A Dutch approach to Flexicurity?

Negotiated change in the
organization of temporary work

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Cover design:
Selina Houwing
(lunchbox: Peter Dirven)

Language editing:
Suzanne van Kessel

Lay-out and printing:
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A DUTCH APPROACH TO FLEXICURITY?

Negotiated change in the organization of temporary work

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Promotiecommissie:

Promotores:
Prof. dr. J. Visser
Prof. mr. E. Verhulp

Co-promotor:
Prof. dr. K.G. Tijdens

Overige commissieleden:
Prof. dr. J. O'Reilly
Prof. dr. G. Schmid
Prof. dr. A.C.J.M. Wilthagen
Prof. dr. M.J. Keune
Mr. dr. S.S.M. Peters
Dr. J. P. Van den Toren

Faculteit der Maatschappij- en Gedragswetenschappen

Which is the most universal human characteristic: fear or laziness?

Louis Mackey in *Waking Life*
(directed by Richard Linklater)

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List of frequently used abbreviations

ABU	*Algemene Bond Uitzendondernemingen*, Association of Temporary Work Agencies
AÜG	*Arbeitnehmerüberlassungsgesetz*,Personnel Leasing Act
CBS	*Centraal Bureau voor de Statistiek*, Statistics Netherlands
CLA	Collective Labour Agreement
CC	Civil Code
CIETT	*Confédération Internationale des Entreprises de Travail Temporaire*, International Confederation of Temporary agency work Businesses
CLA	Collective Labour Agreement
CNV	*Christelijk Nationaal Vakverbond*, Christian National Union Confederation
CWI	*Centrum voor Werk en Inkomen*, Centre for Work and Income
De Unie	National union confederation for Staff and White-collar Employees
F&S Law	*Wet Flexibiliteit en Zekerheid*, Law on Flexibility and Security
FNV	*Federatie Nederlandse Vakbeweging*, Confederation of Dutch Unions
LAML	Leasing of Agricultural Machines and Labour
LBV	*Landelijke Belangen Vereniging*, National Interest Association
NBBU	*Nederlandse Bond van Bemiddelings- en Uitzendondernemingen*, Dutch Federation of Intermediary and Staffing Agencies.
OSA	*Organisatie voor Strategisch Arbeidsmarktonderzoek*, Institute for Labour Studies
ROA	*Researccentrum voor Onderwijs en Arbeidsmarkt*, Research Centre for Education and the Labour Market
RWI	*Raad voor Werk en Inkomen*, Council for Work and Income
SER	*Sociaal-Economische Raad*, Social-economic Council
SMU	*Stichting Meldingsbureau Uitzendbrache*, Foundation of Reporting Bureau in the Agency Work Sector
STAR	*Stichting van de Arbeid*, Labour Foundation
TAW	Temporary Agency Work
VIA	*Vereniging van Internationale Arbeidsbemiddelaars*, Association of International Labour Intermediaries
WAADI	*Wet Allocatie Arbeidskrachten Door Intermediairs*, Law on the Allocation of Labour through Intermediaries
WMO	*Wet Maatschappelijke Ondersteuning*, Law on Communal Support
WOR	*Wet op de Ondernemingsraden*, Law on Works Councils

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And now: let's dance!

Chapter 1 – Variations in flexibility and security

1.1. Introduction

In January 1999, long-standing debates on how to reform the Dutch labour market in light of pressures towards flexibilisation culminated in the Law on Flexibility and Security (F&S Law). According to the explanatory memorandum to the F&S Law, pressures were visible from the 1980s onwards on both the supply- and demand side of the labour market. The demand side showed a deepening of international competition, shorter life cycles of products, and technological developments. On the supply side, the composition of the labour force underwent changes and workers increasingly wished to combine their work and their private life in a flexible manner. These pressures resulted in a growing differentiation and flexibilisation of working hours, remuneration, location of employment, and employment contracts (MvT 1997b).

The Dutch F&S law was considered unique from an international perspective, as it was a clear attempt to combine flexibility with security in the labour market. It was also an innovative approach to the regulation of temporary agency work, a type of employment with a long tradition in the Netherlands (Storrie 2002). The security for employees with open-ended [1] contracts was reduced somewhat while security for temporary agency workers or on-call workers was increased. Because of its attempt to simultaneously and in an integrated manner increase both flexibility and security, this piece of legislation can be regarded a flexicurity policy. A flexicurity policy is characterized by a strategy to enhance, simultaneously and in a deliberate way, the flexibility of organizations, labour markets and labour relations on the one hand, and employment and social security on the other (Wilthagen and Tros 2004). In line with the Dutch corporatist tradition, the F&S law contains many provisions that are 3/4 - mandatory. This means that employers' organisations and trade unions are free to negotiate deviating provisions in their collective labour agreements (CLAs)[2]. When wanting to understand how employers and workers have changed their behaviour in

1 I use the terms open-ended and permanent contracts interchangeably although I prefer the term open-ended as contracts that are termed 'permanent' are in fact not negotiated for ever. When referring to employees I sometimes use the term permanent because permanent employees sounds better than 'open-ended employees'.

2 This is different from semi-mandatory law whereby deviation from the law is possible within an employment contract. In the Netherlands there is even a third type: 5/8 mandatory which means that deviation from law is possible in an agreement with a works council.

response to the F&S Law, the level at which CLAs are negotiated is the most appropriate one; in the Netherlands this is the sector-level (Van Klaveren and K. Tijdens (eds.) 2008).

After the introduction of the F&S Law, the Ministry of Social Affairs and Employment commissioned an evaluation study to assess its impact (Van den Toren, Evers et al. 2002). One of the main conclusions of this report was that due to the economic boom in the early 2000s and the concomitant scarcity of labour, employers could not take advantage of the full range of flexibility options enabled by the law. The authors expected that in a period of economic decline, the use of the law's provisions would increase. The idea arose to carry out the same study in a period of economic downturn, which led to a research proposal and a subsidy for the current project from the Dutch Organisation for Scientific Research NWO (*Nederlandse Organisatie voor Wetenschappelijk Onderzoek*) in 2004[3]. Two major differences between this project and the 2002 evaluation study is firstly the incorporation of a theoretical perspective linking empirical outcomes to the theoretical literature in law, sociology and economics on institutions and behaviour. The project set out to gain more knowledge of how institutions are changed and how they interact with behaviour regarding temporary employment. A second difference is the inclusion of a longer-term perspective: i.e. from the early 1990s to 2006/ 2007. The evaluation study was rather a snapshot of the state of affairs in 2001.

This project into the developments after the implementation of the F&S Law in 1999 is an interesting case study for two reasons. First of all, the Netherlands provides a 'quasi-experiment' to analyse the outcome of an attempt to combine flexibility in security in the labour market. The introduction of the law constitutes a quasi-experiment because it enables a comparison before and after this institutional change and the drawing of causal inferences. This project will shed light on the question what constitutes the specific 'Dutch approach' to flexicurity. It is a relevant study at a time when flexicurity has become an increasingly important topic in the European debate on labour market policy. Secondly, the F&S Law is designed to assign a strong role to the social partners in negotiating flexicurity balances in line with the needs of their sector or individual firm. Because I analyse both the content of the Dutch flexicurity regime and the role of the social partners in its implementation, this project combines an analysis of both the substantive and procedural outcomes of flexicurity policies within the context of the Netherlands.

3 Projectnr. 400-03-163

The project focuses on fixed-term (FT-) contracts and temporary agency work (TAW), which are referred to together as temporary work. These two types of external flexible employment were fundamentally altered with the introduction of the F&S Law and led the European Commission to denote temporary work in the Netherlands as an 'example of flexicurity' (European Commission 2007b). This project analyses both the developments in the extent of temporary work and the way it is regulated in national law and CLAs. To better understand the specificities of the Dutch case, I will compare flexicurity in the Netherlands with the policy debate at EU-level, and the regulations and practices in three other European countries. I then move on to analyse the balance between flexibility and security regarding temporary work in eleven sectors within the Netherlands. The analysis will therefore take place at three levels: the EU-level, the cross-national level, and the sectoral level within the Netherlands. In addition, the project is an analysis over time: roughly from the mid 1990s to 2006/2007. This long-term perspective is necessary for understanding how flexicurity in temporary employment becomes normalised and institutionalised over time. Normalisation refers to a situation where a practice becomes more and more accepted and widespread whereas institutionalisation refers to the codification of practices in formal rules. Normalisation can be further subdivided in changes in behaviour and changes in norms towards acceptance of a certain practice.

This chapter is set up as follows: I will first examine the discussion on flexicurity and how it developed at EU-level and in the Netherlands. Then, in sections three and four, I will conceptually develop the notions of flexibility and security and how both can be enhanced simultaneously, i.e. flexicurity. In section five I will outline the theoretical background to understand institutionalisation and institutional change, and then develop my research questions in section six. Section seven provides an outline of the book.

1.2. A multi-level flexicurity debate

1.2.1 Increasing competitiveness in Europe through flexicurity

Since the 1980s, European labour markets have experienced a growing demand for flexible labour, both from employers and workers. On the supply side, women have started to participate in the labour market on a large scale. This trend has been visible since the 1960s and 1970s, and these new entrants brought new preferences towards employment, mainly the possibility of combining work and care for children. On the demand side, processes associated with globalisation surfacing in the 1980s increased

pressures on the economies of Europe to be competitive on a global scale (Visser and Hemerijck 1997; Levy 1999; Huber and Stephens 2001).

In the 1980s and 90s flexibilisation of European labour markets was hailed as the answer to increase competitiveness, create jobs and bring down unemployment. The deregulated, flexible labour market of the US was seen as the exemplary model: between 1980 and 1999, 34 million jobs were created in the US as opposed to 20 million in the EU15 while a significantly larger proportion of the EU15 was aged between 24 and 65. In addition: both in the US and the EU15 the share of unemployment was 9.5% in 1983. In 1999 this percentage was unchanged in the EU15, while the share of unemployment in the US was brought down to little over 4% (OECD Labour Force Statistics, in Rubery and Grimshaw 2003). The term 'Euro-sclerosis' was coined to denote the 'rigid' employment regulations and the lack of market mechanisms in Europe (Goudswaard 2003 p. 17). It was hoped that more flexibility in the labour market would lead to more jobs and greater increased capacity of the European Economies to adjust to fluctuations in the economy.

Over the course of the last decades, European labour markets have indeed become more flexible in reaction to increased pressures for international competition and of a changing composition of the labour force. The increasing use of temporary work is in turn enabled or restricted by changing legislation, and both the share of temporary work and legislation are embedded in changing norms surrounding temporary work. Although the open-ended employment contract is still the standard in Europe – over three quarters of employees have an open-ended contract – the number of people with a temporary contract is increasing. The main increase is found in Southern Europe and in some Eastern-European countries; flexible contracts are most often found in catering services, education, care sectors and retail, and among lower-educated, women, and entrants to the labour market (EIRO 2007b). FT-contracts, part-time contracts, on-call contracts, TAW and self-employment have become established features of European labour markets. The share of self-employment, part-time employment and FT-contracts in the EU15 increased from 44% in 2001 to more than 50% in 2005 (European Commission 2007a). Note that this high share partly reflects the fact that part-time and FT-employment can be overlapping categories. Part-time employment accounts for the largest contribution (around 60%) to employment creation after 2000.

This flexibilisation posed challenges for national regulatory systems, and many countries have incorporated these changes by introducing more flexibility in labour

market legislation. In the modification of national legal systems, the debate often includes notions as 'dual labour market', 'segmentation', 'precariousness', and 'outsiders'. The European Commission has stated in relation to flexibility that: "There is a risk that part of the workforce gets trapped in a succession of short-term, low quality jobs with inadequate social protection leaving them in a vulnerable position" (2007, p. 8). The European Commission argues that security for these workers "on the margins" should be increased. It is important to note that the degree to which this applies to various types of flexible labour varies. For example, being an on-call worker is often considered precarious, while this can also be the case for part-time work (O'Reilly and Fagan 1998), though it does not have to be, especially not in the Netherlands (Visser 2002).

Since the early 1990s, policy makers at European level and in the Netherlands have stressed the need of increasing flexibility of European labour markets in order to remain competitive in a changing global economy while also reinforcing social protection, social cohesion, and solidarity. This combination of flexibility and security in the policy debate is now often denoted with the term 'flexicurity' (European Commission 2007, p. 7). The concept of flexicurity spread in academic and policy-making circles during the 1990s. At EU-level, the notion to combine flexibility and security in the labour market found its first expression in the 1993 White Paper on Growth, Competitiveness and Employment and was formulated more explicitly in the 1997 Green Paper on Partnership for a New Organisation of Work. The demand for flexibilisation of labour markets while providing security to (especially vulnerable) workers has been addressed at a series of EU summits, including Essen, 1994, Florence, 1996, Amsterdam, 1997, Luxemburg, 1997 and Lisbon, 2000. It is furthermore a central issue of the Adaptability pillar of the European Employment Strategy (Wilthagen and Tros 2004).

In a seminal publication on flexicurity, the European Commission developed 'common principles' on which flexicurity is based, a set of 'components of flexicurity', and four 'pathways to flexicurity' (European Commission 2007b). In this report, the European Commission also highlighted the importance of social dialogue: "Active involvement of social partners is key to ensure that flexicurity delivers benefits for all" (ibid. p. 18). Social partners are employers' organizations and trade unions. Despite the fact that flexicurity should be arranged according to the existing institutions that vary across member states, the common principles provide the anchors for consensus on flexicurity. There are eight common principles that are quite broadly defined and state what flexicurity should bring about and how. For a complete description, see the 2007

report, but some typical examples of what flexicurity should bring about are more and better jobs, a reduction of the gap between insiders and outsiders on the labour market, and gender equality. These results can be obtained by adapting flexicurity to the specific circumstances, labour markets and industrial relations in member states, while negotiations between social partners should take place within a "climate of trust and dialogue" (ibid. p. 20).

The first 'common principle' of flexicurity outlines the four components of flexicurity: 1) flexible and reliable contractual arrangements; 2) lifelong learning strategies; 3) effective active labour market policies ; and 4) modern social security systems. In this project I focus on the first element: flexible and reliable contractual arrangements. To measure flexicurity in temporary work as operationalised here this focus was needed, whereas assessments of flexicurity in the entire labour market should ideally incorporate all four components. Flexible and reliable contractual arrangements should be embedded in "modern labour laws, collective agreements and work organization" (ibid. p. 12). The idea behind these contractual arrangements is "to help outsiders, (…) to find work and to move into stable contractual arrangements" (ibid. p. 13). This component links up to the first of the four 'flexicurity pathways', namely "tackling contractual segmentation" (ibid. p. 28). The other three flexicurity pathways are: developing flexicurity within firms and transition security; tackling skills and opportunity gaps, and; improving opportunities for benefit recipients and informally employed workers (ibid. p. 30-35). The flexicurity pathway that this study sheds light on is that of tackling contractual segmentation by means of flexible and reliable contractual arrangements. This is core element of the F&S law and the reason why the European Commission regards it as an example of flexicurity.

1.2.2 Flexicurity in the Netherlands

Discussions on flexibilisation of the Dutch labour market, mainly focussing on dismissal protection, surfaced in the late 1960s. The debate on flexibilisation often discerns two groups in the labour market: *insiders* and *outsiders*. Insiders are employees with open-ended employment contracts, long job tenure, and full rights under labour law. There are two types of outsiders: those in employment and those outside the labour market. This project deals with outsiders within employment. This type of outsiders have small, flexible, irregular short-term contracts in informal, or highly competitive and therefore vulnerable sectors of the economy (Lindbeck and Snower 2002; WRR 2007). The growing uncertainty concerning product demand and the pressures to reduce costs decreased the security of insiders. However, security decreased even more for outsiders

in the labour market (WRR, p. 21). Outsiders with employment, the focus of this project, are not or only partly protected by labour law depending on the national context.

In the Dutch context, the debate on outsiders is related to the system of protection against dismissal that is allegedly too restrictive and therefore brings about segmentation of the labour market. Segmentation entails that it is increasingly difficult for outsiders to become part of the groups of insiders. However it should also be borne in mind that the share of transitions into open-ended employment is related to favourable economic circumstances. Keeping that in mind, while the share of flexible contracts has increased, the degree of dismissal protection has only slightly decreased with the F&S law; this might lead to a sharpening of the insider-outsider duality (Visser and Van der Meer 2007, p. 55).

Despite the fact that it has not been substantially modified since its development in the 1940s, the Dutch system of dismissal protection is always a core feature of the Dutch discussion on labour market flexibility (see chapter five). Many economists, lawyers, and employers continue to argue that the Dutch dismissal system is unnecessarily complicated, and it has one of the most restrictive regimes regarding the dismissal of permanent employees compared to other OECD countries (OECD 2004, p. 72). To illustrate the discussions that continue to the present day I would like to mention the latest developments in the field here. In 2007, the Minister of Social Affairs and Employment drew up a proposal to revise dismissal law, but again no agreement could be reached. A commission was installed to draft an advice on the issue that was presented in June 2008. This advice contained a proposal to reduce the dismissal costs for employers and making severance payments part of a 'work budget' paid by employers, workers and the state. The work budget should be used for extra training of the worker before and after dismissal (Commissie Bakker 2008). This 'package deal' effectively increased flexibility regarding dismissal with increased security through extra training. However, this advice has not resulted in social reforms as it was dismissed in the semi-annual negotiations between social partners in the fall of 2008.

At the start of the 1990s, employers' organisations and trade unions were also sharply divided over the issue of flexibility and dismissal legislation. Whereas employers called for greater contract flexibility and flexibility of labour law, labour unions objected to the deterioration of worker protection and called for an improvement of the legal status of flexible workers. In 1993, the Labour Foundation STAR made up of unions and employers' organisations issued a recommendation titled 'A New Direction' (*Een Nieuwe*

Koers). This document was in line with changes already taking place since the Wassenaar Agreement of 1982. The New Direction document was drawn up to make a contribution to economic recovery in a period of recession, and presented an agenda for the 1994 collective bargaining round. In the document, the STAR advised the social partners not to demand wage increases and expressed the need for differentiation in employment conditions to accommodate the rising diversity in the needs of workers and firms (STAR 1993). By frequently using the terms 'decentralisation' and 'tailor-made' with regard to the collective bargaining process, the New Direction document was an important impulse for the decentralisation in CLAs in the years that followed (STAR 1993; Verhulp 2005). This decentralisation had accommodated the expansion of temporary work throughout the 1990s finally leading to the 1999 F&S law.

In the 1990s, the reality of increasing flexibility caught up with the discussions on legislative reform as the share of FT-contracts and TAW increased rapidly while the institutional framework was lagging behind. Due to the possibilities enabled by 3/ 4-mandatory law, provisions negotiated by social partners in CLAs diverged more and more from what was stated by law. In light of these pressures, the Dutch Minister of Social Affairs and Employment drafted a memorandum titled 'flexibility and security' in 1995 and asked the social partners within the STAR for advice. They responded unanimously with an advice document in 1996. This unanimous advice was a milestone in the discussion and constituted part of the 'Dutch miracle' of the 1990's (Visser and Hemerijck 1997). Because the STAR advice was unanimous, it was almost entirely adopted in the F&S law.

The F&S Law was designed to increase the legal status of various types of precarious, flexible work and thereby to decrease the gap between insiders and outsiders in the labour market. The underlying notion was that flexibility and security should go hand in hand to ensure that flexibilisation will take place in a "responsible and balanced manner for both parties" (MvT 1997, p. 1, translated). These balanced and flexible employment relations should then be "the core of an economically competitive and socially responsible labour market", fostering social cohesion in the labour market and society as a whole (ibid.). The F&S law can be considered a clear example of a flexicurity policy although the term was not used widely until the 2000s. In 1998, Wilthagen already wrote an influential paper on the Dutch attempts to combine flexibility and security in the labour market, introducing the term 'flexicurity' in the academic debate (Wilthagen 1998). It is therefore no coincidence that the Netherlands is seen as an example of

flexicurity; the concept partly draws on the Dutch model. Wilthagen is now also a key expert advising the European Commission on issues of flexicurity thereby functioning as a link between the Dutch and the European debate.

1.3. Conceptions of flexibility and security

1.3.1 What is flexibility?

Flexibility in the labour market can refer to many different things: flexibility in production processes, flexibility in wages, flexibility in work processes and workers' tasks, flexibility in working time, and flexibility in employment contracts. This project deals with this last type of flexibility, as it is the core element of the F&S law. In the academic debate, flexibility is often subdivided into four types of flexibility: internal numerical flexibility, external numerical flexibility, functional flexibility and wage flexibility (Atkinson 1984). Flexibility in employment contracts such as seasonal work, on-call work or TAW are examples of external numerical flexibility, but it also includes regulations on dismissal. The type of external numerical flexibility I analyse is temporary employment, which can be subdivided in FT-contracts and TAW. The first type refers to contracts with a fixed duration, as opposed to contracts with no specified end date, which I refer to as 'open-ended'. TAW entails a triangular employment relationship whereby an employee is deployed to a third party by an agency, which is the legal employer, within the framework of the business of the legal employer. The third party, the user firm, has a contract of assignment with the agency; the employee works under the supervision and guidance of the third party. This definition is derived from the Dutch Civil Code (article 7:690), but corresponds with EU-wide definitions: "the temporary agency worker is employed by the temporary work agency and is then, through a commercial contact, hired out to perform work assignments at the user firm." (Storrie 2002, p.1). Also: "TAW (…) involves the supply of workers by firms for assignments with client organizations (Arrowsmith 2006, p. 1).

The Dutch F&S Law entailed significant changes in the regulation of both FT-contracts and TAW. Whereas before 1999, only one FT-contract could be offered after which an open-ended contract was required, the F&S Law allowed three consecutive FT-contracts, for a maximum duration of three years. Both before and after 1999 however, deviations from the law were possible in CLAs by means of 3/4-mandatory law. The new regulations in the F&S law resulted in a significant increase in flexibility for employers. To somewhat curtail this increased flexibility, the explanatory memorandum to the F&S

Law states that a continuation of the employment relationship after three contracts or three years means an automatic replacement of the FT-contract by an open-ended contract (MvT 1997b). The legal relationship between an agency worker and an agency was not entirely clear before 1999. The F&S Law brought TAW within the scope of labour law, the agency became the legal employer, and agency workers were entitled to certain labour rights after an initial period of 26 weeks. Because the provisions on FT-contracts and TAW are 3/ 4-mandatory, social partners can deviate from them in a CLA. The extent to which deviation has indeed taken place and what its practical effect on the balance between flexibility and security in temporary work is taken up in chapter five.

TAW and FT-contracts are functional equivalents and often used for the same reasons; both contracts are for example used when employers are uncertain about future product demands, as a buffer to protect a core of permanent workers, when the work in itself is temporary (projects or seasonal work), and as a means to screen new employees. In this last sense TAW and FT-contracts can be seen as functionally equivalent to trial periods. Both types of flexibility relate to protection against dismissal in the sense that temporary contracts entail less dismissal protection. Lower protection does not hold for the duration of an FT-contract; it is quite difficult to lay off an FT-employee under the Dutch regime. For FT-workers there is however a predetermined end to the employment relationship and agency workers are typically only hired for the duration that a user firm needs them; when there is no more demand in the user firm the agency work employment relationship ends.

I refer to FT-contracts and TAW together as temporary employment. By its very nature, temporary employment entails flexibility for both employers and workers. However, flexibility can be more or less restrained. I therefore also analyse norms, laws, and provisions in CLAs to the extent to which they curb or enable the proliferation of temporary work. Norms that involve an acceptance of (widespread) temporary work, and laws and CLA-provisions that provide little restrictions on temporary work increase flexibility. In the case of 3/4-mandatory law, social partners can negotiate provisions that limit the restrictions that the law sets. In the case of the F&S law this for example entails that a CLA states that more than three contracts can be offered and for more than a maximum of three years. These decentralised regulations then increase the flexibility laid down in the law. In the cross-country comparison I will initially analyse national law and existing norms, and where possible and relevant also CLAs.

1.3.2 Combining flexibility with security: flexicurity

Wilthagen and others have termed the double policy strategy of increasing both flexibility and security a 'flexibility-security nexus' (Wilthagen, Tros et al. 2004). Within this nexus, Wilthagen et al. differentiate between four types of flexibility and four types of security loosely based on Atkinson (1984). The various types of flexibility and security together constitute a 'flexicurity-matrix'. Table one below contains the flexicurity matrix as developed by Wilthagen et al. This matrix is used as a heuristic tool in this project; the shaded cells indicate the flexibility and security elements that are relevant for the analysis carried out here. Below I further develop what security entails in this study.

Table 1.1. Elements of the flexicurity matrix relevant for flexible and reliable contracts

Flexibility		**Security**	
External numerical flexibility:	Flexibility in hiring and firing of workers, such as easy dismissal and TAW	**Job security**	Security of retaining a specific job with a specific employer
Internal numerical flexibility	Flexibility in working-time, such as overtime and part-time work.	**Employment security**	Security of remaining in the labour market, for example by upgrading skills, or activating labour market policies
Functional flexibility	Workers that are multi-employable due to a diverse set of skills or a flexible organisation of work within a firm.	**Income security**	Security of having an income when paid work ceases.
Wage flexibility	Flexibility in the wage-level due to performance- or result-based pay.	**Combination security**	Security to combine paid work with private life

Source: Wilthagen, Tros and Van Lieshout (2004, p. 4)

As mentioned above, temporary work is a type of external numerical flexibility contained in the upper left cell. Security for temporary workers can be three-fold: job security, employment security and income security. Job security in this project is the extent to which FT-contracts are turned into open-ended contracts with the same employer. For agency workers job security is the type of contract offered with the agency: in the Dutch case for example, agency workers can have an FT- or open-ended contract with their agency, though 80% of agency workers are still employed based on an 'agency work contract'. In this type of contract, job security is tied to the demand for the worker by a user firm. The various forms job security can take will become visible in the country-comparison in chapter four.

Employment security in this project is made up of two elements. The first is the rate of transitions into open-ended employment (or FT-employment in the case of agency workers) with another than the current employer. These transition rates unfortunately do not show to what extent there are (groups of) long-term flexible workers that hardly or never make the transition to more stable employment; these figures are not available. Secondly, employment security also involves access to training for temporary workers, as this increases skill levels and thereby theoretically raises the opportunities for employment (European Commission 2007, p. 13). The last type of security in temporary work is the security of having an income outside of employment. This is therefore access to benefits, social security, and pensions. What is not taken up in the table but what I add to income security in this project is equality of pay between employees with temporary and those with open-ended contracts. When these four types of security are increased, the gap between temporary and open-ended employment, and thereby labour market segmentation, decreases.

The last element of security in the matrix refers to the possibility to combine work with private life. This type of security is often combined with a type of flexibility from the left column of the flexicurity matrix. This type is 'internal numerical flexibility', i.e. flexibility in working time. Internal numerical flexibility is associated with combination security because it gives workers security to flexibly integrate their working and their private life. External numerical flexibility such as temporary work and easy dismissal are not related to combination security (Chung, Kerkhofs et al. 2007). Therefore, external flexibility is not driven by changing demands on the supply side of the labour market and this is therefore not analysed in this project.

FT-contracts and TAW by their very nature bring about a certain degree of uncertainty for workers; the need for restrictions to ensure a certain level of security was therefore pointed out in the explanatory memorandum to the F&S law (MvT 1997). Because of this insecurity certain restrictions are needed and as these restrictions are done away with, security decreases while flexibility increases. This reasoning shows that flexibility and security in this project are two sides of the same coin: they represent a zero-sum game when analysing one specific element. This is caused by the fact that I analyse specific regulations and provisions separately. Within one regulation on temporary work, flexibility and security cannot be increased at the same time. However, when analysing the two types of temporary work, and when taking into account a

package of national rules, and/ or CLA-provisions, security and flexibility can both be increased.

The reality of combinations of flexibility and security is however more complex than this analytical representation. Leschke (Leschke 2007b) develops the notion of virtuous and vicious cycles. Security and flexibility can increase simultaneously within a set of complementary institutions that reinforce each other. An example of this is Denmark, where relatively low dismissal protection creates flexibility while an elaborate package of active labour market policies increases employment security. Because investment in skills increase and mobility is stimulated, flexibility and security are then beneficial to both employers and workers. This results in a virtuous cycle of flexicurity. On the other hand a vicious cycle of flexicurity can occur where both flexibility and security are decreased simultaneously. An example is a situation where security is increased through very strict dismissal protection that entails a benefit for employees in the short term but that might increase unemployment in the long term. To determine these cycles, a long time frame for analysis and also a view encompassing a broad range of institutions of the economy and the labour market is key; such cycles are not analysed in this project. The provisions are themselves trade-offs between flexibility and security while a set of provisions can increase or reduce both.

The issue on what constitutes flexibility and security in temporary work might not always be straightforward. The practical application of F&S regulations on FT-contracts is a case in point. A 1997 EU-directive stipulates that flexibility in FT-contracts should be limited to ensure security for FT-workers (see EC 1999/70 fixed-term workers directive). This line of reasoning is reflected in the F&S law: restrictions are needed to increase security. However, it is not obvious what kind of security is hereby increased. It can be argued that limiting the maximum number of FT-contracts – e.g. to three in the Netherlands – leads to *in*security for these workers as they are in some cases laid off after the third contract expires. If they could have a fourth contract, they would still have a job. Here we see the gap between rules and what happens in practice: the idea behind the restrictions is that after the stipulated three FT-contracts, temporary workers will move into more stable – read open-ended – employment. As this does not occur in practice the security provided by these restrictions is less straightforward. The memorandum to the F&S Law explicitly states that the extended flexibility in FT-contracts and TAW should be limited to ensure security for workers. Although reality is more complex, I follow this definition of security that is the background for the F&S law and the EU-directive on

FT-contracts; the limitation of the number and duration of temporary contracts increases security while the extension increases flexibility.

It is important to stress two further aspects of flexicurity as defined in this project. The first is the implicit assumption that employers want flexibility and employees want security. This is a simplification of reality, as employers for example also want security in having the right people at the right time in the right positions. This security is however not taken into account in the current project, resulting in a somewhat narrow view of flexicurity. This is purely for the sake of analytical clarity and should not be taken as an accurate representation of reality. Secondly, the way in which the term flexicurity is used in this project is a further specification of one of the four flexicurity components, and one of the four flexicurity pathways outlined by the European Commission (2007). The flexicurity component that is closest to the analysis in this project is the component "flexible and reliable contractual arrangements" (ibid. p. 12) and the flexicurity pathway of "tackling labour market segmentation" (ibid. p. 28). I am aware that this is not entirely in line with flexibility from a policy perspective as flexibility should involve an integrated set of policies that covers insiders, 'outsiders' in employment, and 'outsiders' out of employment (European Commission 2007, p. 20). However, here I adopt an analytical approach. Although I do not aim to measure all elements that should be included in a comprehensive flexicurity policy strategy, the analysis in this project is a valid attempt to operationalise and clarify this relatively new concept from an analytical point of view.

1.4. How to organise? Procedures of flexicurity

The European Commission has stressed the importance of social partners and the fact that flexicurity should be the result of negotiations between them. The Netherlands are therefore specifically interesting for analysing flexicurity in temporary work as the F&S law stimulates a re-assessment of the national flexicurity balance by social partners through 3/ 4-mandatory law. The majority of contracts of Dutch employees are covered by CLAs negotiated at sector-level; this is therefore the most appropriate level to analyse negotiations and balances in flexibility and security. It is essential to start with the sectors and firms, as it is within sectors that flexibility strategies are negotiated between employers and employees (and/ or their representatives). Like the study at national-level, the sector-level analysis should be carried out over time to discern the impact of the F&S law and other possible influences. This argument might only hold for corporatist economies like the Netherlands, where social partners play a key role in shaping

employment conditions at the sector level. The country comparison will shed light on how social partners play a role in negotiating flexicurity in other settings.

As mentioned in the introduction to this chapter, a key input for this study was the evaluation study of the F&S law carried out in 2001/ 2002 by Van den Toren, Evers et al. That evaluation contained case-study analyses of ten sectors. Developments in these sectors will be analysed again in the current project. I therefore select the same sectors for analysis: horticulture, leasing of agricultural machines and labour, metal- and electrical engineering, energy, construction, retail, architects, cleaning, security, and home care. In this project I chose to split retail further into the subsectors supermarkets and department stores. Elaborate information on the design of the study, the sectors and the data-analysis is taken up in the methodological chapter three.

Compared to the 2001/ 2002 evaluation, this study will encompass a longitudinal analysis, also including the period before the introduction of the F&S law. I wish to investigate not only the claim that "decentralisation appears to be having a beneficial effect on the introduction of flexicurity" (Wilthagen, Tros et al. 2004 p. 22), but also that the ability to find tailor-made flexicurity solutions is facilitated by "good economic performance, which seems a positive condition for drawing up new rules on flexibility and security" (ibid.). I analyse the period 1998-2006 which was a period with an economic boom (1998-2001) as well as a downturn (2002-2004). Finally, this study embeds the empirical analysis in a theoretical framework to understand how developments over time occur. Because the analysis deals with changing legal regulations and sector-level regulation in CLAs, the theoretical framework is based on political and socio-economic theory on institutions.

1.5. Behaviour, institutionalisation and institutional change

When asking an employer in any country why he or she deploys temporary labour at a certain point in time, the answer will mainly refer to economic developments, such as decreasing demand or uncertainty about future demand (Goldschmeding 1998). However, when comparing countries, remarkably different patterns can be seen in behaviour regarding the use of temporary labour. One element of this project is therefore a comparison of the use and regulation of temporary labour in four West-European countries (chapter four). Formal and informal institutions create an institutional framework that has a mediating role shaping economic motives (Auer 2001; Visser and Van der Meer 2007).

Increasing globalisation since the 1980s brought about a new distribution of risks between employers and workers (Crouch 2008, p. 1). The traditional employment relationship is more and more surrounded by various new forms of contracting between workers, employers, self-employed, and intermediary parties. The risks associated with the employment relationship, i.e. fluctuations in product demand and difficulty to adjust the labour force accordingly, can be shifted between the workers, employers, and the society as a whole. Governments deal with new risks and changing new practices by creating new institutional frameworks; a process of institutionalisation. This is mostly a direct effect of normalisation of a certain practice, which entails an increase in its extent and acceptance of the practice in norms. Institutionalised rules in turn affect norms on and behaviour regarding the nature and extent of temporary work. The *extent* is the share in total employment whereas the *nature* is understood as the level of various types of security in temporary employment. Changing norms and behaviour are in turn input to amend the formal institutional regime. The details and theoretical background of this process whereby normalisation leads to institutionalisation, which in turn leads to possible further normalisation, are fleshed out in the ensuing theoretical chapter.

In the theoretical chapter two, I will show that an institutional setting is made up of regulations and informal norms at the national and sector-level. I analyse normalisation and institutionalisation of temporary work, and institutional change at both national and sector-level. A key institutional change in this project is the implementation of the F&S Law in 1999, but actors play a key role in further shaping this process of change. Institutionalisation in this project is analysed at national and sector-level. Legislation at national-level, but also economic developments, shape power relations between social partners and thereby the outcome of negotiation processes. With the Dutch flexicurity regime, the decentralisation of industrial relations to the CLA- (i.e. sector or company-) level was reaffirmed. This decentralisation of collective negotiations can entail a shift of power from the trade union to the firm or employers' organisation. This is especially the case in sectors where trade union membership is declining and where labour scarcity is low (Visser 2003).

In institutional theory, change has often been difficult to incorporate or present as 'frictionless' (Thelen 2004). Authors such as Fligstein have contributed to the field by incorporating politics and interests into the field of institutional theory. I further extend these notions and look at how change at various levels unfolds, which parties are involved, and whose interests are represented. The most suitable theories to analyse this

are typologies of institutional change that can be considered minor and incremental, but can lead to large-scale transformations (Streeck and Thelen 2005; Hall and Thelen 2009). I will assess to what extent this theory is useful in explaining developments in the Netherlands, and where the theory might lack and need revision.

1.6. Research questions

The developments briefly sketched in this chapter will be analysed in-depth throughout the study. As mentioned, the analysis is carried out over time and at three levels: the EU-level, the national-level and the sector-level. The EU-level is mainly dealt with here but I will return to it in the cross-national comparison of four countries, including the Netherlands, in chapter four. Chapter five then will further scrutinize national-level developments within the Netherlands, while chapter six compares sectors within the Netherlands. The overarching question in this project is: **What is the Dutch approach regarding the extent, nature, and organization of flexicurity in temporary work?** This main question is fleshed out in five research questions that can be subdivided in three types of questions. The first is a descriptive question: what happened? Then, the second and third research questions identify the mechanisms and actors behind the changes. The fourth and fifth questions deal with the explanation, i.e. the processes and outcomes of developments. The five research questions are:

1) What are the developments in temporary work during the last 10-15 years in terms of its extent, security aspects and formal regulation?

2) How does normalisation and institutionalisation of temporary work take place?

3) Which mechanisms and actors explain the developments in the extent, nature, normalisation and institutionalisation of temporary work?

4) How are national-level institutions on temporary work implemented by social partners? And;

5) Did the Dutch flexicurity regime lead to convergence or divergence between sectors within the Dutch economy?

After the next chapter, which develops a theoretical framework, and chapter three on the methods deployed in this study, these research questions will be answered over the course of the empirical chapters four, five and six. Questions one and three will be answered in all three chapters to include both the national- and sector-level. Question two will be answered mainly in chapter five on the Netherlands but also in chapter four in which the Netherlands is compared to other EU-countries. Questions four and five

are answered by looking at sector-developments over time in chapter six. In the next section I will discuss the content of the chapters more elaborately.

1.7. Introduction to chapters

In the following chapter, I present the theoretical framework for this study, drawing on the literature on institutions and institutional change. The theoretical framework serves to analyse institutional change at both national and sector-level, and the interaction with changing norms and behaviour, i.e. normalisation. Special attention is paid to the role that pivotal actors, so-called 'institutional entrepreneurs', play in these processes. The institutional change at national level was the introduction of the F&S law in 1999. The chapter shows that the new law was not so much an external reform of Dutch regulations on flexible labour, but to some extent also a codification of developments already taking place in the Dutch economy. Because the F&S law was aimed at reflecting a development that was becoming more and more widespread in Dutch society, this institutional change was not abrupt but incremental. At sector-level too, the F&S law and its effects are incremental. The available typologies of institutional change will be scrutinised in light of the Dutch case to see which type of institutional change has occurred, which theoretical mechanisms can be identified, and which outcomes can be observed. An addition of this study to these theories is the multi-level perspective of institutional change. This chapter ends with twelve propositions that will serve as guidelines for analysis throughout the remainder of the book.

Chapter three contains the methodological considerations for the research. The project is based on comparative case-study analysis drawing on J.S. Mill's *Method of Difference*. The cases can be countries (chapter four), or sectors (chapter six). I also make an in-depth case study analysis of the Netherlands over time (chapter five). The sector-study is based on eleven cases, which presents a challenge for systematic comparison. To deal with this, I use the method of Qualitative Comparative Analysis (QCA), using fuzzy set (fs) membership scores, i.e. fsQCA. The method basically translates labels that are very common in qualitative research, i.e. 'higher', 'lower' 'more than' etc. into scores for membership in a certain set (e.g. the set high labour scarcity). FsQCA shows which conditions, e.g. strong unions, high labour scarcity, are sufficient and which are necessary for flexibility, security, and flexicurity. Details on the method and how it is applied are discussed in chapter three. In that chapter I also operationalise the concepts in the theoretical framework e.g. flexibility, security, change, and power. The chapter contains a

schema of the research questions, the propositions to be tested, and the methods used, which functions as a kind of 'blueprint' for the project.

The fourth chapter is the first of the empirical chapters; here the Dutch institutional regime on flexible labour is compared to that in Germany, Denmark and the United Kingdom. These countries are instances of types of employment and industrial relations regimes. In the existing typologies, the Netherlands is becoming more and more difficult to classify. Whereas the Netherlands and Germany were traditionally grouped together as having a similar dualist labour market regime, the introduction of the flexicurity framework marks a shift in the Netherlands towards the Scandinavian countries. The empirical analysis in this chapter shows the developments in the share of temporary work in these four countries and how this type of flexible employment has become institutionalised and normalised since roughly the mid-1990s to the present day.

The fifth chapter contains a detailed study of normalisation and institutionalisation of temporary work in the Netherlands and which actors played a key role. The social partners were key actors involved in the drawing up of the F&S law, which can therefore be theoretically conceptualised as a reform. Social partners can be considered 'institutional entrepreneurs' who secured their interests through their involvement in shaping the new legislation. Especially important were the social partners in the TAW sector, who drew up a covenant for the TAW sector concomitantly with the introduction of the F&S Law. These actors openly favoured change of the existing regime by advocating the exceptional position of the TAW sector. The social partners still play a key role in the implementation of the law. This chapter therefore also shows how social partners implement the law and how the national-level balance between flexibility and security is translated into the sector-level. The data show that in decentralised bargaining in CLAs, flexibility is increased more than security; a change that is interpreted by the Dutch trade unions as a drift away from the intentions of the legislator. This chapter ends with an assessment of how institutional changes shift the risks of the employment relations between employers, employees and temporary work agencies, leading to different patterns of behaviour.

In chapter six I present the results of qualitative research in the eleven sectors on how temporary work has developed, how regulations in CLAs take shape, and how flexibility and security elements are negotiated between social partners. The institutions that I analyse in this chapter are the sector-level CLAs, and their embeddedness in sector-level norms and traditions on deploying flexible labour. As was visible at national

level, the analysis here shows that flexibility has increased in the period of economic downturn between 2001 and 2004. This is in line with the expectation expressed in the 2001/ 2002 evaluation that during an economic downturn employers are able to make more use of the flexibility options enabled by the F&S Law. Again, these changes might entail a drift away from the intentions of the F&S law. During the economic downturn sectors have converged and most sectors either increased flexibility or did not change flexibility or security. Yet, developments differ across sectors; the reasons for this are sought in the power balance between social partners and changing external pressures. The analysis with fsQCA shows that openness to international competition is a necessary condition for flexibility, while scarcity of labour is a necessary or sufficient condition for security. Interestingly, strong unions play a smaller role than expected in realising security for temporary workers.

In the final chapter, I return to the schema of research questions and propositions introduced here and developed in chapter three, and answer how institutionalisation, normalisation, and institutional change occur, as well as which actors play a key role in this. The theoretical framework has turned out to be useful for analysing the Dutch case, but in my conclusions I propose some revisions and additions. My analysis shows the importance of a framework that incorporates *multi-level* institutional change, as well as the possibility that perceptions of various actors differ. Finally, in my conclusion I argue that a Dutch approach to the regulation of temporary work does seem to stand apart in the European context. The aim to move towards the Danish model by means of the F&S law has however not led to a dissolving of a dualist regime, which is to a large extent explained by the varying positions of the unions in the Netherlands and in Denmark.

Chapter 2 – A framework for understanding institutional change and the role of interest associations

2.1. Introduction

The share of temporary employment in any labour market is embedded in an institutional framework made up of formal and informal institutions. Following North (1990), the term 'institutions' refers to "the humanly devised constraints that shape human interaction" (p. 3). These constraints can be both formal, i.e. rules backed by the force of law, and informal, such as norms, traditions and customs. Formal and informal institutions exist at various levels; the level of a nation-state, company-level, or the level of economic sectors. In this chapter I will outline a theoretical framework to analyse change in formal and informal institutions at national and sector-level. The theoretical framework also includes the analysis of behaviour that is shaped by formal and informal institutions. Behaviour in this project refers to the occurrence of temporary work, which is behaviour of both employers, employees, and the representatives of both.

A central part of the formal institutional framework for temporary work in the Netherlands is the Flexibility and Security (F&S) law, introduced in January 1999. The F&S law is made up of a series of adjustments to Dutch labour law to redistribute flexibility and security in the labour market by somewhat decreasing security for insiders, increasing flexibility in fixed-term work, and increasing security for on-call and temporary agency workers. The F&S law was a means to deal with the increasing demand of employers during the 1990s for relaxation of dismissal protection (for a complete description, see chapter five) and offered a way around dismissal law mainly by extending the possibilities to use consecutive fixed-term (FT-) contracts. In addition, the F&S law simplified dismissal procedures, shortened notification periods, and introduced the possibility to dissolve an FT-contract (Knegt, Hesselink et al. 2007). Despite these measures to increase flexibility for employers, the discussion about the need for relaxation of dismissal law remains topical in the Dutch context (Scheele, Theeuwes et al. 2007).

The Dutch institutional framework on temporary work is however broader than the F&S law: also other elements of national labour law such as dismissal protection and laws on benefits for sickness and disability, collective labour agreements (CLAs), and

informal norms surrounding temporary work are part of the institutional framework. The institutional change brought about by the F&S law was not an entirely new development; it was also to a certain extent a codification of developments already visible from the behaviour of employers and temporary employees, and in CLA provisions on temporary work. As I will elaborate in the next chapter, the F&S law leaves room for social partners to deviate from certain provisions of the law by means of a CLA. CLAs therefore also form part of the formal institutional framework on temporary work, at the sector or company-level.

Institutional change can have various sources and take various forms. Scholars such as Peter Hall, Wolfgang Streeck and Kathleen Thelen have developed typologies of types of incremental but discontinuous institutional change based on purposeful action by individuals that act according to their perceived interests. These types of change seem to fit the implementation of the F&S law because the F&S law was partly a codification of existing practices and therefore an incremental change. I call this process of codification 'institutionalisation'. This process is closely related to a development that can be understood as 'normalisation'. When a certain practice becomes more widespread and accepted in norms and customs (informal institutions), this is a process of normalisation. When a practice becomes more and more normalised, the formal institutions at some point have to be adjusted in line with these developments; this is institutionalisation. Institutionalisation can however be more or less in line with normalisation; practices might also be institutionalised while they are not to a very large extent normalised. In addition, in the Dutch case institutionalisation often takes place first at the level of CLAs and is consequently taken up in national law. The F&S law nevertheless introduced some novel elements that were not merely codifications, although this mainly holds for elements other than those on FT-contracts and TAW. After the practices in the Dutch context are institutionalised, they are subsequently fleshed out further within CLAs and can then in turn shape norms and influence behaviour.

In this chapter I provide a theoretical framework to analyse these multi-level processes of normalisation and institutionalisation, and the relation to actual behaviour of employers and temporary employees. In the next section, I will briefly outline the institutional perspective, followed by a section highlighting the debate on institutional change and what triggers it. I then discuss the relationship between institutions and actors in processes of normalisation and institutionalisation, and the effects of and on behaviour. After discussing normalisation and institutionalisation in section four, I

discuss four issues that relate to the nature of institutional change in section five. Section six outlines different types of institutional change, drawing on existing typologies of incremental, but possibly discontinuous institutional change. To this I add a multi-level perspective in section seven that is imperative for understanding the Dutch case. Section eight deals with the role of purposeful actors in institutional change by discussing 'institutional entrepreneurship'. In the concluding section nine, I recap the argument and the propositions developed in this chapter, and show how they relate to the empirical analysis.

2.2. The institutional perspective

Classical sociologists such as Durkheim, Weber and Parsons have always considered institutions the primary focus of analysis (Brinton and Nee 1998). In his attempts to establish the discipline of sociology, Emile Durkheim denoted it as the science of institutions, as opposed to the emphasis on the individual in economics at that time. Classical sociologists were committed to drawing up a macrosociological framework integrating economic utilitarian with sociological structuralist accounts (Nee 1998). From the middle of the 20th century, there was a renewed interest in institutional analysis. Institutionalist approaches developed in response to the behavioural perspectives that were influential during the 1960s and 1970s in sociology (Hall and Taylor 1996). Scholars rather started to focus again on the interaction between the institutional context and the individual agent (Merton 1998). An approach called "new institutionalism in sociology" started from these notions, but took the institutional perspective a step further by seeking to "explain institutions rather than simply assume their existence" (Nee 1998, p. 1).

During the same period, other disciplines such as political science and economy also went through a stage of renewed interest in institutions. In political science, the institutionalist approach set itself apart from the dominant structural-functionalist approaches. The 'historical institutionalists' focussed on power relations in explaining institutions; emphasized path dependency and unintended consequences in institutional development; and aimed to integrate the role of ideas in their analysis. Kathleen Thelen and Paul Pierson are prominent scholars in this tradition. In economy, the focus on institutions was termed 'new institutional economics', with important protagonists such as Oliver Williamson and Douglas North. The defining features of this approach are that a) Individuals have fixed preferences and behave to maximise their interests; b) Politics is mainly about solving collective action problems; c) Institutions structure interactions as

they limit the range of alternatives and information available to actors, and d) Institutions are created because they perform certain functions (Hall and Taylor 1996). Mainly this last element highlights the functionalist outlook in the approach of economists that leaves little room for unintended functions of institutions.

The new institutionalism in sociology is characterised by three features. Firstly, the definition of institutions is often much broader than the one used in political science and economics, not only covering formal rules but also informal rules such as norms. Secondly, there is a specific outlook on how institutions are related to behaviour of individuals, whereby institutions provide the cognitive scripts and models to guide social action: "It follows that institutions do not simply affect the strategic calculations of individuals (…), but also their most basic preferences and very identity" (Hall and Taylor 1996, p. 948). Thirdly, instead of seeing institutions originating and changing from a functionalist perspective, the new institutionalism emphasizes the role of legitimacy and ideas in explaining why institutions exist and persist. March and Olsen have termed this a 'logic of appropriateness' in contrast to a 'logic of instrumentality' (March and Olsen 1989).

It has been argued that the new institutionalism in sociology attempts to bring the various perspectives in the social sciences together by using domain-bridging concepts such as choice, bounded rationality, and social embeddedness. The approach revitalizes the classical sociological focus on context-bound rationality and integrates sociological with economic approaches, i.e. the interplay between social institutions and economic action. The difference between the new institutionalism and a traditional rational choice perspective is the emphasis on incomplete information and inaccurate mental models. The similarity is the commitment to explanations based on individual-based choice-models (Nee 1998). The new institutionalism in sociology also brings together formal and informal rules in structuring behaviour of individuals (Brinton and Nee 1998).

Scharpf (1997) has developed a model that similarly integrates the rational choice model with the institutional perspective, focussing explicitly on how the institutional environment influences the preferences and capabilities of, and interaction between, actors. Scharpf's 'actor-centred institutionalism' is a framework that is

> "characterised by its giving equal weight to the strategic actions and interactions of purposeful and resourceful individual and corporate actors and to the enabling, constraining, and shaping effects of given (but variable) institutional structures and institutionalised norms" (Scharpf 1997: p. 34).

As mentioned above, Scharpf does not see the 'institutional setting' as the explanatory factor in empirical research; rather, the institutional setting is the most important influence on the explanatory factors, i.e. actors (individual or composite) with their orientations and capabilities, actor constellations, and modes of interaction. Actors depend on socially constructed formal and informal rules to orient their actions that reduce the range of potential behaviour. In other words: the institutional setting affects both their orientations and capabilities. The actors I analyse in this project are employers, trade unions, and employers' organisations. The state is also an important actor that will feature in my analysis, although more in the background; representatives of the state were not interviewed as the focus is on employers and associations representing employers and employees.

Actions are not related to interests that can objectively be defined; rather actors behave on the basis of their subjective and variable preferences. An actor is pragmatist, i.e. preferences develop through interaction. Preferences are not pre-existent, but are constructed and shaped in the course of the interaction between actors and their environment. In addition, preferences and room for manoeuvre are shaped by actors' reflections on past experiences and expectations about future experiences (Emirbayer and Mische 1998):

> "actors may switch between (and reflexively transform) their orientations toward action, thereby changing their degrees of flexible, inventive, and critical response towards structuring contexts". Actors have the capacity "to mediate the structuring contexts within which action unfolds" (ibid. p. 1012).

Scharpf also notes that preferences can not only be deduced from actor's behaviour but from the social role they play within a certain institutional setting. For example: when an individual is a trade union official, this can provide some information about the likely orientations of that individual. Nevertheless, individual self-interest always plays some role and should also be taken into account. In this sense, the framework still contains elements of a 'rational choice' perspective whereby individuals act purposefully on the basis of their preferences.

Scharpf however departs from the rational choice perspective in claiming that actors are mostly incapable of determining policy outcomes completely in line with their own orientations and capabilities. What is more important in this respect is the constellation of actors of which individual actors are part. An actor constellation entails a level of potential conflict between actors, conflict that is subsequently resolved within a

certain mode of interaction. Scharpf distinguishes between four 'modes of interaction': unilateral action; negotiated agreement; majority vote; and hierarchical determination. The mode of interaction central in this project is the process of collective bargaining, which I regard as an instance of 'negotiated agreement'. The outcome of this mode of interaction is the CLA. A CLA is a formal institution as it is made up of a set of formal rules that shape the environment in which employers and employees interact (Scharpf 1997). These formal institutions are in turn embedded in, or interact with, informal institutions existing in a sector.

The environment in which employers, employees, and their representatives negotiate is the system of industrial relations. An industrial relations system is made up of various formal and informal institutions, such as legislation and CLAs (formal) and traditions of collective bargaining (informal). An industrial relations system partly creates and/ or sustains norms about what constitutes appropriate behaviour for employers' associations and unions. It has for example been claimed that the Dutch F&S legislation and how this has come into force is a good example of the functioning of the Dutch 'consultation economy' (*overlegeconomie*) (Wilthagen and Rogowski 2002). Norms play an important role in institutional change as formal and informal institutions are often closely intertwined: informal institutions such as norms and customs can be a forerunner of institutional change, or they can frustrate it (North 1990). Also, norms influence processes of institutional change and the implementation of new rules as they give legitimacy to these changes (Dimitrakopoulos 2005).

Besides a rational choice perspective on behaviour there is also a rational choice perspective on institutions (Thelen 2004). This perspective entails that institutions exist because they fulfil certain functions in society. This perspective has been criticized for being functionalist and overemphasizing stability of institutions. The notion of stability inherent in seeing institutional settings as complementary wholes is also found in the 'varieties of capitalism perspective' (Hall and Soskice 2001), which is further developed in the next section. A more accurate description however shows that institutions are deeply political: a certain institutional setting benefits some actors more than others. This leads to continuous contestation over the appropriate form the institutional setting should take and attempts to alter it. Regarding the functionalist view that institutions exist because they perform certain functions for society (e.g. by benefiting certain groups), Thelen (2004) has shown that political processes can radically reconfigure the form and functions of institutions over time. In an analysis of the German system of vocational

training, Thelen shows that a system that currently functions as a strong alliance between employers' organisations and unions fulfilling an important role in Germany's high-skill, high-wage, high-value-added manufacturing economy is based on a system introduced over a century ago to crush the organised labour movement. A strictly functionalist perspective would fail to grasp that the system has moved away from its initial function, and has come to fulfil an entirely new set of goals.

2.3. Institutional change

The way in which institutions develop and evolve is a central theme in institutional theory, and one that has been elaborated on by scholars such as Kathleen Thelen, Wolfgang Streeck, James Mahoney, and Paul Pierson. Paul Pierson (2004) is mainly associated with a strand of theory that shows how institutions remain stable over time. In this body of theory, the resilience of institutions is attributed to feedback mechanisms, lock-in effects, and path-dependency. Pierson argues that institutions generate dynamics of self-reinforcing or feedback processes. These are related to the notion of increasing returns and the costliness of changing institutions once they are in place (Pierson 2000; Pierson 2004): Pierson's interest in path dependency comes from the assertion that 'history matters' and relates to four issues: 1) The timing and sequence of events highly determine social outcomes; 2) Large-scale consequences may result from relatively minor or contingent events; 3) Because of path-dependency, particular courses of action, once chosen, are very difficult to reverse: "forsaken alternatives become increasingly unreachable with the passage of time" (Pierson 2004, p. 13), and; 4) Political development is often punctuated by critical moments or junctures (Pierson 2000; Pierson 2004). The path-dependency perspective is an alternative to a functionalist (rational choice) view of institutions as it shows how factors that have given rise to certain institutions can be quite different from the ones that sustain the institution over time (Pierson 2004; Thelen 2004).

The notion of path dependency is closely associated with a 'punctuated equilibrium' model of institutional change. Pierson is however sometimes more nuanced, focussing more on incremental change, though he still refers to "threshold effects" and "key causal factors" (2004, p. 13/ 14) indicating a 'punctuated equilibrium' view on historical developments. According to this view, institutions are stable and inert and are reproduced through a variety of mechanisms; institutional change is brought about by exogenous shocks. In this respect, it corresponds with rational choice perspectives, in which change can also only be exogenous as systems naturally maintain themselves.

Although the punctuated equilibrium model can account for certain instances of institutional change (e.g. after a revolution), change often takes place incrementally (Streeck and Thelen 2005). In addition, there are many cases where significant exogenous shocks (e.g. the Second World War in Germany) have not lead to institutional change (Thelen 2004).

Before I further discuss the ways in which various scholars have conceptualised various types of institutional change, I discuss the *source* of institutional change. The most important source of institutional change according to North is a change in relative prices (1990 p. 84). When prices change, the terms of a contract change, providing an incentive to alter the terms of a contract in line with actors' preferences. Hall and Thelen show that the opening up of national economies can be an important impetus for institutional change as it changes the market pressures and opportunities under which firms operate (Hall and Thelen 2009). These pressures and opportunities can be understood as a change in relative prices. For instance, as labour becomes cheaper because firms can move to low-cost countries, firms may use their increased bargaining power to re-write the contract with labour and advocate a more flexible version of the employment contract. Firms are then the central actors in an ensuing process of institutional adjustment with pressures on unions and governments. However:

> "governments typically do not have the luxury of responding to international economic developments on a *tabula rasa*. In many cases, they have to react to corporate strategies that are shifting even more rapidly in response to those developments. Changes in rules often follow the accumulation of 'deviant' behaviour (…)" (italics and parentheses in original) (Hall and Thelen 2009, p. 17).

For instance new rules may be necessary because actors (i.e. firms) increasingly breach the rules in response to the new pressures and opportunities in which they operate (Streeck and Thelen 2005; Li, Feng et al. 2006; Hall and Thelen 2009). Firms using temporary labour in breach of the law, or outside the CLA, may bring about institutional change or, depending on the case, a reinforcement of existing law and existing CLAs.

2.4. Normalisation and institutionalisation of temporary work

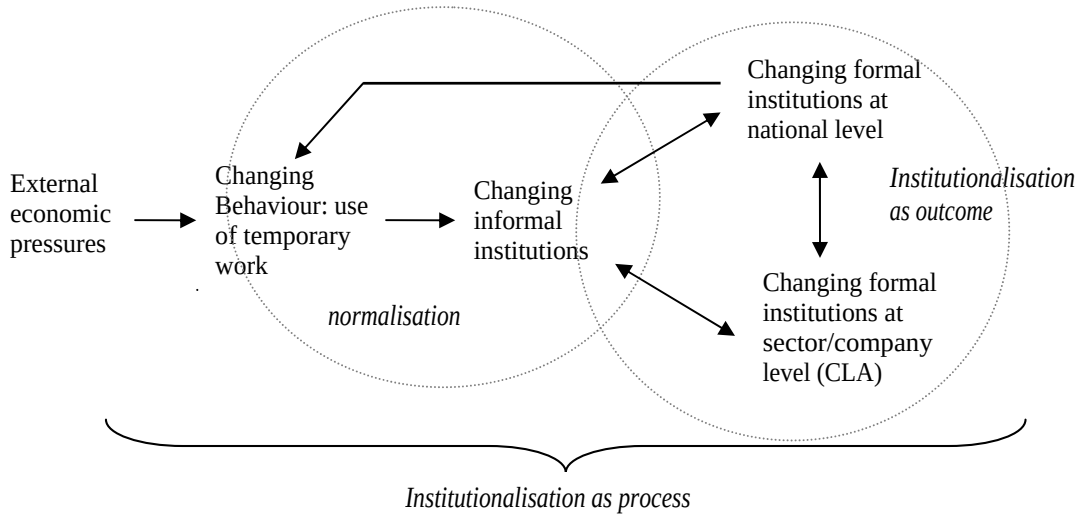
Institutional change is closely intertwined with processes of institutionalisation and normalisation. Institutionalisation is a process by which a particular activity, here: the use of temporary work by employers and workers, becomes 'routinised' and 'regular'. The outcome of this process is a (new) institution. Normalisation is a process whereby a practice becomes more and more widespread (quantitative dimension) and accepted in

norms (qualitative dimension). Normalisation is to a higher or lower extent part of a process of institutionalisation. The concept of 'normalisation' was first used by Ellingsaeter in her analysis of part-time work in Norway (Ellingsæter 1989). Visser (2002) also used the term in an analysis of part-time work in the Netherlands and showed that the rapid increase and normalisation of part-time work throughout the 1980s and 1990s was not the outcome of policy planning but the result of changing behaviour and preferences of Dutch women. Changes in behaviour were then taken up and accommodated by changes in the formal institutions (Visser 2002).

In the process of normalisation and institutionalisation, informal institutions play a key role. The causal relations in fact run both ways: as behaviour changes, informal institutions (norms) may alter and this may lead to modifications of the formal rules. In the previous section I showed how firms can claim to be an exception, operating on the boundaries of the law, thereby functioning as a 'motor' for change. Changing behaviour is here the increased use of temporary work by employers in response to external pressures. These external pressures are heightened global forces to become more flexible and cost-efficient and, on the supply side, the changing role of women in society and their increased participation in the labour market. In my framework of analysis these 'external pressures' shape the behaviour of employers, which I regard as the core actors for analysis (see figure 1. below). Informal rules are the norms that exist among employers and employees concerning temporary work; i.e. the extent to which they consider it a normal state of affairs to make use of temporary workers or work in a temporary job.

Institutionalisation occurs by changes in the formal rules; in this project this is national level legislation and the sector-or company level CLA. These two levels of formal regulation can also mutually influence each other. In turn, changing rules have an impact on the behaviour of employers and employees whereby more restrictive rules will lead to a smaller extent of temporary work and more permissive rules will trigger temporary work to become more widespread. This changing behaviour is then again further input for changes in the norms and as norms change and the fringes of the rules are being sought and maybe even trespassed, this again can lead to change in formal institutions. Finally, there can be feedback loops from the formal institutions at sector-level back to those at national-level, although these might operate via changes in informal institutions. Together, their relations show the following processes:

Figure 2.1. Temporary work: normalisation, institutionalisation, and institutional change



The figure shows that normalisation is to a lesser or greater extent an aspect of institutionalisation; this is represented by the dashed circles. With this model in mind I would like to point out that changes in all areas, i.e. formal institutions, informal institutions, and behaviour, all occur within a certain structure of power in which actors operate. At various levels in the analysis, this will be more or less explicit. The above on the source of institutional change, institutionalisation and normalisation leads to the following three propositions:

P1. *As external economic pressures for flexibilisation increase, employers will use more temporary work.*

P2. *As temporary work becomes more widespread, the informal institutions on temporary work entail more acceptance leading to a 'demand' for rule change in formal institutions.*

P3. *When rules become more permissive regarding the use of temporary work, temporary work will become more accepted by both employers and employees; temporary work will become less accepted when rules become more restrictive.*

These propositions will be tested in chapters four, five and six, in which I will analyse the developments in the Dutch institutional framework in comparative international perspective (chapter four), and more specifically in the Netherlands (chapters five and six). As the 1999 F&S law created a new framework and a new 'balance' for temporary

work, it entailed institutionalisation and contributed to normalisation. This in turn affected behaviour and informal institutions on temporary work, as well as institutionalisation within CLAs.

2.5. The nature of institutional change – four issues for discussion

Besides the source of institutional change, much has been written on the *nature* of institutional change; I discern four issues for discussion. The first issue is whether a development should be classified as a change or rather a perpetuation of existing practices. Secondly, there is the issue whether institutional change is discontinuous or incremental. Thirdly, it is important to ask whether change is intentional or unintentional, and fourthly whether it is endogenous or exogenous. Regarding the last issue, there could be cases where institutions change so slowly that it becomes questionable if there is change or continuity. Deeg has commented on this particular point by stating that "it may be that it is only possible to determine retrospectively and with considerable lag time that there has been a change to a new path" (2005, p. 195). It can be imagined that one observer sees institutions that remain unchanged, while another claims that change is indeed taking place, albeit very slowly. If the last case is taken to the extreme, one might never observe institutional stability, and this is indeed what historical institutionalists have been accused of (Thelen 1999).

Streeck and Thelen have asked the question "What counts as change?" (2005, p. 16), and answer it by stating that small changes are often overlooked. They criticize scholars for ignoring change or to regard all "that appears to be new as a variation of the old" (ibid.), and argue that focussing on continuities leads to a disregard for large transformations. Streeck and Thelen however provide very little if any tools for cases where it is ambiguous and difficult to ascertain if there is actual change. In this project the timeframe is six to ten years in chapters four and six, while it is around 40 years in the study of temporary work in the Netherlands (chapter five). As the time frame is shorter, it becomes harder to discern whether change has taken place. In empirical research this is always an empirical question and I will make some statements that change has indeed occurred, and show why that is the case. Because the project however deals with incremental changes these statements remains contestable and open to discussion.

When one finds that institutional change is indeed taking place, the second issue for discussion arises: was the change discontinuous or incremental? Although institutional change can sometimes be discontinuous, such as in the case of a revolution or a sudden change in the law, most institutional change is incremental by nature (North

1990; Pierson 2004; Streeck and Thelen 2005). In his 1990 work, North emphasizes that institutional change takes place incrementally and is made up of continuous marginal adjustments. He relates this mostly to the fact that formal institutions are embedded in informal institutions such as traditions and customs that provide legitimacy and ensure self-enforcement; formal enforcement alone is not enough (North 1989; North 1990). Also, informal rules are "extensions, elaborations, and qualifications of rules that "solve" numerous exchange problems not completely covered by formal rules" (North 1989, p. 241, quotation marks in original).

The relationship between formal and informal rules in the analysis of institutional change is a complex one. North argues that changes in informal institutions lag behind formal institutional change (North 1990). Formal institutions might be changed overnight, such as the introduction of the F&S law, but informal institutions (at sector-level) are more resistant to deliberate policies. In practice, formal institutions are always to a certain extent discontinuous (e.g. the introduction of a law) while informal institutions are not. Formal rules might be changed with the aim to overrule existing informal institutions (North 1990, p. 88). Also, actors can attempt to change the formal structure by amending the informal rules first (Li, Feng et al. 2006). One of the aims of the F&S law was to overrule 'deviant' behaviour and norms and bring them in line with general developments regarding (among other things) temporary work taking place in the labour market as a whole. I will analyse the extent to which this development at national level has led to a change in the sector-level CLAs (i.e. the formal institutions) regarding the use of temporary work. If change at sector-level has not occurred despite the new institutional framework implemented at the national level, the room to deviate from the provisions of the F&S law has been used to maintain existing practices. This is then likely caused by the informal normative order in which institutional arrangements are rooted (March and Olsen 1989), and that is resistant to change (Dimitrakopoulos 2005). I therefore propose that:

P4: *In sectors with strong informal institutions on temporary work, changes in formal institutions at national level will have little or no change in sector-level formal institutions and behaviour.*

Some framework of what is outlawed by formal institutions provides the background to proposition four; whatever is forbidden, is much less likely to occur. This assumption is not tested further as the practices studied in this project are not outlawed. In addition,

proposition four only holds under conditions of unchanging power relations between the parties that negotiate and draw up these formal institutions at national and sector-level, i.e. the social partners. The formal national-level institutions are the introduction of the F&S law and the other law regulating the TAW sector, the Law on the Allocation of Labour through Intermediaries WAADI. The sector-level formal institutions are CLA-provisions on temporary work; behaviour is the extent of temporary work. The informal institutions are the extent to which use of temporary work is already widespread and there are norms entailing acceptance of temporary work in a sector.

The third discussion point is whether institutional change is intentional or unintentional. Related to this, a distinction should be made between the formal rules and the ways in which the rules are implemented. In this project the change in the formal institutional framework on temporary work was the F&S law. The formal rules laid down in the F&S law are implemented in sector-level CLAs (formal institutions), and have an impact on the norms of employers and employees (informal institutions). Because of the room parties to a CLA have to deviate from the F&S law, a gap can arise between what is stated at national-level and how rules are implemented at sector-level CLAs. The fact that outcomes may be unintentional from the legislator's point of view is related to two factors. First of all, actors might have difficulty dealing with the complexity of the new rules. Secondly, rules always offer a certain room to manoeuvre for actors to implement the rules in line with their interests. What happens in collective bargaining is that the party that makes concessions concedes to change that is not intended from that party's point of view.

In the long run, institutional change is almost always unintentional for two reasons. Firstly, actors are seldom aware or interested in the long-term outcomes of their actions that remain largely external to them and do not have explicit motivations towards the goal which is the eventual outcome. Secondly, they are only to a limited extent capable of influencing all aspects of a complex reality. Thelen (2004) has for example shown that in the case of Germany's system of vocational training, after a certain period of time the rules in place started to benefit a different group than the one that was initially intended to benefit from them. In this project, I look at the short run, i.e. a period of roughly ten years, but I contend that even in the short-run institutional development can have unintended consequences. The notion of unintended consequences has been an essential element of sociological analysis and is a central feature in the work of classical socio-economic thinkers as Mandeville, Toqueville, and

Smith (i.e. the 'invisible hand') (Boudon 1982). Boudon gives an overview of the various types of unintended consequences that are multiple and multidirectional, i.e. they can or cannot be unforeseen, can or cannot be beneficial, and this in turn is likely to vary for different (groups of) actors. With the exception of functionalist theories, the majority of theories on institutional change incorporate the notion of unintended consequences. It is present in path-dependency-theories (Pierson 2004) (see previous paragraph), and in the typologies of incremental, discontinuous change discussed in the next section. The notion of unintended consequences is therefore taken up in the propositions five to nine on the various types of institutional change.

The fourth issue relevant when analysing institutional change is the question whether change is endogenous or exogenous. Most change is endogenous (North 1990; Streeck and Thelen 2005) and the distinction between endogenous and exogenous is not clear-cut. Many changes are simultaneously partly exogenous and partly endogenous, because actors within a system are always to a certain extent free to react to the exogenous change and change institutions accordingly. An example is the way globalisation has had a different impact in various countries (Deeg 2005; Streeck and Thelen 2005). In these various countries, policies to increase flexibility in the labour market have been introduced referring to pressures of globalisation. While these pressures can be regarded as exogenous, actors within a country are to a certain extent free to react to them, making implemented changes partly endogenous. A similar process occurred with the introduction of the F&S law; this was not only an exogenous factor influencing the institutional framework of flexible labour, but also to a certain extent an endogenous change, as it codified the normalisation of temporary work already visible in informal institutions and CLA-provisions on temporary work. Roots has even stated that "law is inherently incapable of producing major social change because legal restrictions unsettle social equilibria and generate counteractions" (Roots 2004 p. 1376). This is in line with Dutch labour law in general: it is generally aimed at codifying broad developments, mainly to get the outliers in line with these developments and to gain some control over a specific segment of the labour market (Asscher-Vonk, Fase et al. 2003).

2.6. A typology of institutional change

In light of the four issues for discussion posed above, I contend that the changes in regulation of temporary work in the period considered are best analysed with theories dealing with endogenous and incremental change. I contend that the introduction of the

F&S law in the Netherlands was not entirely an exogenous shock, although it was partly introduced in response to 'deviant' employer behaviour and pressure due to exogenous developments such as internationalisation. Because the law was partly a codification of a trend of increasing labour market flexibilisation already taking place in the Netherlands from the early 1990s, the developments that took place at sector-level after the law was introduced are likely to be incremental. Whether or not developments can actually be regarded as change, or rather as a continuation of practices already taking place is an empirical issue that will be fleshed out over the course of this book. Also, the degree to which changes led to unintended outcomes will show from the empirical analysis.

Streeck and Thelen (2005) have developed a typology of institutional change, taking endogenous, incremental change as a starting point. In their book "Beyond Continuity" the authors show that, in contrast to so-called 'punctuated-equilibrium' models, in most cases change does not occur in shocks, but is incremental. In line with for example Pierson (2000), they furthermore argue that small, incremental changes in institutions can have large-scale consequences, which are often largely unintended. Streeck and Thelen developed their theory in response to the path-dependence literature and the 'varieties of capitalism' approach (Hall and Soskice 2001). This literature takes the firms as the most central actor that coordinates its behaviour with other actors in five spheres, e.g. the sphere of relationships with employees or the sphere of industrial relations. The nature of this coordination can vary, resulting in a classification of countries as either "liberal market economies" or "coordinated market economies". In liberal market economies the market is an important coordinator for firms' behaviour, while in coordinated market economies various stakeholders are involved. Hall and Soskice argue that although these two types of economies vary in the nature of coordination in all five spheres, they can both produce optimal macro-economic outcomes. The explanation for this lies in the notion of 'institutional complementarities', or how institutions mutually reinforce their workings. Because of the central place that institutional complementarities have in the varieties of capitalism approach, it has been accused of a focus on equilibrium (Streeck and Thelen 2005, p. 16).

Thelen, in cooperation with Streeck and with Hall, has criticized the varieties of capitalism perspective as it puts too much emphasis on institutional stability and coherence. As a result, the efforts behind the maintenance of institutions, as well as incremental change, are overlooked (Thelen 2004; Streeck and Thelen 2005; Hall and Thelen 2009). Streeck and Thelen distinguish between the process of change on the one

hand, which can be incremental or abrupt, and the result of change on the other, which can be either continuous or discontinuous (2005, p. 9). The punctuated equilibrium model is associated with abrupt change that leads to discontinuity; the type that they focus on in their 2005 book is a process whereby change is incremental, but the outcome is also discontinuity. Streeck and Thelen introduce new conceptual tools to analyse small-scale institutional developments with large-scale consequences. In contrast to the punctuated equilibrium model, these types of change do not occur solely during a short time-span, but rather constantly take place from within:

> "Political institutions are not only periodically contested; they are the object of ongoing skirmishing as actors try to achieve advantage by interpreting or redirecting institutions in pursuit of their goals, or by subverting or circumventing rules that clash with their interests" (Streeck and Thelen 2005, p. 19)

In the typology of Streeck and Thelen, feedback effects remain in the background, although these too might play an important role; developments are hardly ever unilateral (Thelen 1999). The F&S law is designed to stimulate tailor-made solutions at lower levels. I expect that in the fleshing out of the F&S law in CLAs, some feedback effects to the national level can be expected, which may lead to convergence between sectors.

Streeck and Thelen have developed a typology consisting of five modes of gradual but large-scale transformative change: *Displacement*, *Layering*, *Drift*, *Conversion*, and *Exhaustion* (ibid. p. 31). Hall and Thelen (2009) also develop three types of institutional change: *defection*, *reinterpretation*, and *reform*. These three types of change are placed within the varieties of capitalism perspective and therefore point to the firm as the central actor. Two of the three types of Hall and Thelen are in fact the mechanisms behind two of the five modes developed by Streeck and Thelen; *defection* is the mechanism defining *displacement* and the mode *conversion* features *reinterpretation* as main mechanism. I therefore discuss these two combinations of mode and mechanism together. In addition, Hall and Thelen discuss 'reform', which is explicit institutional reform carried out by a government and built on coalitional politics. I will discuss reform as a sixth type of institutional change.

In the case of *displacement*, existing institutions are questioned and become slowly discredited. Actors stop following the practices that are prescribed by an institution and no longer behave cooperatively towards an outcome. Streeck and Thelen attribute this to the fact that an institutional framework is never completely consistent. The institutions

displacing the existing ones can be institutions that existed previously but had moved to the periphery of society, that were always suppressed, or that are exogenous to society. Streeck and Thelen argue that displacement is more likely to occur when endogenous change has "prepared the ground" (p. 22). However, the way displacement of this type of change exactly relates to the informal institutional structure is not discussed. Relating this process to the Dutch case, I argue that:

P5. *If social partners defect from using the CLA for cooperation and negotiation of flexibility and security provisions on temporary work, and start using other institutions, this is a case of* displacement.

Cases of *layering* entail the emergence of new institutions unto existing ones. The existing schemes are not attacked, but their status and structure is gradually changed within the system. When new schemes are 'layered unto' old ones, they are likely to develop at a faster pace than the existing schemes. Support for the older institution slowly wanes and eventually, the old institution can be replaced by for example *displacement* or *drift*. The F&S law was to a certain extent layered unto existing law, and CLA-provisions can also be layered unto other provisions of the F&S law. It is important to note that layering in this sense is facilitated and partly aimed at by the system of 3/4-mandatory law. For example, the provision on FT-contracts introduced by the F&S law reads that three FT-contracts can be offered, although social partners can negotiate in a CLA that this number is increased or decreased. Such diverging provisions, laid down in the CLA are in fact 'layered' onto the rules of the law. This autonomy to negotiate diverging provisions is not dealt with in the types of change outlined by Hall, Streeck and Thelen. Their typology is not developed for situations where parties have the freedom to layer their institutions at sector-level (i.e. the CLA) onto the formal institutions at national level. Their analysis therefore lacks a clear multi-level element that is a core feature of the Dutch institutional regime. In the process of layering, new elements are attached to existing institutions, thereby gradually changing the status and structure of the institutions. Tailored to the Dutch case, I will use the following proposition:

P6. *In the Dutch case, CLA-provisions are* layered *unto the national-level formal institutions on temporary work (i.e. the F&S law), and as CLA-provisions deviate from what is laid down in the F&S Law, they can change the status and structure of this formal national-level institution.*

In the case of *drift*, institutional change takes place while at the surface institutions seem to remain stable. One central mechanism behind drift is the deliberate neglect to adapt the institution to a changing environment. Another mechanism related to drift is the gap between the rules and their implementation. As the pressures in the environment alter, the way rules are implemented might diverge more and more from how they were intended. Drift can be the result of a passive lack of maintenance of an institution, an active lack of maintenance, or active cultivation of an alternative. Observing *drift* in the Netherlands would entail that we find a gap between what is negotiated in CLAs and the provisions laid down in the F&S law. The mechanism behind this is that the institution of the CLA is not maintained or alternatives are sought while at the surface, the institution itself remains intact. The gap between rules and implementation of the rules are however not problematic in the Dutch case as this was intended by the legislator. I expect that:

P7. *If the CLA remains intact at the surface while its content diverges from how it was intended, be it due to active or passive lack of maintenance, or active cultivation of an alternative, this is a case of* drift.

In the case of *conversion*, existing institutions are redirected towards new goals or functions. Conversion can occur in response to changes in the environment or changes in the power relations within a system. New goals or the incorporation of new groups into the coalitions on which institutions are founded can drive changes in the functions of institutions (Thelen 2004, p. 36). Here too, the gap between the institution and the actual implementation is central. This gap might arise due to unintended consequences of institutional design, ambiguity in the rules or how they should be applied, reinterpretation of rules to further certain interests, and redeployment due to changing external conditions or changing coalitions over time (Streeck and Thelen 2005, p. 31). The outcome is an institution that is formally still intact but has been redirected towards a new purpose. Hall and Thelen (2009) give an example of conversion by discussing the mechanism behind it: reinterpretation. In the German system of industrial relations extended possibilities for lower level collective bargaining to accommodate demands for more tailor-made provisions at a lower level have been reinterpreted and redirected to bring down workers' employment conditions.

At the level where CLAs are concluded, one might also be able to witness conversion, whereby existing practices are used towards new ends. With restrictions on

trial periods introduced with the F&S law, employers might have increased their use of temporary workers, or extended possibilities for use in their CLA, as this is also a way to screen possible new employees (Berkhout and Van Leeuwen 2004; Blanpain 2004). Another use of temporary agency workers relates to the reduction of costs of hiring and firing (ibid.). Here too one can see that one type of flexibility (agency workers) might be used to replace another type of flexibility (e.g. low dismissal protection). However, reinterpretation might work both ways: when existing practices are not used towards new ends, but new practices are rather used towards existing ends. Using different practices to achieve the same end (e.g. agency work to keep hiring and firing costs low) might entail a continuation of practices, while the label changes. In essence it involves the same mechanism as conversion, i.e. 'redirection' or 'reinterpretation' (Streeck and Thelen 2005, p. 31). However, it is clearly a different process taking place. In fact, this could be regarded as a type of 'reversed-conversion', or a situation where 'old wine is sold in new bottles'. I therefore contend that:

P8. *If existing CLA provisions are redirected towards new ends, this is a process of* conversion. *When new CLA-provisions are used to obtain existing ends, this is a process of* reversed-conversion.

The fifth mode of change is *exhaustion* whereby the behaviour invoked or allowed by an existing rule actually undermines it. Over the course of a certain period of time the scope of the institution gradually dwindles and it slowly breaks down or withers away (Streeck and Thelen 2005, p. 31). Mechanisms in this process entail the undermining of the institution by its own workings, decreasing returns due to changing cost-benefit relations, and limits to the growth of the institution. In the Netherlands for example, the public disability benefits scheme was used extensively in the early 1990s by firms who wanted to dismiss part of their workforce. This happened up to the point where almost a million people received unemployment benefits and the scheme was no longer sustainable. Before the system entirely broke down, it was substantially reformed. There are however no signs that the Dutch institution of the CLA is declining in importance. Although the union density figures and therefore the power of the trade unions is decreasing, the current level of bargaining coverage is unchanged compared to the 1980s (EuropeanCommission 2008). The institution of the CLA is still highly valued by both employers and employees; exhaustion is therefore not relevant for analysing developments in the CLA in the Netherlands.

A sixth form of institutional change is reform (Hall and Thelen 2009). In contrast to the five types discussed above, which mainly encompass 'bottom-up' change, reform is an institutional change endorsed by governments and backed by coalitions of social or political actors. A coalition arises after different groups of actors have reached a compromise regarding their conflicting interests. In the Netherlands, many socio-economic reforms are based on compromise between employers' and employees' representatives (see chapter five). In the Dutch 'consultation economy' the social partners for instance played an important role in the design and implementation of the F&S law:

P9. *If the drawing up and implementation of the F&S law was to a large extent backed by central coalitions of social and political actors, it can be regarded as a* reform.

As I analyse a range of sectors in this project, it is possible that the above-mentioned processes differ per sector, e.g. in some sectors I might find conversion while in others I might find drift. Possible explanations for these variations between sectors are outlined in the next section.

2.7. Multi-level institutional change

The formal institutional framework on temporary work has been altered with the introduction of the F&S law in 1999. Whereas the introduction of the F&S law was an intended change in the formal institutional regime, the developments that as a result might have taken place at the sector-level could have been largely unintended. I analyse to what extent these developments have had an effect at sector-level in the use of temporary work (behaviour), norms on temporary work (informal institutions) and CLA provisions (formal institutions). To analyse the developments at sector-level, I will focus on the use of, and CLA provisions on, FT-contracts and TAW at sector-level, which I group together as 'temporary work'. Because the F&S law stimulates 'tailor-made' solutions, CLAs that are mostly negotiated at sector-level, I might observe differences between sectors. In addition, as my study will cover a certain period of time, I will also be able to analyse whether differences between sectors are increasing or in fact decreasing. Increasing differences, or divergence between sectors, then shows that tailor-made provisions are indeed concluded. When variations across sectors however decrease over time, this points to convergence, possibly triggered by learning or benchmarking processes across sectors. This leads me to the following proposition:

P10. *If variations between sectors increase over time, i.e. a process of divergence, this entails the realisation of 'tailor-made' sector-level solutions. If variations between sectors decrease over time, i.e. convergence, this is brought about by benchmarking or 'learning'-processes.*

Deviating CLA-provisions can be either more permissive or more restrictive than the national provisions taken up in the F&S law. If in a CLA it is for example negotiated that two FT-contracts can be concluded with an employee, while the law states that three FT-contracts can be offered, this CLA is more restrictive than the law. I conceptualise more lenient provisions as employer-friendly and stricter provisions as worker-friendly.

Institutional change in this sense is related to shifting interests of actors or shifts in the extent to which they can realise their interests. For example, when employers feel they bear too many risks of the employment relationship as a result of for example high costs for dismissal, they will use more temporary work (De Kok, Westhof et al. 2007). As mentioned in proposition four above, informal rules play a role at the sector level in for example collective bargaining. Bargaining is an important mechanism to codify or influence informal rules in addition to the more obvious negotiations about formal rules. In the process of bargaining, actors will prefer the (formal and) informal rules that best serve their interests. When social partners feel that the provisions of the F&S law are not in line with their interests, they will have an incentive to negotiate CLA-provisions more permissive or more strict than the provisions laid down in the F&S law. I assume that employers' representatives have an interest in increasing flexibility by negotiating more permissive provisions, while the interest of unions is to protect workers from insecurity and negotiate stricter provisions.

The extent to which actors can secure their interests, however, is based on the power they have vis-à-vis other actors. The set of formal and informal rules that ensue from the bargaining process are shaped primarily by asymmetries in bargaining power (Knight and Ensminger 1998). The power resources of the parties are related to a number of sector-characteristics. For example: worker-friendly CLA-provisions are more likely in sectors with strong unions and a low need for flexible labour. Also, an economic downturn can affect the bargaining strength of unions vs. employers' organisations. As I specifically analyse the impact of the economic downturn in the Netherlands between 2002 and 2004, this is also a factor I take into account. The impact of the economic downturn however, will have affected sectors that are more sensitive to the business

cycle (e.g. construction) more than those with low sensitivity to the business cycle (e.g. supermarkets). A description of the sector-characteristics, and propositions on their impact on CLA provisions and actual use of FT-contracts and TAW is taken up in the empirical chapter six. In that chapter, I will test the following propositions:

P11: *Irrespective of the strength of informal institutions, power changes in favour of employers will lead to CLA-provisions more permissive than what is laid down in the F&S law.*

P12: *Irrespective of the strength of informal institutions, power changes in favour of employees will lead to CLA-provisions more restrictive than what is laid down in the F&S law.*

In processes of institutionalisation and institutional change, actors, i.e. purposively acting individuals or groups, play an important role. In the following section I show the impact that individuals can have in emergence and more importantly the changing of institutions.

2.8. Institutional entrepreneurship

Streeck and Thelen have pointed out that change is never automatic but always sponsored by certain actors. Between on the one hand an institutional environment that structures and gives meaning to the lives of individuals and on the other the capacity of individuals to change this very environment lies an area of tension. This tension has given rise to the notion of so-called 'institutional entrepreneurs' that seize opportunities for change and innovation (DiMaggio 1988; Scott 1995; Fligstein 1997; Colomy 1998). Opportunities are always available as "there is always room, and often reason, to be critical of what is deemed appropriate" (Hall and Thelen 2009, p. 10). Institutions can be interpreted differently by different actors. Divergent interpretations and outcomes of the institutional environment are closely linked to the interests of actors: "actors are strategic and even those not involved in the design of an institution will do everything in their power to interpret its rules in their own interest" (Streeck and Thelen 2005, p. 27). North (1990) also pointed out that institutional change is not only mostly incremental in nature, but also that the instruments of institutional change are political or economic entrepreneurs. Change requires entrepreneurship; institutional entrepreneurs attempt to alter or even destroy existing institutions and/ or establish new institutions with the aim to obtain their objectives. This process always occurs within a certain constellation of power.

The tension mentioned above can also be framed as a paradox: how can individuals change the very institutional environment made up of formal rules and informal norms that structures and gives meaning to their lives? This points to one of the core discussions in sociology: the problem of structure and agency. To what extent can actors make use of their agency and alter the very environment that structures their lives and helps them make sense of the world (Boxenbaum and Battilana 2004; Koene 2006)? In his framework for analysing institutional change, North focuses on organisations and their entrepreneurs as agents of institutional change (North 1990, p. 4-5). Entrepreneurs are purposive actors that operate within a certain institutional structure. When these structures frustrate them in obtaining their objectives, actors have an incentive to try and alter the institutional structure. This can be done indirectly, by undermining the informal institutions, or directly, by attempts to alter the formal rules (North 1989, p. 242). These two ways to alter the institutional structure have been elaborated by Li, Feng and Jiang (see below).

Whereas North attributes institutional stability to high costs of change, Thelen shows that institutional continuity, or the absence of change, is not per se the result of passiveness of actors. Institutional continuity can just as well be the result of deliberate strategy. Thelen (2004, ch. 1) argues that stability of institutions is not an automatic process; when institutions persist, this is often due to active maintenance of the status quo by actors whose interests are met by the arrangements. Institutional stability too might require purposeful action by institutional entrepreneurs. It is important to note that there are countervailing forces when actors try to shape, change and create institutions. Institutions are not perfectly creatable or malleable (Scott 1995). Institutional entrepreneurs always operate within a set of institutional constraints and power relations that set boundaries to the room for change (North 1990).

Institutional entrepreneurs can be individuals, but as individuals mostly operate within a certain association, institutional entrepreneurs can also be associations, composed of multiple individuals. The associations I analyse are employer's organisations and trade unions. In addition, the government is also an actor that can be an institutional entrepreneur. Especially in the Dutch consultation economy, institutional reform of the labour market is shaped by negotiations between the government and associations that represent certain interest groups. These associations can aim to further the goals of their individual members, but to some extent they are also self-interested and advance their own goals that are independent of their members (Schmitter and Streeck 1985). Based on

these goals, they operate as institutional entrepreneurs with certain skills and within a certain field. The role that associations can play within a field is very much shaped by the government; they are assigned a distinct role to stimulate order between the state and civil society, and between the market and the community (Schmitter and Streeck 1985). By means of 3/ 4-mandatory law in the F&S law, the Dutch government explicitly aimed at encouraging the role of the social partners in regulating flexibility and security outcomes. Schmitter and Streeck emphasize that the role associations can play is shaped against the backdrop of "the Damocles sword of threatened direct state intervention" (1985, p. 20). The state retains a relatively strong and autonomous role that provides the context in which associations can pursue their objectives.

Schmitter and Streeck argue that associations seek to defend and promote their interests in a process of negotiation. To facilitate negotiation, actors must have a series of skills: they have to know the rules of the negotiation process, they have to be able to operate with different actors in different power constellations and within different realms, such as the political realm and the realm of industrial relations. Associations must furthermore be capable of recognizing each other as legitimate bargaining parties and reaching and implementing compromises. To reach these compromises, the authors point out that it is imperative for the parties to have some degree of symmetry in their respective resources (1985, p. 10/11) (see propositions 10 and 11 above).

Another aspect of the field in which associations operate, is the existence of various lines of cleavage. Within groups of associations there are cleavages between the included and the excluded, between the well-organised and the less well-organised, between established and rival associations, and between associations that make up a majority and those that make up a minority. In the Dutch agency work sector, there is a number of employers' representatives and trade unions between which cleavage lines might exist. In chapter five, I will delve further into these cleavage lines and the interaction between these associations that shape the direction of institutional change.

The freedom provides by the institutional environment to change it, the 'windows of opportunity', are used by institutional entrepreneurs. Subsequently, an important analytical step is to determine the room to manoeuvre for actors: what is the space for people to renegotiate the terms of action? What are the degrees of freedom? The existing institutional framework and the (incomplete) information at hand shape the room for manoeuvre within existing structures, according to North (1990, p. 100). This level of freedom leaves room for agency, although this does not necessarily imply that

actors will use this freedom to innovate practices. Institutional entrepreneurs have to experience a 'sense of urgency' to break out of the normal procedures and find new ways to carry out procedures. Institutional entrepreneurs are believed to need certain skills to do this, foremost thorough knowledge of the playing fields and political skills to deal with other actors in different arenas. In the Netherlands, (possible) institutional entrepreneurs operate within a 'consultation economy'. This entails that knowledge of the networks in which one operates is central to success. All players in the field know each other. In a consultation economy in which one always operates within a network, one should also keep a clear view of the interests of other actors. For example, it is important for an employers' organisation to also show 'a social face' and take the interests of trade unions into account.

The form taken by entrepreneurship can be through politics and lobbying, or by exerting a certain degree of power. Li, Feng, and Jiang (2006) distinguish four ways through which institutional entrepreneurs change their environment. The first is to advocate openly for changes in for example the media. Two conditions for such a strategy to be effective are on the one hand tolerance on the part of relevant groups for new ideas and on the other the fact or perception that changes will be beneficial for the general public. The second strategy is to persuade relevant decision makers 'behind the scenes' through lobbying. A third strategy is for an entrepreneur to claim to be an exception. In this sense, the entrepreneur would not attempt to change the rules (at least on paper), but to claim the right to exemption from the rules. The fourth strategy is termed "Ex Ante Investment with Ex Post Justification" (p. 359). When an institutional entrepreneur follows this strategy, he or she sets up or expands a business whereby he or she evades existing laws or regulations. Only after the business has proved to be successful, the entrepreneur uses this success to persuade the rule-making bodies to change existing regulations (Li, Feng et al. 2006). Institutional entrepreneurs can change formal and informal institutions by using one or a combination of the abovementioned strategies.

Li, Feng, and Jiang delineate strategies that apply to entrepreneurs in the pure sense of the term, i.e. people that set up an economic business. They show which four individuals have successfully adopted one of the four strategies discussed above. In this project I analyse groups as well as individuals, mainly trade unions, employers, and employers' organisations, and show to what extent these associations or individuals operate as institutional entrepreneurs. My conclusion is that the four strategies defined by

Li, Feng, and Jiang can be applied to associations acting as institutional entrepreneurs. In this project I aim to show which actors behave like institutional entrepreneurs that actively maintain the status quo, or instead work towards small or large-scale institutional change:

P13. *Key actors made the formal and informal institutional regime on temporary work more permissive by 1) openly advocating for change; 2) lobbying; 3) claiming an exceptional position vis-à-vis the existing institutions, and/ or 4) evading the laws and norms with ex-post justification and efforts to change the rules*.

The empirical analysis in chapter five will show which of these strategies were used by pivotal entrepreneurs in bringing about change in the norms and rules regarding temporary employment or CLA-provisions on this type of temporary work.

2.9. Conclusion

In this chapter I have outlined a theoretical framework to analyse multi-level formal and informal institutional change. The formal institutional change in temporary work at the national level in the Netherlands was mainly the introduction of the F&S law in 1999. I assert that this was not just an external 'shock' to the Dutch regulations on flexible labour, but also a codification of developments already taking place in the Dutch labour market. In this sense it was an attempt to bring 'deviant behaviour' in alignment with dominant behaviour. I contend that these national-level reforms represent an endogenous institutional change in response to pressures that originated exogenously: during the 1980s and 1990s, firms started to focus more and more on using flexible labour to remain competitive in an increasingly internationalising economy. This internationalisation led to increasing competition and a resulting shift in the relative price of production and labour. This shift in turn expanded the power resources and bargaining position of employers vis-à-vis labour. I follow North (1990) in his argument that relative price changes are an important source of institutional change. Because of these international developments employers' behaviour changed, as they were looking for ways to flexibilise their use of labour and increased the use of temporary work. On the supply side, there was a rise in unemployment in the 1980s and an expansion of labour force participation in the 1990s that increased the pool of people that could work on the basis of flexible contracts and the bargaining position of employers.

Changes in behaviour triggered changes in informal institutions, i.e. norms, on temporary work on both employers' and employees' side. As a specific type of behaviour becomes more widespread and accepted, it undergoes a process of 'normalisation'. These changes in behaviour and informal institutions in turn trigger reform of the formal institutions, i.e. laws and CLAs, which is a process of institutionalisation. Normalisation and institutionalisation are mutually reinforcing processes that create a cyclical process (see figure 1). This analysis provides the basis of the following three propositions:

P1. *As external economic pressures for flexibilisation increase, employers will use more temporary work.*

P2. *As temporary work becomes more widespread, the informal institutions on temporary work entail more acceptance leading to a 'demand' for rule change in formal institutions.*

P3. *When rules become more permissive regarding the use of temporary work, temporary work will become more accepted by both employers and employees; temporary work will become less accepted when rules become more restrictive.*

The first proposition will be tested in the sector-analysis in chapter six where I operationalise external pressures as four sector-characteristics and assess their impact on the use of temporary work. The second and third propositions will be tested in chapters four and five in which I analyse the institutionalisation of temporary work over time in four different institutional settings, i.e. Denmark, Germany, the UK, and the Netherlands (chapter four). On the basis of this comparison I will be able to determine to what extent the nature (i.e. level of security) and extent of temporary work in the Netherlands can be attributed to its unique path of normalisation and institutionalisation. In chapter five I then delve further into the Dutch case to gain more insight into how normalisation and institutionalisation occurs and how they interact.

This project explores formal institutional change at two levels: the level of national law and the level of the CLA, which in the Netherlands is most relevant at sector-level. It is imperative to take both levels into account as the F&S law is 3/4-mandatory, which means that social partners can deviate from the law within a CLA. This feature of the F&S law is in line with the character of the Dutch 'consultation economy', in which associations play an important role. In chapter six I therefore carry out an analysis of formal and informal institutional change within sectors and CLAs. To do so, I test the bulk of the propositions by scrutinising developments across sectors. I will analyse firstly how formal and informal institutions interact by testing whether the following holds:

P4. *In sectors with strong informal institutions on temporary work, changes in the formal institutions at national level will have little or no change in sector-level formal institutions and behaviour.*

After this first step of determining the extent of change at the sector-level, I will determine the nature of institutional change by testing the possible occurrence of various types of institutional change developed by Peter Hall, Wolfgang Streeck, and Kathleen Thelen. Because the F&S law was aimed at reflecting a development becoming visible in Dutch society, this institutional change was not abrupt but incremental. At sector-level too, the F&S law and its effects are an incremental change. Whether these incremental changes have led to a continuation of practices at sector-level or rather discontinuity will become apparent from the empirical analysis. I will try to establish to what extent the institutional change can be classified as *displacement, layering, drift, conversion,* and *reform*:

P5. *If social partners defect from using the CLA for cooperation and negotiation of flexibility and security provisions on temporary work, and start using other institutions, this is a case of* displacement.

P6. *In the Dutch case, CLA-provisions are* layered *unto the national-level formal institutions on temporary work (i.e. the F&S law), and as CLA-provisions deviate from what is laid down in the F&S Law, they can change the status and structure of this formal national-level institution.*

P7. *If the CLA remains intact at the surface while its content diverges from how it was intended, be it due to active or passive lack of maintenance, or active cultivation of an alternative, this is a case of* drift.

P8. *If existing CLA provisions are redirected towards new ends, this is a process of* conversion. *When new CLA-provisions are used to obtain existing ends, this is a process of* reversed-conversion.

P9. *If the drawing up and implementation of the F&S law was to a large extent backed by central coalitions of social and political actors, it can be regarded as a* reform.

Because the types of institutional change might vary across sectors, I analyse in chapter six to what extent the variations across sectors have increased, i.e. divergence, or decreased, i.e. convergence, over time:

P10. *If variations between sectors increase over time, i.e. a process of divergence, this entails the realisation of 'tailor-made' sector-level solutions. If variations between sectors decrease over time, i.e. convergence, this is brought about by benchmarking or 'learning'-processes.*

CLAs are negotiated mostly at sector-level between social partners within a certain power relation and within a framework of informal institutions on temporary work. CLA-provisions on temporary work can either be in line with national law, they can be stricter, or they can be more permissive than the law. The occurrence of stricter or more

permissive provisions is strongly related to the power relation between social partners. Turning then to the role of power struggles, I will test the following propositions by analysing the impact of sector-level characteristics such labour scarcity and power of unions:

P11. *Irrespective of the strength of informal institutions, power changes in favour of employers will lead to CLA-provisions more permissive than what is laid down in the F&S law.*

P12.*Irrespective of the strength of informal institutions, power changes in favour of employees will lead to CLA-provisions more restrictive than what is laid down in the F&S law.*

Lastly, all institutional change requires some form of institutional entrepreneurship. In the Dutch consultation economy, associations representing interest groups play a key role in bringing about institutional change. The type of institutional entrepreneurs that are central in the analysis here are employers' and employees' associations that operate within a certain field in which they use various strategies to further their (members') interests. The way they trigger institutional change is a topic in the empirical chapters four, five, and six. Based on those chapters, I will gain insight into the following proposition:

P13. *Key actors made the formal and informal institutional regime on temporary work more permissive by 1) openly advocating for change; 2) lobbying; 3) claiming an exceptional position vis-à-vis the existing institutions, and/ or 4) evading the laws and norms with ex-post justification and efforts to change the rules*.

In the remainder of this book, I scrutinise how individuals and associations negotiate and bargain with each other and reach a compromise in the field of flexibility and security of temporary work. I scrutinise how these compromises alter the existing formal and informal institutional framework of temporary work at various levels and how these levels interact. The methods on how I will proceed to test the propositions developed in this chapter are taken up in the following chapter.

Chapter 3 – A methodological framework for analysing institutional change

3.1. Introduction

After outlining the aim and research questions of the project in chapter one and the theoretical framework and propositions in chapter two, I now present the methodological design behind the empirical analysis. A new institutional framework combining flexibility and security for temporary work was introduced in the Netherlands in 1998/ 1999 made up of the Flexibility and Security (F&S) law (1999), and the Law on Allocation of Labour through Intermediaries (Dutch abbreviation WAADI) (1998). The implementation of these 'flexicurity policies' provides us with a natural or quasi experiment, because it enables a comparison before and after this institutional change and the drawing of causal inferences. In the empirical chapters four, five and six I will first compare the nature of temporary work in the Netherlands in terms of extent and security aspects to that in three other nation states, to assess its relation to the specific Dutch 'flexicurity framework'. Subsequently, I will take a closer look at the Dutch case to analyse firstly the way normalisation and institutionalisation and the specific nature of temporary work are interrelated, and secondly how and why the formal and informal institutional framework has taken various forms in economic sectors.

To answer the overarching question of this project: *What is the Dutch approach regarding the extent, nature, and organization of flexicurity in temporary work?* I have developed five research questions. Appendix A contains an overview of the research questions, the propositions developed on the basis of the theoretical framework in the previous chapter, and the units of analysis. In these five research questions I move from the first descriptive question, to the second and third questions from which mechanisms and actors can be identified to the explanation of the processes and outcomes with research questions four and five. The first question is: what are the developments in temporary work during the last 10-15 years in terms of its extent, security aspects and formal regulation? To answer this question, I start from the Dutch national-level legal framework on temporary work and make a comparison with three other institutional frameworks in Germany, Denmark and the UK. The second question is how normalisation and institutionalisation of temporary work occur for which I analyse the interaction between developments in the extent of temporary work, norms on temporary

work and formal regulation. For this question I also compare the legal frameworks on temporary work in the four countries, but also take a closer look at how the Dutch flexicurity framework on temporary work has taken shape. The third question asks which mechanisms and actors explain the developments in the extent, nature, normalisation and institutionalisation of temporary work. This part of the study will be carried out by analysing the legal frameworks in the four countries as well as sector-level formal institutions, i.e. collective labour agreements (CLAs). After this comparison of the Netherlands with the other four countries, I will move on to answer the explanatory research questions dealing with processes and outcomes. Question five deals with the processes at work when national-level institutions on temporary work are implemented by social partners. Finally, question six asks if there is a trend towards convergence or divergence between sectors. These questions will be answered by drawing on a comparative, sector-level perspective.

This study draws on a qualitative, comparative, and case-study approach. The comparative element is the central feature of the project, which is carried out in three dimensions: 1) comparing countries, 2) comparing sectors, and 3) comparing points in time. In addition to the comparison between countries, I deal with institutions at the EU-level (i.e. Directives) as well to show the simultaneous development of the flexicurity policy debate at both EU-level and within the Netherlands; this is mainly taken up in the introductory chapter to this book in relation to the comparison of legal frameworks across countries. In chapter four, the EU Directives on temporary work and how they relate to national regimes are also discussed. At (cross-) national level, I compare the Netherlands, Germany, Denmark and the UK and the developments over time in their institutional frameworks on temporary work. This comparison is essential to put developments within the Netherlands in a larger perspective. This is the topic of chapter five: developments in the institutional framework on temporary work in the Netherlands over time. At the sector level, I compare the formal and informal institutional regime as well as employers' behaviour regarding temporary work between eleven sectors and over time within the Netherlands.

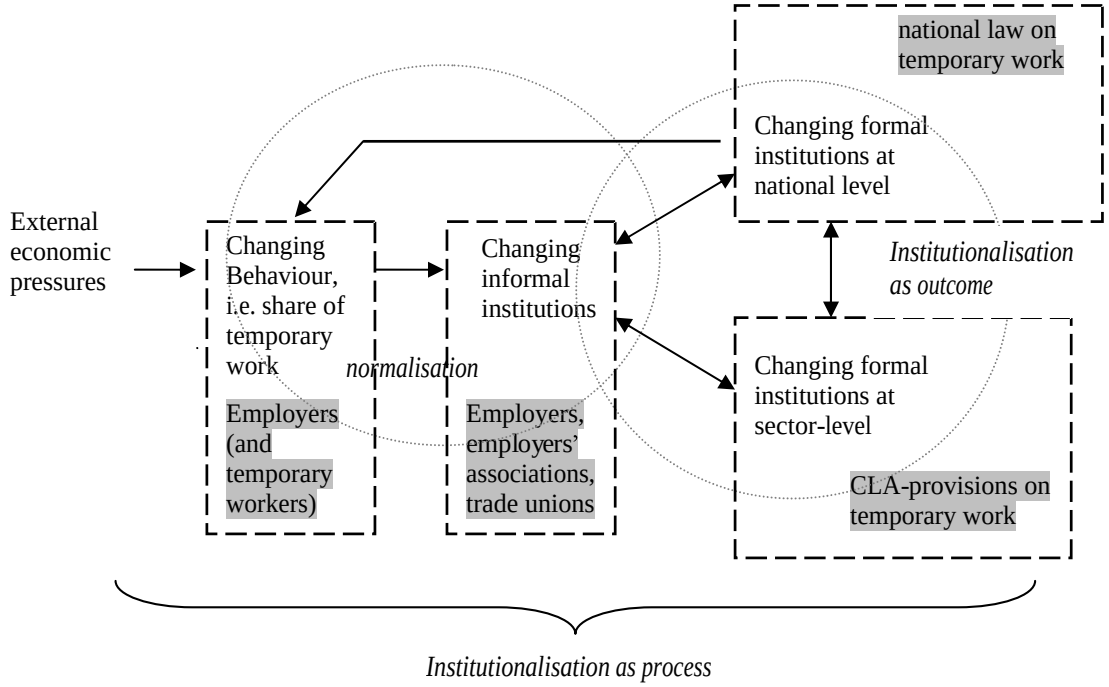
The basis of these comparisons can be understood as an application of John Stuart Mill's *Method of Difference*, developed in his 1843 work *A system of Logic* (Moses and Knutsen 2007). The core of this method is the non-random selection of cases that share basic characteristics, but vary with respect to key factors. Any differences between the cases in terms of outcomes or 'dependent variables' can then be explained by these key

factors. In chapter four I compare four countries that are all similar regarding general socio-economic development, i.e. they are all post-industrial, highly developed North-Western economies. Nevertheless, they vary on key indicators, namely their institutional frameworks regarding temporary work (Storrie 2002). In chapter six, I compare eleven sectors within the Netherlands that share many basic characteristics because they are all part of the Dutch economy. They however vary on key indicators shaping the extent and regulation of temporary work, e.g. openness to international competition or the position of trade unions. In the remainder of this chapter I will first discuss the analytical framework and the units of analysis in section two, and a description of the levels of analysis and selection of cases in section three. In section four I outline the operationalisation of the concepts used in this project. In section five and six I discuss how the data is gathered and the methods of analysis. In the concluding section seven I recap the main elements of this chapter and present the lay-out of the empirical chapters in the remainder of this book.

3.2. Analytical framework and units of analysis

On the basis of the theoretical framework in chapter two, I outlined a model to analyse processes of normalisation, institutionalisation, and institutional change regarding temporary work. I hereby present this figure again as an analytical model by including the units of analysis, shaded and taken up in the boxes with dashed lines:

Figure 3.1. Analytical framework on normalisation, institutionalisation, and institutional change in temporary work



To analyse changes in behaviour by both employers and employees, but mostly triggered by employers (see previous chapter), I discuss developments in the share of temporary work, both at the level of nation states and at sector-level. Changing informal institutions are the changes in norms and customs expressed by employers, their representatives, and trade unions. Changing norms are partly expressed in behaviour and formal institutions, but the degree to which behaviour and institutionalisation is based on norms can best be uncovered through interviews. Questionnaires leave no room to delve into topics that come up unexpectedly, while this is necessary to fully understand what flexibility and security means within a range of very different sectors. A second reason to engage in interviews was that this was the method used in the 2002 evaluation study. In order to obtain maximum comparability of the results over time, it was imperative to employ the same method.

When norms and customs reflect increasing acceptance of temporary work and the share of temporary work increases, this is a process of normalisation. When the legal framework on temporary work includes more issues, this is institutionalisation. Institutionalisation can entail both restrictions and more permissive rules. When institutionalisation involves more leniencies regarding temporary work, this is caused by normalisation; in this sense the two processes interrelate. To analyse changes in formal

institutions I study the legal framework on temporary work in four countries containing flexibility and security elements. Formal institutions at sector-level are CLAs, more specifically the provisions on temporary work in these. Bargaining over these provisions always occurs within a certain power relation between negotiating parties. Although less explicit, normalisation and institutionalisation also always occur within a certain structure of power. Where possible I include the CLA-level in the country-comparison, but it is central to the comparison of sectors within the Netherlands in chapters five and six. In the sector-comparison the concept of power is measured through a range of sector-characteristics. Apart from the comparison across countries and sectors, I also make a comparison over time. The three levels of comparison are explained further in the following section.

3.3. Research design – a comparative analysis in three dimensions

The analysis in this project is carried out in three dimensions: a comparison of countries, sectors, and developments over time. EU-level institutions are currently an important frame of reference for national policies on temporary work, although in many cases national developments were autonomous and occurred simultaneous with or even preceded developments at EU-level. More specifically, these are (discussions on) the EU directives on fixed-term work and temporary agency work. This comparison between four countries provides initial insight into the Dutch case and prepares the ground for an in-depth study of the Dutch case (chapters five and six). In chapter five I discuss the normalisation and institutionalisation of the Dutch flexicurity regime and the shifts in flexibility and security in temporary work thereafter.

Because social partners have a pivotal role in the implementation of flexicurity in the Netherlands, it is imperative to move from national to sector-level to further understand the Dutch case. This is taken up in chapter six and entails the final step in the analysis: a study of eleven sectors within the Dutch economy and the way the provisions on temporary work laid down in national law are fleshed out in negotiations between employers' and employees' associations. At sector-level the guiding questions are: *how* have flexibility and security strategies of employers and social partners shifted after the introduction of the flexicurity regime, and what role does the power relation between social partners play in *explaining* these shifts? Related to this is the question whether sector-level practices have become more similar (i.e. convergence), or more different (i.e. divergence) across sectors over time. This last element relates to notions of institutionalisation: If I find little change: is this institutional inertia/ path dependency?

What is the nature of the changes? Can small changes be expected to have large-scale consequences in later stages? An answer to these questions will be provided in the closing chapter of this book.

3.3.1 Comparing countries

In order to answer the research question whether there is a 'Dutch approach' to flexicurity in terms of the specific mix of flexibility and security in temporary work and the role of the social partners, I compare the Netherlands with Germany, Denmark, and the United Kingdom (UK). A comparison of the Dutch institutional framework with that in other countries provides a background for understanding the Dutch case. The selection of countries is based on the notion that minimum variation is desired on background characteristics, while the countries should display maximum variation on a set of characteristics that are essential in explaining the nature and extent of temporary work. All four countries proximate certain types of regulation of temporary work in a typology developed by Donald Storrie (2002). Storrie argues that most continental countries (e.g. Germany, Belgium, Spain) have detailed regulation on agencies and agency work, combined with strict conditions on admissibility of agency work in certain sectors (e.g. construction) and maximised lending out duration. A second institutional framework is found mostly in Scandinavian countries, where there is no special regulation of either temporary work agencies or temporary work assignments, and temporary work is covered by mainstream labour law. In the case of Denmark specifically, this entails leaving many issues up to the social partners for regulation within CLAs. A third institutional framework is the British-Irish model, which has neither special regulation concerning temporary(agency) work, nor much protection through common law regulation of standard employment contracts[4]. In Storrie's typology, the Netherlands can not be clearly classified within these regimes. Because of the combination of regulations embodied in the F&S Law, he describes the Netherlands as "rather innovative and quite different" (Storrie 2002, p.9). How different the model indeed is, is a key question in this project.

Besides Storrie's typology, there are other typologies of employment regimes and labour markets. Visser, in his contribution to the 2008 Industrial Relations in Europe publication, distinguishes between employment regimes and industrial relations regimes.

4 In this typology, the new member states were not yet included. In a 2006 update of the 2002 study, Arrowsmith did not use a new typology but rather created a dichotomy between the 15 old EU member states and the new members.

This distinction is relevant as it differentiates between on the one hand the content of labour market policy, and on the other the way this content takes shape in practice, i.e. the role of the social partners in the design and implementation of labour market policies. The division in employment regimes (taken from Gallie's 2007 *Employment Regimes and the Quality of Work*) distinguishes between inclusive, dualistic, and market employment regimes. The industrial relations typology is divided in Nordic corporatism, social partnership, state-centred, pluralist, and the fifth type, fragmented/state-centred, which applies to Central-and Eastern European countries (European Commission 2008b).

Denmark is an example of an inclusive employment regime, as it aims to include as many people as possible in the labour market. Means to achieve this are extending labour law to include atypical types of employment, and limiting the differences between people in and outside the labour market by extensive social security. In this regime, organised labour has a strong influence on government policy; the industrial relations system is based on corporatism. The state accords a strong role to social partners in fleshing out national-level policy, and there is strong employee representation within firms. The Netherlands and Germany are grouped together in the dualistic employment regime because there is a consultative involvement of labour in the decision-making system and a clear difference between a core workforce with strong employment protection and good employment conditions and much poorer conditions and "significant vulnerability" for those on non-standard contracts (Gallie 2007, p. 19). The industrial relations regime is social partnership because labour is weaker in the relationship with government but is involved in tripartite negotiations. The state in Germany tends to have a weaker position in industrial relations than in the Netherlands, but this is compensated by "stronger legalism" (European Commission 2008b, p. 49). The last employment regime is the market-based regime in which the influence of collective bargaining and negotiation institutions are kept to a minimum as they interfere with the functioning of the market. The market may or may not automatically bring about equality between different groups in the labour market. This employment regime applies to the UK where we also find a pluralist industrial relations regime characterised by a rather powerful state that may formulate policies autonomously as well as a strong role for the market.

In the typology of employment regimes, The Netherlands can be less and less grouped together with Germany (Storrie 2002). It seems that the introduction of the F&S law has led various analysts to classify the Netherlands with the inclusive regimes

(OECD 2006; EIRO 2007b; European Commission 2007a). Due to increased similarities with for example Denmark, the Netherlands was classified with the Scandinavian countries in a typology of working and employment conditions in a recent report by the EIRO (EIRO 2007, p. 3). Although Visser (2008, p. 49) groups Germany and the Netherlands together as dualistic, I would argue that the formal institutional change embodied especially the F&S Law aims to break down the distinctions between insiders and outsiders in the labour market, and incorporate temporary (mainly agency) in the framework of mainstream labour law. The extent to which temporary work is increasingly normalised and institutionalised in the Netherlands compared to other regimes, and is indeed shifting away from Germany in the direction of Denmark, will show from the empirical analysis in chapter four. Another possibility that will be explored is whether the Dutch employment regime has become more market-based, indicating a shift towards the UK; the UK and the Netherlands are comparable in the sense that they do not have a strong system of unions within sectors and firms, and comparable union membership figures. Below I recap the main differences between the countries; the highlighted cells show where Germany and the Netherlands differ.

Table 3.1. Typologies and country selection

	Regime on temporary work (Storrie)	**Employment regime**	**Industrial relations regime**	**EIRO and European Commission 2007**
Denmark	Scandinavian	Inclusive	Nordic corporatism	Nordic
Germany	Continental	Dualistic	Social partnership	Continental
United Kingdom	British-Irish	Market	Pluralist	Ireland/UK
Netherlands	Move away from continental → Nordic? British?	Dualistic	Social partnership	Nordic

3.3.2 Comparing sectors

Whereas theories on institutional change (outlined in chapter two) often start with the notion of the nation-state as the primary unit of analysis, I will focus on the sector-level, showing to what extent institutional change within a country takes place differently across economic sectors. I compare countries to position the Dutch case and then compare sectors within the Netherlands to understand how the balance between flexibility and security is fleshed out at the level at which negotiation between social

partners take place. Research in the 1990s has shown that the sector-level is an increasingly important reference point (Hollingsworth, Schmitter et al. 1994; Arrowsmith and Sisson 1999).

> Both to capture the diversity of capitalism and to render it manageable, *it seems useful to focus on the sector as the key unit for comparative analysis*. A number of changes in technology, market structure, and public policy seem to have converged to make this mesolevel (…) increasingly salient (Hollingsworth, Schmitter and Streeck 1994, p.8-9) (italics in original).

The significance of the nation-state decreases, while the sector-level gains in importance due to processes of 'marketization' (Arrowsmith and Sisson) and globalisation (Hollingsworth, Schmitter and Streeck). Because of globalisation of the world economy, national-level developments decrease in importance as the needs of specific industries are more and more free-floating of national contexts. The importance of 'market structure', taken from the quote above is translated into sector-characteristics that I analyse in chapter six. I will look at characteristics such as openness to (inter)national competition, sensitivity to the (international) business cycle, and the relative scarcity of labour and their effect on flexibility and security in temporary work.

Regarding developments in public policy in the quote above, the F&S Law can be seen as a prime example of a policy development aimed at decentralising labour market policies to the sector-(meso-) level. In this sense, the F&S Law falls within the corporatist tradition in the Netherlands, where social partners play a large role in shaping employment conditions. This opportunity to find customized solutions on a decentralized basis, is in line with the principles agreed on through tri- and bi-partite negotiations in the 1980s and 1990s, most importantly the 1982 in the Wassenaar Accord and the 1993 'New Direction' central agreement (see chapter five). The F&S Law was also designed to accord a large degree of freedom to the social partners to come up with solutions tailor-made to the specific situation in each sector. Decentralisation is enabled by the fact that the F&S Law as many provisions of the law are 3/4 mandatory.

To enable a comparison of both sectors and developments over time, I selected the same sectors that were analysed in an evaluation report of the F&S Law in 2001/2002 (Van den Toren, Evers et al. 2002). These sectors are: horticulture, leasing of agricultural machines and labour (abbreviation LAML), metal- and electrical engineering, production and distribution of energy, construction, retail (split up in supermarkets and department stores that together account for more than 50% of the sector), cleaning,

architects, security, and home care. In the 2002 evaluation report, the sectors were chosen on the basis of a number of indicators that are central in analysing temporary work (Van den Toren, Evers and Commisaris 2002 p. A10). An overview of the main characteristics from this study is provided in table 2.2 below[5]. The qualitative data on sectors in the 2002 study and in this project was obtained through interviewing social partners and employers. Because employers naturally answer questions based on their experience in their specific firm, I explicitly asked them to reflect rather on the developments in the sector as a whole, in order to obtain information for the sector-level.

Table 3.2. Sector-characteristics relevant for flexibility

	Business cycle sensitivity	**Tightness of Labour market**	**Unpredic-tability**	**Share and diversity in flexible workers***
Horticulture	Very low	Average	No	Very large; large
LAML	Very low	Average	No	Large; large
Metalectro	(Very) high	Low-high (depending on sub-sector)	Yes	Average; large
Energy	High	Low	Yes	Small; small
Construction	Very high	Average	Yes	Large; large
Supermarkets	Low	High	No	Fluctuating; large
Department stores	Low	Low	No	Small; small
Cleaning	Low	Average	No	Large; large
Architects	Very high	Very low	Yes	Small; average
Security	Low	Very high	No	Large; large
Home care	Low	Average	No	Large; large

Source: Van den Toren, Evers, et al 2002, p A9/10
* flexible workers here are: on-call workers, seasonal workers, temporary agency workers and FT-workers.

Determining the boundaries of sectors of economic activity is not always clear-cut and unproblematic[6]. The sector-division I use is reflected in the Dutch system to classify industries, SBI (*Standaard Bedrijfs Indeling*), which corresponds with the NACE-classification system of the European Union. The description and numbering of the

5 It is not possible to supplement this data with other characteristics such as the share of each sector in total employment as statistical sources (mainly Statistics Netherlands, CBS) do not provide data on this detailed sector-division.

6 Thanks to Marc van der Meer for pointing this out to me. Michael E. Porter from the Institute for Strategy and Competitiveness of Harvard Business School for example looks at clusters rather than sectors. Clusters are "geographically concentrated groups of interconnected companies, universities, and related institutions that arise out of linkages or externalities across industries". Source: https://secure.hbs.edu/isc/login/login.do?http://data.isc.hbs.edu/isc/index.jsp

sectors according to the SBI classification 2004 is taken up in table in appendix B. The CLA does not always overlap clearly with a certain sector; for example: in the energy sector the recent market liberalisation has led to the outsourcing of various activities that now fall under different CLAs, such as the CLA for the small metal sector (i.e. heating systems) and the CLA for chemicals (Poel, Tijsmans et al. 2008).

In addition, the average collective bargaining coverage rate in the Netherlands is around 80 percent but this varies by sector, with lower coverage rates in sectors with many small firms (Visser 2006; Van Klaveren and K. Tijdens (eds.) 2008). Sectors with less than 100% coverage rate are sectors in which the CLA is not generally extended. The majority of workers that are covered by a CLA are covered by a sector-level CLA (European Commission 2008, p. 23/ 24); in this project I therefore focus on sector-level CLAs. The exception is found in the sector 'department stores', which is covered by three company-level CLAs. The sectors that I selected for this study do not always correspond one-to-one with the scope covered by the CLA. An overview of the classification of sectors and the scope of the CLA is taken up in the table in appendix B.

3.3.3 Comparing points in time

To analyse why and how the specific Dutch balance between flexibility and security came about, it is essential to look at developments over time. The general time-frame in this thesis is from the mid-1990s until 2006, although it is slightly extended in the cross-national comparison to include the early 1990s and confined in the sector-level analysis where I focus mainly on developments after 2001. Because the share of temporary work has increased across Europe during the 1980s, but mainly the 1990s, the country comparison focuses on developments since the 1990s. For the sector-level comparison within the Netherlands, I concentrate on two developments central to the use of temporary work. The first is the introduction of the F&S law and WAADI in 1998/1999, the second is the economic downturn between 2002 and 2004. I assume that the economic downturn has had a different impact according to the specific characteristics of sectors, and that it affected the power balance between the social partners. I argue that in response to these regulatory and economic developments, employers and social partners shifted their behaviour and norms regarding temporary work, which reflected in changing CLA-provisions on temporary work.

In my study of the different sectors in the Netherlands, I look specifically at developments just before, and after the introduction of the F&S Law. I selected the years 1998, 2001, and 2004 for a repeated cross-sectional analysis to study the influence of

changes in the institutional framework and the impact of the business cycle. 2001 was a clear peak year for the Dutch economy, while 2004 was a year in which the economy climbed out of a recession. In 1998 the economy was growing fast but the peak was not yet reached. Regarding the institutional change, 1998 was just before the introduction of the F&S Law, while in 2001 social partners, workers and employers had already worked with the new rules for a couple of years. In 2004, the regime was in place for five years, sufficiently enabling all parties involved to get used to and work with the new set of rules, possibly amending them in line with sector-specific needs. The CLAs that I analyse do not always correspond with the years 1998, 2001 and 2004 as they are often negotiated for a duration of several years. The CLAs that I used that did not correspond exactly with these three years were: Architects in 2001 and 2004 (CLAs 2002 and 2006); Horticulture in 2004 (CLA 2005); LAML in 2004 (CLA 2006); Energy in 2004 (CLA 2005); Cleaning in 2004 (CLA 2005), and; Home care in 2004 (CLA 2005).

3.4. Operationalisation

3.4.1 Measuring flexibility

The institutionalisation and normalisation of temporary work and outcomes in terms of the extent and security aspects is the topic of this project. Temporary work is here divided in two types: fixed-term (FT-) work, and temporary agency work (TAW). The institutional framework for both was substantially altered by the F&S law and WAADI and therefore FT-contracts and TAW are mentioned as the core elements of the Dutch flexicurity framework (European Commission 2007b). I contend that temporary employment mainly increases flexibility for employers, and is not the most desired type of flexibility for workers (Chung, Kerkhofs et al. 2007).

The outcomes I look at are on the one hand flexibility elements and on the other security elements. The flexibility outcome I analyse is made up of the extent of TAW and FT-work in a sector, and national and sector-level formal and informal institutions on temporary work. In the comparison between countries, flexibility outcomes are the extent of both FT-employment and TAW, and the degree to which laws enable or rather restrict the use of temporary employment. In the national-level study of the Netherlands in chapter five, flexibility is again the extent of temporary work over time, developments in norms that contribute to the normalisation of temporary work and the increased possibilities to use temporary work by national law and in CLAs. At the sector-level in the Netherlands (chapter six), flexibility is again the extent of temporary work in these

sectors, but also informal institutions on temporary work reflected in norms and customs in the sector. Furthermore, I analyse the provisions in CLAs that increase flexibility for FT-contracts further than the F&S law stipulates. CLA-provisions extending flexibility for TAW are not found in these CLAs; these are only taken up in the sector-wide CLAs that I discuss in chapter five on the Netherlands.

In the comparison of sectors in chapter six, sectors are scored for having a high degree of temporary work (score of 1), or a low degree of temporary work (score of 0). To assess the share of FT-contracts and TAW, I used data from the '*Arbeidsrekeningen*' from Statistics Netherlands (CBS) and from the OSA labour market supply panel. OSA is the Institute for Labour Studies (*Organisatie voor Strategisch Arbeidsmarktonderzoek*) of the University of Tilburg. OSA provides figures on FT-contracts and TAW, while CBS groups together different types of flexible jobs. The CBS category 'flexible jobs' includes both FT-contracts and agency work, and additionally on-call workers (*oproep- en invalkrachten*). For the energy sector, CBS does not have figures on flexible jobs. It is not possible to obtain figures on TAW and FT-contracts at the exact level of the eleven sectors I study, so I used a higher-level classification. For the CBS data I used the following grouping of sectors: horticulture and LAML are grouped under "agriculture, forestry and fishery"; supermarkets and department stores under "retail and repair"; cleaning and security under "other business services", and home care services under "healthcare and social work". To construct the metalectro sector, I grouped together five industrial CBS-sectors: basic metal, metal products, machines, electro technical, and means of transportation. For the OSA data I used a similar higher-level categorisation, and was able to add information on the energy sector under the higher-level category 'public utilities'.

OSA collects figures every two years on different types of employment contracts by means of labour market supply panel surveys. I analysed the labour supply panel data for the years 1998, 2000, 2002 and 2004. To arrive at a score for the year 2001, I averaged the data of 2000 and 2002. In the supply panels, respondents are asked to specify their type of employment contract by choosing from 'permanent', 'FT with prospect of permanent'; 'FT', and; 'other'. They are furthermore asked to specify the characteristics of the employment contract, including the option 'agency work'. Because the number of observations in my sector-classification is too low (i.e. less than 50 people per sector), I cannot make sound calculations on the share of these types of contracts. I therefore use the OSA data, just as the CBS data, at a higher sector-level. Using the

higher-level sector-division entails a higher number of observations: most sectors have more than 200 observations. The sector agriculture, however, still has a small number of observations (from around 80 in 1998 to less than 40 in 2004), which makes this data less reliable.

3.4.2 Measuring security

To arrive at measures for security in temporary work, I use the 'flexicurity matrix', developed by Wilthagen (2002) as an analytical starting point. This matrix shows four types of flexibility and four types of security. The four types of flexibility are: 1) internal numerical (e.g. overtime); 2) external numerical (e.g. TAW); 3) functional (e.g. job rotation); 4) wage (e.g. performance related pay). For this project, I will only look at the second dimension, external numerical flexibility, of which FT-work and TAW are two instances. This category is, however, broader and includes for example laws facilitating dismissal, on-call workers, freelancers, seasonal workers etc. The four types of security are 1) job security (i.e. remaining in the same job with the same employer); 2) employment security (i.e. having a job); 3) income security (i.e. being sure of an income within or outside of employment); and 4) combination security (i.e. the security of being able to combine work and private life).

As mentioned above, external flexibility is hardly compatible with combination security (Chung, Kerkhofs et al. 2007). TAW and FT-contracts can however be associated with the three other types of security, i.e. job, employment and income security. To this I add a fourth type: representation security, which refers to the ability for temporary workers to have a collective voice (Standing 1999, in Kalleberg 2009). In the empirical analysis, job security is measured as the type of contract an agency worker has with the employer (in the Netherlands the agency) and the transition rates from FT-contracts to open-ended contracts with the same employer. Employment security is the transition rate into open-ended employment with another than the current employer (for agency workers this can be the user firm) and access to training. Regarding transition rates it should be noted that they are incomplete in the sense that they do not capture the people that might consistently 'stay behind' and remain 'stuck' in external flexible jobs. Such more precise transition rates are, however, not currently available. Income security is level of equality between temporary workers and permanent workers regarding pay, pensions and access to benefits. Representation security is the union membership level among temporary workers and the degree to which they are represented in works councils. For agency workers this can be the works council in the firm that they are

working or in the agency they work for. These four types of security are aimed at creating equality between temporary and permanent workers, and generating an inclusive labour market. This type of security fits very well with the flexicurity perspective and with the aims of the F&S Law.

I will analyse the differences between these securities for temporary workers across countries by analysing the legal framework at both national and sector-level and by providing information on practice where possible (chapter four). In chapter five, I show the way these securities have shifted over time in the Netherlands because of the possibility to deviate. In chapter six, security for temporary workers is measured via six CLA-provisions on TAW and FT-contracts. I select three CLA-provisions on TAW measuring rights to 1) equal pay, 2) training and 3) being directly hired by the firm they are working at. The three CLA-provisions on FT-contracts measure if the CLA is stricter than what is laid down in three elements of the F&S law.

3.4.3 Sector-characteristics: power and external pressure

Negotiations on flexibility and security between social partners always take place within a certain power structure between the parties involved. In propositions ten and eleven developed in the previous chapter I assume that the nature of this power structure will have an impact on the balance between flexibility and security in temporary work. The institutional changes in the legal framework itself somewhat changed the power balance between social partners because it changed the framework of reference. This, however, only applies to provisions on FT-contracts. According to the rules that existed before the F&S law, social partners could also deviate from the law, but the law at that time stipulated that after one FT-contract, an open-ended contract should be offered whereas the F&S law states that this number can be three instead of one. For example, before the F&S law the social partners in a certain sector negotiated that two instead of one FT-contract was possible; this then entailed an increase in flexibility. After 1999 this same provision entailed an increase in security relative to national law. Social partners would enter a new bargaining round with an increase in security on the table that was in fact bargained as extended flexibility in the previous negotiations[7]. The new framework therefore re-positioned the social partners vis-à-vis one another. The sector-study will,

7 For the analysis of developments in flexibility and security over time I, however, use the framework of the F&S law. This increases comparability; if I would use the two different reference frames a huge increase in security will likely be observed after 1999. This would in my view create a wrong impression by obscuring the fact that existing CLA-provisions, and the lived reality for workers, has remained unchanged.

however, focus on developments after the new framework was installed (i.e. 2002-2006), and therefore I include other factors shaping the power balance.

Based on an analysis of the relevant literature and the previous study into the F&S law I discern the following set of sector-level characteristics that shape the power balance between parties negotiating a CLA. These characteristics are: openness to (inter)national competition, scarcity of labour, business cycle sensitivity, and the membership level of the unions in a sector. A higher degree of international economic openness increases the bargaining power of employers as they have more possibilities to relocate production. Whether or not relocation will in fact occur does not matter for the power imbalance; the mere threat of relocation will induce employees' representatives to make concessions (Raess and Burgoon 2006). Business cycle sensitivity and scarcity of labour overlap to a certain extent, though not in all cases: in sectors such as healthcare and education there is a high degree of scarcity in the Netherlands although these sectors are hardly sensitive to the business cycle. Business cycle sensitivity and labour scarcity together affect the demand for labour and thereby the power balance between social partners. When the demand for labour goes up, unions have more power at the bargaining table. Finally, I assume that a higher membership level of the unions in a sector increases their bargaining power as they have more legitimacy vis-à-vis employers.

Besides obtaining information on these sector-characteristics through interviewing, I use data from additional statistical sources such as the Statistics Netherlands (CBS), the Institute for Labour Studies (OSA), and the Research Centre for Education and the Labour Market (ROA). However, these sources do not provide data at the exact level of the eleven sectors, which prevents direct use of these measures. It is necessary to combine the qualitative interview-data with the statistical sources to arrive at scores on each characteristic. To measure openness to national and international competition, I used a measure from CBS, a measure for international competition derived from ROA (De Grip, Van Loo et al. 2004), and a study by Visser (2003). The CBS-measure is derived from the OECD, but is only available for agricultural and industrial sectors. Based on the CBS/ OECD, openness is measured as the sum of the value of the export and import by/ through the sector, divided by the added value of the sector. The indicator developed by De Grip et al. is based on the export share of production in a sector. This measure is unfortunately only available for the year 2004. Visser makes a distinction between exposed and sheltered sectors that applies to the early 2000s and also contains future developments (Visser 2003). I therefore use his analysis to

arrive at a measure for openness for the years 2001 and 2004. These three sources are combined with interview-data to arrive at sector-level scores for openness.

The measure for labour scarcity is the share of vacancies per 1000 jobs, taken from CBS. Because the CBS-measure is based on a higher-level sector-classification than the classification I use, e.g. retail instead of supermarkets and department stores, I will combine this data with data obtained through interviews. An overview of the CBS-data and the method used to arrive at scores for this characteristic is taken up in Appendix C. Researchers from ROA also developed a measure for business cycle sensitivity. This measure reflects "(…) the degree to which the employment rate is sensitive to economic developments. The measure is composed by relating past fluctuations in employment to the extent to which a certain profession or education type is reflected in a sector" (ROA 2007 p. 109). The figures show fluctuations in employment levels on the basis of which can be seen which sectors are more and which are less sensitive. More information on the data on openness and business cycle sensitivity can be found in appendix C. The final sector-characteristic is the strength of the trade unions, which I measure as the share of union members in the sector. This measure is taken from CBS and again is only available at a higher-level sector-classification, so some degree of detail is lost when grouping some sectors together (see appendix C). In the Netherlands union membership is relatively low around 25%, while collective bargaining coverage is on average high around 80%. Bargaining coverage could therefore mean another measure of union strength, but recent study shows that collective bargaining coverage is not a useful measure, as it hardly fluctuates between the sectors in this study; all sectors have scores around 80%(Van Klaveren and K. Tijdens (eds.) 2008).

3.5. Data-collection

To measure institutional change at national and sector-level and over time, it is imperative to combine a range of sources. I will obtain data by means of qualitative interviews, combined with secondary analysis of statistical sources, background documents, and existing empirical studies. Finally, I will analyse the sector-level CLAs. The comparative country study in chapter four is based on secondary data analysis. Chapter five is based on secondary analysis and analysis of CLAs, and in chapter six I combine qualitative interview data with analysis of CLA texts, supplemented by secondary analysis of mainly statistical sources.

3.5.1 Interviews

To gain insight into processes of change and the reasons for this change, it is crucial to understand how employers and social partners deal with changing pressures such as increasing internationalisation, the way these pressures vary across sectors and over time, and how pressures are translated into sector-level practices. Furthermore, it is important to understand what motivates certain behaviour of employers and social partners: what factors do they see as central to pressures for and negotiations on flexibility and security? What is the role of economic developments and what is the role of institutional developments, mainly the new institutional regime made up of the F&S law and WAADI?

The most appropriate method to answer these questions is conducting semi-structured interviews with key respondents. Questionnaires would not offer this possibility and I chose to do interviews to increase comparability with the 2002 evaluation study, which is the key input for this project (Van den Toren, Evers et al. 2002). The interviews lasted 1,5-2 hours to reach sufficient depth in discussing the topics and leave room to delve into specific issues that came up during the interview. The semi-structured nature of the interviews allows me to gain complete insight into the processes in different sectors from the perspective of key actors who shape practices. Core factors explaining power differences are therefore tested inductively, i.e. the sector-level power characteristics should make sense to the respondents.

The interview respondents were set out to be the same as those in the earlier study into the F&S law, which contained a list of respondents that I took as my starting point. I first contacted the employers' organizations, trade unions, and firms by telephone to inquire if the same person that was interviewed in 2001 was still in the same position and if not, who his or her replacement was. In about two-thirds of the cases the people still occupied the same position; in about one-third they were replaced. I then contacted the people in the relevant position with a letter explaining the research. In this letter, I indicated I would contact them by telephone within two weeks. About a week-and-a-half after the letter was mailed, I contacted the respondents by phone to set a date for the interview. Especially that last phase was often quite difficult with people having very busy agenda's. After many phone calls and e-mails, I managed to contact and schedule interviews with all the respondents I needed, with the unfortunate exception of one trade union representative in the sector LAML.

The total number of interviews is little over 50 across the eleven sectors and the TAW sector (see appendix E). The interviews were held with a representative from an

employers' association and a representative of the trade union that together negotiate the sector-level CLA, and an HR-manager of a large firm[8]. For the interviews, I used a one-page topic list (see appendix D, translated from Dutch) as my guide. I used an additional extended topic-list with specific questions under each topic, of which I often departed to some extent depending on the direction the interview took. This topic-list was sent to the respondents beforehand. All topics were covered during the interview. Before I conducted interviews in each sector, I adjusted the questions in line with information on the sector gained from my desk-research. For example, when I read about a recent reorganization or new strategy orientation in a sector, I included specific questions about this. Also, I included questions about the specific CLA-provisions.

The focus in the interviews was not so much the developments in flexibility strategies before and after the introduction of the F&S law, but mostly the impact of the law during the recent economic downturn (2002-2004), compared to the preceding economic boom (1999-2001). The F&S law was introduced during that economic boom, and the earlier study found that the effect of the law was hard to ascertain during these circumstances, as labour scarcity limited the possibilities to use flexible labour (Van den Toren, Evers et al. 2002). The question how the law affects the employers' behaviour (mainly through CLAs) in times of an economic downturn initially sparked this research and was the main topic for the interviews. However, in my analysis of the eleven sectors in chapter six, I also refer to differences before and after the law. The sources I used for this are existing sector-reports and firms' annual reports, and the 2002 evaluation study.

3.5.2 Other sources

Especially regarding TAW, reliable and comparable figures across countries can be difficult to obtain, and definitions can vary somewhat (Storrie 2002; Arrowsmith 2006; Arrowsmith 2008). Temporary work agencies often have a portfolio of services including posting of workers and pay rolling, which are often also reported, but don't fall under the strict definition of TAW given in chapter one above. In addition, self-reporting of workers often leads to lower figures as they identify more with the place they actually work than with the agency that lent them out (Arrowsmith 2006, p. 41). The data for Germany is overall satisfactory, while in Denmark data is limited due to the recent origin of the industry and the high degree of migrants in the business (ibid. p. 4). The data for

8 Small and medium-sized firms are less likely to use flexible labour: 65% of all firms with up to 100 employees did not make use of agency workers or freelancers in 2005. N.B. of the 735.000 small and medium-sized firms in 2005, 410.000 (56%) were one-person enterprises (De Kok, J., F. Westhof, M. v. Praag and J. v. d. Sluis (2007). Flexibele arbeid in het MKB. Zoetermeer, ACE and EIM.

the Netherlands is of variable quality, while in the UK the figures are inconsistent (ibid.). Because the status of the agency worker is often more unclear in the UK, estimates can vary across sources. Employers' organisations often report higher figures than trade unions because they also include posted workers (ibid. p. 41). Figures from the UK Labour Force Survey probably underreport figures, as they are likely to exclude large groups of migrant workers (ibid. p. 4). In this chapter, I combine figures obtained from temporary work agencies, national statistical agencies, reports, papers and scientific journals on the issue, with the aim of gaining accurate information from various sources.

For the sector-study, I gathered various sources containing information on the sector and the specific firms I selected in addition to the interview data. The documents used were sector-reports, firms' annual reports, existing studies on the sector, and the collective agreements. For the year 1998, when the F&S Law was not yet implemented, I made use of the earlier evaluation of F&S Law in case no other studies or CLA was available, as this report refers to CLA provisions on FT-contracts before the implementation of the F&S Law (Van den Toren, Evers et al. 2002). To complement the qualitative interview data that I obtained in the interviews and enable comparisons across sectors, I used statistical sources such as the CBS, OSA, and studies by ROA (see under section 4.3 above).

For the analysis of CLAs I coded the CLA-texts combined with the coding available in the DUCADAM database of collective agreements. This abbreviation stands for Dutch Collective Labour Agreements Database and Monitoring; it is administered by the Amsterdam Institute for Advanced Labour Studies (AIAS). The DUCADAM data-set is an SPSS-file containing information on almost all CLAs in the Netherlands. The information is coded in 1125 characteristics (Schreuder and Tijdens 2003). The CLAs have been collected and supplied by the largest Dutch trade union FNV since the second half of the 1990s. The FNV almost exclusively registers CLAs that they concluded, but these CLAs make up about 90% of all CLAs in the Netherlands; all CLAs for the eleven sectors I study were available.

3.6. Data-analysis – case study analysis and QCA

In this project I adopt a comparative case-study approach. In chapter four, the cases are four countries; in chapter five I provide a more in-depth case-study of the Netherlands, including a comparison over time. In chapter six I present eleven cases, i.e. sectors of the Dutch economy. In chapters four and five the case-study approach worked very well and enabled me to make systematic comparisons. Regarding the analysis of the eleven sectors,

however, a systematic comparison proved more difficult. During the initial stage, the data of each sector was compiled in sector reports. Taking these reports together and presenting eleven case studies proved incompatible with retaining a comprehensive overview. I preferred to translate the data to a somewhat higher abstraction level, to make comparisons across the eleven cases. The method that proved very useful for this is Qualitative Comparative Analysis (QCA), as it draws on qualitative data, but allows for systematic comparison. In QCA, the sector-level characteristics to measure power are termed 'conditions' and the flexibility and security elements are termed 'outcomes'. QCA is based on the idea of reality being complex; this is reflected in two key notions. The first notion is that outcomes are usually brought about not by a single but a combination of conditions. Because I have qualitative data on the sectors, I can get a picture of how and where the different sector-characteristics come together to produce a certain outcome. A second notion in QCA is that there are more possible combinations of conditions which can lead to the same outcome. This is termed 'equifinality' (Ragin 2000).

QCA, in short, captures the complexity that is available in qualitative data. The analysis entails comparing the conditions and outcomes and establishing which conditions occur simultaneously with which outcomes. The analysis, nevertheless, remains qualitative: the input is qualitative and the output is also a qualitative description, though more systematic and based on comparison. The outcomes are, however, not generalisable to cases that have not been observed; there are also no significance levels.

Within QCA, I use a specific type of QCA that draws on 'fuzzy set membership', abbreviated fsQCA. FsQCA is based on the practice in descriptive qualitative research where differences in degree are often referred to by terms such as 'somewhat', 'higher', 'less' etc. In fsQCA, these quantitative labels are translated into set membership scores between 0 to 1 indicating membership in a set, while different sets indicate different qualitative categories. The term fuzzy refers to set membership and captures the degree of membership, i.e. a case is not either 'in' or 'out' of a set but more or less in or out. Business cycle sensitivity or strong unions are examples of sets of which sectors are more or less a member. When QCA was first developed, it was based on the notion of binary values, i.e. either 0 or 1 (Ragin 1987). Cases could only be in or out of a set. This type of QCA is nowadays referred to as 'Crisp Set QCA' (csQCA). The main problem associated with assigning binary scores for set membership to cases was a significant loss of information, i.e. a case could only be completely in or our of a set, e.g. the set of sectors with strong trade unions. To deal with this problem, Multi Value QCA (mvQCA) was

developed. However, for mvQCA not the conditions but the outcome still had to have binary scores, and led to a large number of hypothetically possible cases, but not present in the empirical analysis. To deal with all the shortcomings, limitations and critiques of both csQCA and mvQCA, fsQCA was developed (Ragin 2000; Wagemann and Schneider 2007).

By combining qualitative as well as quantitative differences, fsQCA translates common labels in qualitative case study analysis – higher/ lower, more/ less – into scores for set membership. Consider a hypothetical study in which countries are grouped according to whether or not they are rich or poor, while at the same time distinguishing between richer countries and less rich countries. This is what Ragin calls the "dual nature of diversity" (Ragin 2000, chapter 6); fsQCA not only distinguishes between categories (sets), of which cases can be a member or not, but also the degree to which cases are member of a set. Unlike quantitative methods that assign values to variables, fsQCA is based on assigning 'set membership scores' for certain conditions, i.e. to what extent does a case belong to a certain set of conditions. In comparison with conventional 'levels of measurement' in science, i.e. nominal, ordinal, interval, and ratio, fuzzy sets can be considered interval or ratio scales. However, in addition to the ratio scale, with a meaningful zero point, fuzzy set scores also have a meaningful one point. Nevertheless, the *purpose* of a fuzzy set is to indicate set membership, which is equal to the purpose of the nominal scale (Ragin 2000, p. 155).

Fuzzy sets can be continuous, with scores between 0.5 and 1 indicating 'more in than out', and scores between 0 and 0.5 indicating 'more out than in'. Scores can also be based on three values (1, 0 and 0.5); five (adding 0.75 and 0.25), or seven (1, 0.83, 0.67, 0.5, 0.33, 0.17 and 0). Using three-, five-, or seven-value sets seems comparable to using an ordinal scale. The difference is, however, that with fuzzy sets, categories are not arrayed relative to each other: "Fuzzy membership scores address the varying degree to which different cases belong to sets, not how cases rank relative to each other" (Ragin and Pennings 2005 p. 424). In chapter six of this thesis I will use the five-value scale as this is "especially useful in situations where researchers have a substantial amount of information about cases, but the evidence is not systematic or strictly comparable from case to case" (Ragin 2005, p. 3). The five scores entail the following in terms of set membership:

Fuzzy set score	Membership meaning
1	Full member of the set
0.75	More member than non-member of the set
0.5	Neither member, nor non-member of the set
0.25	More non-member than member of the set
0	Full non-member of the set

I will not use the 0.5 breaking point because it indicates maximum ambiguity, i.e. it cannot be determined whether a case is in or out of a set. In fsQCA, these cases are excluded from the analysis. Because the 0.5 score is left out, I essentially use a four-value scheme (Ragin 2005). The scores for membership in the sector-characteristics are still, and will remain, open to debate. Within QCA, the starting point is the close correspondence between scores and knowledge of the cases. A characteristic of the fuzzy set analysis is that once scores are assigned, they should not be considered fixed, but rather open to continuous adjustment on the basis of the "dialogue between ideas and evidence" (Ragin and Pennings 2005 p. 171). Scores can always be adjusted in line with increasing or differing knowledge. My justification of the scores in words, tables and appendixes can be used as input for any discussion on the correct scoring of the characteristics.

Translating (qualitative) data into set membership scores and assigning scores to cases is a central and very demanding activity in fsQCA because "researchers must establish a very close correspondence between fuzzy membership scores (…) and their concepts" (Ragin 2000, p. 150). In order to assign scores to cases and setting the breakpoints – i.e. at 0, 0.25, 0.5, 0.75 and 1 - the researcher needs thorough theoretical and substantive knowledge of the cases. In the case of for example an analysis of GNP per capita in a country (Ragin 2000, ch 6, table 6.2, figure 6.1), it is not useful to set the breakpoints (e.g. five values) at $5.000 and distribute the cases accordingly, because the difference between $5.000 and $10.000 could for example be much more significant than that between $30.000 and $35.000. The breakpoints might not coincide with clear mathematical categories, but they should with conceptual categories. Ragin calls this the "truncation of irrelevant variation" (ibid. p. 162).

When all the set membership scores are assigned for each case, fsQCA allows determining which (combinations of) conditions are sufficient or necessary for the outcome. If a condition is sufficient, it will always lead to the outcome, although there might also be cases in which the outcome occurs without the condition present. Necessity means that for the outcome to occur, a certain condition must always be

present, although other conditions are also needed. As mentioned above, the conclusions of the analysis remain qualitative in nature and are not generalisable to cases that were not observed. QCA allows me to keep the qualitative nature of the data, mainly the interconnectedness between five sector-characteristics; interconnected conditions then make up various combinations that can lead to a certain outcome. The assumption is the possibility of maximum causal complexity, which means that "no single causal condition may be either necessary or sufficient for the outcome in question" (Ragin 2000, p. 130). Rather, different paths may lead to the same outcome. I analyse not only the combinations of the presence of the five conditions, but also combinations including the absence of a condition. To arrive at the set membership scores in the absence of the conditions, I use negation, e.g. membership in the set high labour scarcity is 0.75, then membership in the set not-high labour scarcity is 0.25. In QCA, the term 'not-high' is preferred over low because not-high is not necessarily low, i.e. they could be analytically quite distinct categories.

In fsQCA, it is assumed that configurations leading to a certain outcome are made up of interrelated conditions. In this project however, the flexibility and security outcomes are also a constellation of factors, i.e. the use of TAW and FT-contracts and various provisions in CLAs. Furthermore, the outcomes are measured in terms of set membership, i.e. in the sets 'high flexibility' and 'high security'. To arrive at membership scores in the outcomes, each sector gets a score of zero or one for every aspect. These zeros and ones make up a final score for security and a score for flexibility, which I then translate into a set membership score.

Besides finding out which characteristics, or combinations of characteristics, are sufficient and/ or necessary for high flexibility and high security, I will analyse changes in these outcomes over time, i.e. between 1998-2001 and 2001-2004. Including a temporal dimension in fsQCA is often seen as problematic (Caren and Panofsky 2005). Although Caren and Panofsky succeed in including a time-dimension in fsQCA, they claim that their solution is only applicable to one type of historical analysis, "trajectory" (ibid., p. 163). This stands in contrast to the type of historical analysis that is important in this project, namely 'path dependency' (see chapter two). Caren and Panofsky explicitly point to the difficulty of incorporating a notion of path dependency in fsQCA. To find a way to incorporate this, Caren and Panofsky advise to "seek creative applications of temporality and sequence in fuzzy sets" (ibid., p. 168). My 'creative application of

temporality' entails carrying out an fsQCA for three points in time and assessing the shifts between these points.

Because the time points are selected to include an institutional change (the introduction of the F&S Law and WAADI) and the fluctuations in the Dutch economy, I attribute the observed shifts between the three years to the impact of these two changes. Although the institutional changes occurred in 1998/ 1999, the effects of these changes might be only visible a couple of years onwards. The impact of the economic downturn is reflected in the two sector-level conditions 'business cycle sensitivity' and 'labour scarcity'. I assume that the impact of an economic downturn affects bargaining parties via the shift in the power distribution it brings about. However, there might be a more autonomous effect of an economic downturn: my interview data will allow me to distil this. An fsQCA at different points in time has been adopted before in an institutionalist analysis of decline in union density in Western Europe (Ebbinghaus and Visser 1999). In line with their study, I analyse the sufficient and necessary conditions over time. I will subsequently be able to show whether sectors have become more similar or different, i.e. have converged or diverged. In addition, if there have been very little developments in the sectors despite institutional and economic developments at the national level, I consider this an instance of path dependency possibly exacerbating divergence or convergence. Informal institutions play an important role in path dependency; how this occurs will be visible from the interview-data.

3.7. Conclusions

On the basis of the research questions and propositions developed in chapters one and two (see appendix A), I have in this chapter operationalised the concepts and outlined the way I will go about measuring them. The units of analysis in the study are employers, employers' associations, trade unions, national laws, and provisions in collective labour agreements (CLAs). To analyse flexibility and security I have chosen to focus on fixed-term (FT-) contracts and temporary agency work (TAW), which are both types of temporary labour. The formal institutions on these types of temporary work were substantially altered by the F&S law and WAADI. For this project I analyse normalisation, institutionalisation, and the nature of institutional change. Normalisation is made up to two elements, i.e. increasing share of temporary work and increasing acceptance of temporary work in informal institutions. Normalisation is, however, not a one-dimensional process and employers' (associations) and trade unions can have a different perspective on this. Also, when there is, for example, widespread use but little

acceptance in informal institutions, there is no high degree of normalisation. Institutionalisation as an outcome is the introduction of more formal rules that can be in turn either more strict or more permissive. When formal and informal institutions become more restrictive, this means that normalisation and institutionalisation is lower and vice-versa.

The analysis as carried out in three comparative dimensions; a comparison of countries (or rather 'institutional frameworks'), of sectors, and over time. An analysis over time is essential to discover processes of normalisation and institutionalisation. A cross-country comparison is necessary to understand the impact of a national institutional framework. Finally, a comparison of sectors is necessary within the Dutch case as the formal flexicurity framework allows for deviation by CLA and most Dutch employment relations are covered by sector-level CLAs. Flexibility is measured as the share of FT-contracts and TAW, and restrictions on both types by national law or CLA-provisions. Security is understood as consisting of different elements, taken from the 'flexicurity matrix' (Wilthagen 2002). These elements, such as equal rights to training and pay, are laid down by law and in CLAs. There is some data available on how these laws work out in practice, but that is not the focus of this project. When this information is available, I will however include it in the presentation.

Based on theories of institutional change discussed in the previous chapter, I will furthermore analyse the power balance between social partners and the informal institutions on temporary work in the analysis between sectors. The power balance is believed to be shaped by four sector-characteristics: economic openness, business cycle sensitivity, labour scarcity, and union membership levels. These sector-characteristics, and the analysis of informal institutions require a combination of secondary data-analysis and qualitative interviewing. To be able to systematically compare eleven sectors I will move beyond a qualitative case-study analysis and use an innovative method called 'fuzzy set qualitative comparative analysis' (fsQCA). The sector-characteristics and the flexibility and security outcomes will be translated into scores, which can combine in various ways. The outcome of the fsQCA will be a description of which factors are necessary and which are sufficient for producing a certain flexibility or security level in a sector.

In the following chapters I will first compare the institutionalisation and normalisation of temporary work across four countries, and the degree of flexibility and security regarding temporary work. By selecting four countries from four different employment and industrial relations regimes, I can draw conclusions about the

specificities of the Dutch institutional framework. Chapter five further describes the Dutch case, mainly how the formal institutional change has led to changes in CLAs and the balance of flexibility and security between employers, temporary workers, and temporary work agencies. In chapter six I compare eleven sectors by means of qualitative description and fsQCA.

Appendix 3.A. Research questions, propositions, and methods

Main question: What is the Dutch approach regarding the extent, nature, and organisation of flexicurity in temporary work?

Research questions 1-5:

Descriptive

Q1. What are the developments in temporary work during the last 10-15 years in terms of its extent, security aspects and formal regulation?

Mechanisms and actors

Q2. How does normalisation and institutionalisation of temporary work take place?

Q3. Which mechanisms and actors explain the developments in the extent, nature, normalisation and institutionalisation of temporary work?

Processes and outcomes

Q4. How are national-level institutions on temporary work implemented by social partners?

Q5. Did the Dutch flexicurity regime lead to convergence or divergence between sectors of the Dutch economy?

Propositions (Ps)

P3 **P2** **P13**

P1 **P4** **P5** **P6** **P9**

P7 **P8** **P11** **P12**

P10

Chapters 4, 5

Chapter 5

Chapters (4) 5, 6

Chapters (5), 6

Chapter 6

PROPOSITIONS		METHODS
P1.	*As external economic pressures for flexibilisation increase, employers will use more temporary work.*	Qualitative interviews Secondary data-analysis of statistical sources and written documents.
P2.	*As temporary work becomes more widespread, the informal institutions on temporary work entail more acceptance leading to a 'demand' for rule change in formal institutions.*	
P3.	*When rules become more permissive regarding the use of temporary work, temporary work will become more accepted by both employers and employees; temporary work will become less accepted when rules become more restrictive.*	
P4.	*In sectors with strong informal institutions on temporary work, changes in the formal institutions at national level will have little or no change in sector-level formal institutions and behaviour.*	
P5.	*If social partners defect from using the CLA for cooperation and negotiation of flexibility and security provisions on temporary work, and start using other institutions, this is a case of* displacement.	
P6.	*In the Dutch case, CLA-provisions are* layered *unto the national-level formal institutions on temporary work (i.e. the F&S law), and as CLA-provisions deviate from what is laid down in the F&S Law, they can change the status and structure of this formal national-level institution.*	
P7.	*If the CLA remains intact at the surface while its content diverges from how it was intended, be it due to active or passive lack of maintenance, or active cultivation of an alternative, this is a case of* drift.	
P8.	*If existing CLA provisions are redirected towards new ends, this is a process of* conversion. *When new CLA-provisions are used to obtain existing ends, this is a process of* reversed-conversion.	
P9.	*If the drawing up and implementation of the F&S law was to a large extent backed by central coalitions of social and political actors, it can be regarded as a* reform.	
P10.	*If variations between sectors increase over time, i.e. a process of divergence, this entails the realisation of 'tailor-made' sector-level solutions. If variations between sectors decrease over time, i.e. convergence, this is brought about by benchmarking or 'learning'-processes.*	Qualitative interviews, fsQCA
P11.	*Irrespective of the strength of informal institutions, power changes in favour of employers will lead to CLA-provisions more permissive than what is laid down in the F&S law.*	
P12.	*Irrespective of the strength of informal institutions, power changes in favour of employees will lead to CLA-provisions more restrictive than what is laid down in the F&S law.*	
P13.	*Key actors made the formal and informal institutional regime on temporary work more permissive by 1) openly advocating for change; 2) lobbying; 3) claiming an exceptional position vis-à-vis the existing institutions, and/or 4) evading the laws and norms with ex-post justification and efforts to change the rules.*	Secondary data-analysis of statistical sources and written documents.

Appendix 3.B. Sectors and corresponding CLAs

SECTORS	Classification	Scope of CLA
Horticulture	SBI-code 0112/0113: Growing of vegetables, flowers, mushrooms, trees, and fruit	Firms that are entirely or predominantly engaged in vegetable cultivation permanently under glass or plastic, with the exception of mushroom and tree cultivation under glass or plastic, but including augmentation firms, also in the open air.
leasing of agricultural machines and labour	SBI-code 014: horticulturist firms and services for agriculture (no veterinary services)	Firms mainly engaged in activities related to vegetable and animal production, construction of green spaces, drainage and maintenance with machines, possibly for third parties, and distribution and other activities related to manure
Metalectro	SBI-code 27-35: Manufacturing of primary metals, metal products, machines, appliances (also audio-visual, telecommunications, and medical), computers, and means of transportation	Range of activities related to the treatment and/or manufacturing of metal, and electro-technical activities (complete description taken up in 7-page appendix in CLA)
Energy[9]	SBI-code 40: Production and distribution of, and trade in, electricity, natural gas and hot water	Production (not including extraction of natural gas), sale, transportation and distribution via fixed infrastructure of electricity, heat, natural gas and water (with the exception of firms affiliated to the employers' organization water firms *Werkgeversvereniging Waterbedrijven*); Collection, treatment and processing of waste; Commercial development, management and exploitation of communication networks and systems and the provision of telecommunication and (multi)media-services; Technical services related to energy technology (research, development, consulting, engineering, certification and training).
Construction	SBI-code 45: Construction industry	17 divisions in CLA, summary: construction, renovation, services on construction sites, demolition, rental of machines with personnel, asphalt and concrete production, road signposting, levelling of polluted ground, civil engineering, asbestos removal
Supermarkets	SBI-code 5211: supermarkets and comparable shops with a general assortment of (luxury) foods	Supermarkets with the exception of employees working in offices, factories, central warehouses, chauffeurs, managers not engaged in sales, cleaners and security personnel.
Department stores	SBI-code 5212: department stores and comparable shops with a general assortment	Three CLAs for the three department stores in the Netherlands: HEMA, V&D and Bijenkorf

9 In the energy sector there was one CLA up until 1997 that was replaced by five CLAs in 1997 that were again brought back to one CLA in January 2008. I analyse one of these five CLAs; the same that was analysed by Van den Toren et al (2002).

Architects	SBI-code 742: Architects-, engineers-, and other technical design-, drawing- and consulting firms	The CLA applies to all employees of architectural firms
Security	SBI-code 746: security/ safeguarding, and tracing	Private security firms, private emergency centres, and private money-and valuables transport admitted on the basis of articles 3a, 3b, and 3c of the law on private security firms (Wpbr)
Cleaning	SBI-code 747: cleaning of buildings, means of transportation, and the like	Periodical or repeated (window) cleaning in or of buildings, means of transportation, and premises, and related activities performed as additional tasks.
Home care	SBI-code 85324: Home care	Care within private homes in the area of housekeeping, personal care, nursing, prenatal care, youth care, diet services, vaccination, and marital care after birth.

Appendix 3.C. Data sources fsQCA

Table 3C/1a. Openness to international competition CBS

Sector	1998	2001	2003
Agriculture, forestry, and fishery	160	152	212
Electricity, gas, and water	4	7	16
Industry (total)	466	446	562

Source: CBS statline, import and export figures based on OECD.
Openness is measured as the sum of the value of the export and import by/through the sector, divided by the added value of the sector. "De som van de waarde van de export en import van goederen door de bedrijfstak, gedeeld door de toegevoegde waarde van de bedrijfstak"

Table 3C/1b. Openness to international competition ROA

Sector	Level of international competition 2004
Agriculture and fisheries	107
Food and beverage industry	109
Chemicals	116
Metal and electrical industry	111
Other industry	103
Energy	102
Construction and real estate	91
Commerce	93
Transport/communications	102
Financial services	91
Hotels/restaurants, repair and business services	92
Non-commercial services	91
Civil service, police, defence and education	91

Source: De Grip et al. 2004, p. 225.
International competition is measured through the export share of the industry's production (p.225)

Table 3C/2. Business cycle sensitivity

Sector	1997-2001 (%)	2002-2006 (%)
Agriculture and fishery	-4.1	0,7
Food	-0.9	-1,4
Chemicals	-2.0	0,2
Metalectro	0.3	-5,2
Other industry	1.4	1,1
Energy	-4.0	3,1
Construction	3.5	-1,1
Real estate	3.5	5,9
Trade and repair	1.4	-1,9
Transport	1.2	0,4
Communication	6.4	-2,5
Banks and insurances	4.9	-2,2
Hotel& catering and commercial services	4.7	0,0
Heath care	4.0	2,2
Government and Education	1.4	1,5
Total (incl. other)	2,5	0,1

Source: ROA 2007, table 1.2, p. 12.
"The business cycle sensitivity of employment is related to the degree to which the employment rate is sensitive to economic developments. The measure is composed by relating past fluctuations in employment to the extent to which a certain profession or education type is reflected in a sector. It is taken into account that not every profession fluctuates to the same extent with the employment-level in a sector" (ROA 2007, p.109).

Table 3C/3. Background data labour scarcity

Sectors	1998			2001			2004		
	label	CBS	FSQCA score	label	CBS	FSQCA score	label	CBS	FSQCA score
Horticulture	Low	22,8	0.25	High	31,3	0.75	Low	33,5	0.75
LAML	Low	22,8	0.25	Low	31,3	0.75	Low	33,5	0.75
Metalectro	High	40,8	0.75	High	51,1	0.75	High	25,3	0.75
Energy	Low	13,3	0.25	Low	16,3	0.25	Low	12,5	0.25
Construction	Low	23,5	0.25	High	41,8	0.75	Low	19,0	0.25
Retail: Supermarkets	Very low	22,3	0	Low	26,0	0.25	Very low	18,5	0
Retail: Department stores	Very low	22,3	0	Low	26,0	0.25	Very low	18,5	0
Cleaning	Low	25,5	0.25	High	31,0	0.75	Low	21,8	0.25
Architecture	High	25,5	0.75	High	31,0	0.75	Low	21,8	0.25
Security	Low	25,5	0.25	High	31,0	0.75	Low	21,8	0.25
Home care	Low	15,5	0.25	High	23,8	0.75	Low	13,5	0.25

The translation into fuzzy set membership scores is as follows:

CBS	Label	FSQCA score
0-15	Very low	0
15-25	Low	0.25
25-35	High	0.75
>35	Very high	1

Table 3C/4. Background data union membership

	Share of union membership CBS		
Sectors	1998	2001	2004
Horticulture	18	16	13
LAML	18	16	13
Metalectro	29	27	27
Energy	50	48	38
Construction	40	39	37
Supermarkets	14	12	12
Department stores	14	12	12
Cleaning	16	12	14
Architecture	16	12	14
Security	16	12	14
Home care	24	23	24

Union density	FSQCA score
0-14%	0
15-24%	0.25
25-39%	0.75
40% and over	1

Appendix 3.D. Topic list (original in Dutch)

1. General trends in employment

Trends in employment from the mid 1990s up until today; influence of the business cycle and other factors relating to employment; trends in the type of employee in the sector

2. Trends in the flexibility need of employers and workers

Origin of flexibility need of employers and workers; developments in these flexibility needs and factors explaining these developments

3. Trends in the flexible deployment of the workforce

What do companies' 'flexibility-strategies' look like? Ratio open-ended to temporary/flexible contracts; flexibility of permanent workers; Developments in flexibility strategies and the reasons behind these developments. How are alternative ways of flexible deployment of personnel weighed/considered?

4. Composition of the population of flexible workers

What are the different types of flexible labour, what is the share of the different types of flexible labour compared to the total employee population (in percentages)? Developments in the group of flexible workers; substitution between different kinds of flexible labour?

5. Effects of 3x3x3-provision, presumptions of law and obligation to extend wage payment for the contract types used

6. Use of various dismissal routes for various types of dismissal

7. Trends in CLA-provisions on flexibility and the effect on actual use

Adjustments in the CLA as a result of the F&S Law; deviations from the F&S Law; developments in the bargaining issues for employers/trade unions; discussion issues in the CLA surrounding flexibility; possible alternative strategies for the regulation of flexible labour.

8. Influence Flexibility and Security Law

Shifts in the costs/benefits of different types of flexible labour; differences in the effects of legislation in an economic boom compared to an economic downturn

9. Effects on the position of employees: balance between flexibility and security?

10. Round-up questions: any issues overlooked that are relevant for flexibility and security? Expectations for the future?

Appendix 3.E. List of interview respondents

No.	Sector	Institution	Respondents name(s)	Place and time
1	Horti-culture	Christian trade union CNV	Jaap Bosma	Hoofddorp 18/12/2006
2		Employers' organization in the agricultural sector LTO	Gerard van der Grind	Den Haag 29/01/2007
3		Flower firm RoyalVanZanten	Fred Verboom	Aalsmeer 14/12/2006
4		Flower Firm Florema	Nico Eveleens	Amstelveen 8/12/2007
5	LAML	Employers' organization Cumela Nederland	Hannie Zweverink	Nijkerk 03/01/2007
6		LAML Firm UniCom Oost B.V.,	Jan Schoot Uiterkamp	Haarle 22/01/2007
7	Metalectro	Peak trade union FNV Bondgenoten	Ger klinkenberg, Maria Sigmond, Jac Christaens, and Ralph Smeets	Weert 06/11/2006
8		Peak trade union FNV Bondgenoten, division shipbuilding	Ruud van den Bergh	Rotterdam 09/11/2006
9		Employers' organisation FME-CWM	Hans Hoogendoorn and Hans Van Rigteren	Zoetermeer 30/08/2006
10		Employers' organisation in shipbuilding VNSI	Ruud Schouten	Zoetermeer 26/10/2006
11		Firm ASML	Ralph Otte	Veldhoven 16/10/2006
12		Firm Xerox Manufacturing	Jan Wijnands	Venray 23/03/2006
13		Temporary work agency – Manpower (in-home Xerox)	Mirjam Zenden	Den Bosch 01/05/2006
14	Energy	Christian trade union CNV	Theo Quist	Den Haag, 11/12/2006
15		Employers' organisation Wenb	Peter van der Vlugt and Petra Broekuijsen-Van Rooij	Arnhem 02/11/2006
16		Firm Essent	Rob Benschop	Arnhem 21/09/2006
17		Firm Nuon	Carel van der Wal and Hilde Arns	Amsterdam1 3/11/2006
18	Construc-tion	Peak trade Union FNV Bouw	John Kerstens	Woerden 20/07/2006
19		Peak trade Union FNV	Han Westerhof and	Woerden

		ZBO/FNV Bouw	Bernet van Leeuwen	21/02/2007
20		Christian trade Union CNV Hout en Bouw Bond	Maarten Post	Odijk 03/05/2006
21		Employers' organisation Bouwend Nederland	Kees Scheepens	Zoetermeer, 18/07/2006
22		Firm Hillen en Roosen	A.P.de Jong	Amsterdam2 4/03/2006
23		Firm Heijmans	Maurice van der Brugge	Rosmalen 11/04/2006
24		Temporary work agency – Randstad, division BouwFlex	Joost Louman	Amsterdam, 19/07/2006
25	Super-markets	Peak trade union FNV Bondgenoten	Jos Brocken and Nicole Boonstra	Amsterdam 27/11/2006
26		Employers' organisation VGL	Pieter Verhoog and Jan Fokke	Leidschen-dam 20/10/2006
27		Firm Ahold	Bert Mijnen	Zaandam 27/09/2006
28	Depart-ment stores	Peak trade union FNV Bondgenoten	Hetty Kijzers	Utrecht 04/09/2006
29		Firm HEMA	Theo de Waal	Amsterdam 31/03/2006
30		Firm HEMA Distribution Centre	Huub C. Cuijpers	Utrecht 13/04/2006
31		Firm HEMA Germany division	Marcel Klösters	Amsterdam 08/05/2006
32	Cleaning	Peak trade union FNV Bondgenoten	Eddy Stam	Utrecht 09/05/2006
33		Employers' organization OSB	J.C.M. Kerstens and I.P.M. Kantelberg	Den Bosch 19/01/2007
34		Firm HAGO	Irma Willemse	Capelle aan den IJssel 26/04/2006
35		Firm ISS	Marijke Balk	Utrecht 28/08/2006
36	Architects	Peak trade union FNV Bondgenoten	Willem Jan Boot	Utrecht 07/12/2006
37		Employers' organisation BNA	Peter Van der Toorn Vrijthoff	Amsterdam 07/12/2006
38		Firm EGM Architecten	H. Kortland	Rotterdam 08/12/2006
39	Security	Trade Union De Unie	Ron Kluwen	Capelle ad IJssel 29/11/2006
40		Employers' organisation VPB/ firm Securitas	Tom Uittenbogaard	Badhoeve-dorp 12/12/2006
41		Firm G4S (Group 4	Marc Razoux Schultz	Amsterdam

		Securicor)		20/12/2006
42	Home care	Peak trade Union FNV (ABVAKABO)	Pim van Loon	Utrecht 30/01/2007
43		Employers' organization Actiz	Kees Stulp	Bunnik 13/09/2006
44		Firm Amsterdam Thuiszorg	Henny Wams	Amsterdam 05/04/2006
45		Firm Amsterdam Thuiszorg	Henny Wams and R. Verhoeven	Amsterdam 27/04/2006
46	TAW sector	Peak trade union FNV Bondgenoten	Marcel Nuyten	Utrecht 15/12/2006
47		Employers' organization ABU	René Snel	Lijnden 21/02/2005
48		Agency Randstad	Willem Plessen	Amsterdam 13/10/2005
49		Agency Manpower	Edwin Zonder	Amsterdam 27/03/2006
50		Agency Tence (main office)	Jan Posthumus	Breda 17/02/2006
51		Agency Tence (regional office)	Door Erkens	Heerlen 07/03/2006
52		Agency Tence (regional office)	Rob Borsje and Angela Rammeloo	Terneuzen 03/03/2006.
53		Agency Tence (Belgium)	Yves Thoorens	Holsbeek 30/032006

Chapter 4 – Institutional frameworks on flexibility and security in temporary work; a four-country comparison

4.1. Introduction – developments in flexibility across Europe

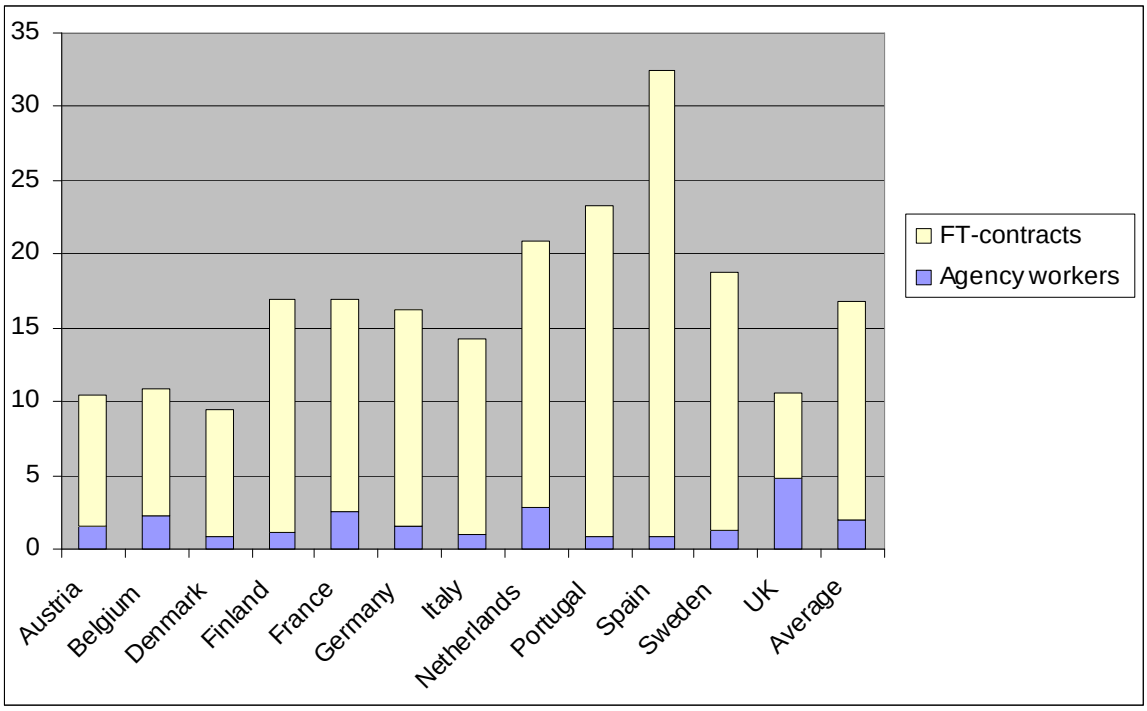
During the 1980s and 1990s, political economies everywhere experienced pressures often denoted with the term 'globalisation'. The term is used to signify increased international competition, which is often explained as an increase in the power of (multinational) firms and market relations (Rubery and Grimshaw 2003). As a result of this increased competition, firms experience a heightened pressure to deploy labour more flexibly. This pressure is often translated into policies aimed at making labour markets more flexible (Esping-Andersen and Regini 2000). In the context of Europe, I have pointed out at the beginning of this book that at the EU-level as well as in the Netherlands there is a specific focus to combine this pressure for flexible labour with a certain degree of security for workers. This is the so-called *flexicurity* approach to labour market reform (European Commission 2007b).

The two types of flexible labour that I focus on for this project are Temporary Agency Work (TAW) and Fixed-Term contracts (FT-contracts). They are often grouped together under the heading 'temporary work/ employment', and I will also use that term in this chapter when I refer to both types of employment. I discern four types of security for these two types of flexible labour: job security, employment security, income security, and representation security. This chapter will deal with the developments in TAW and FT-contracts and the institutional framework regulating flexibility and security aspects of these contracts in four EU countries.

Temporary work has increased across Europe since the 1990s; their share in total employment increased from little over 10% in 1990 to 14,5% in 2007 (source: Eurostat). Especially TAW has been expanding rapidly in the mid- to late 1990s, with annual growth rates of 10% (European Commission 2002; Storrie 2002; Arrowsmith 2006). Although the share of TAW of the total number of people in employment across Europe is small, an average of 1.8%, the share has almost doubled between 1996 and 2006 (source: www.ciett.org). Compared to other European countries, TAW is very prominent in the Netherlands. The number of agency workers in the Netherlands was the highest in all of Europe in 1999. In 2004, however, figures on Dutch TAW show a decline; the level of TAW is now highest in the United Kingdom. The Netherlands however still occupies

the second position. Regarding FT-contracts, the Netherlands is close to the EU average (see figure one). Figure one furthermore shows that the share of temporary employment is the highest in Spain, followed by Portugal and the Netherlands. The share is (less than) 50 % in the United Kingdom or Denmark. Germany occupies a middle position.

Figure 4.1. Share of TAW and FT-contracts in total employment in EU-15 countries 2007



Source: CIETT 2008 and European Commission, *Employment in Europe* 2007 and 2008

During the 1990s, firms have increasingly shifted their focus on how best to organize their workforce within the firm via internal labour markets, to new employment relationships consisting of external flexible labour (Grimshaw, Ward et al. 2001). TAW and FT-contracts are instances of external flexible labour. By using external flexible labour, firms restructure their work force into a core of permanent employees and a periphery of temporary labour (Kalleberg 2001). This increases flexibility and reduces labour costs (Mitlacher and Burgess 2007, p. 402). For TAW in particular, a user firm can further reduce costs related to hiring and firing, and sickness and unemployment benefits, and outsource the risk of a fall in demand (Houseman 2001; Rubery and Grimshaw 2003; Mitlacher 2007). TAW and FT-employment are also to some extent supply-driven, i.e. some people may prefer doing temporary work over other types of employment, as it for example allows them to combine paid work with a study or to familiarize themselves with the labour market. Data on the share of people in TAW or FT-employment that prefer this type of work over other types of employment is very patchy. There are for

example some figures for the UK stating that the share of workers preferring agency work over other jobs is 28% (TUC 2005). The only comparable evidence is available from Eurostat and provides the reasons why people take up temporary employment. These figures are discussed in the next section.

In response to the growing incidence of TAW and FT-work in the Netherlands in the 1990s, the legal framework on flexible labour was significantly altered by means of legislative changes introduced in 1998 and 1999. This new framework, mainly consisting of the Flexibility and Security (F&S) law, has been heralded as an "example of flexicurity", mainly regarding the new regulations on TAW and FT-contracts (European Commission 2007b). The market for TAW was, for example, deregulated, while the legal position of agency workers was improved. This new regulatory regime has been termed "rather innovative and quite different" compared to other ways of regulating the TAW relationship across Europe (Storrie 2002, p.9). I will compare the Dutch regulatory (or: institutional) framework on FT-contracts and TAW with those in Germany, Denmark, and the United Kingdom (UK). I will analyse these four frameworks, which I define as national laws and sector and company-level collective labour agreements.

This chapter will provide an answer to the first research question of this project: what are the developments in temporary work during the last 10-15 years in terms of its extent, security aspects and formal regulation? Furthermore, it will partly touch upon research question three: which mechanisms and actors explain the developments in the extent, nature, normalisation and institutionalisation of temporary work? The elements of the third research question that I touch upon here are the role of certain actors, i.e. social partners in the four countries. Taking a comparative perspective allows me to distil the specificities of the Dutch case. The chapter will proceed as follows: I first start with some background information on the nature of TAW and FT-contracts and the way I define security for these types of employment. In section three, I discuss the EU-level regulations on FT-contracts and TAW, and in sections four to seven, I analyse the four institutional frameworks. Section eight compares the four countries on their flexibility and security dimensions and in section nine I conclude whether the Netherlands are indeed moving towards Denmark, maybe moving towards the UK, or not moving at all.

4.2. Security in temporary employment

TAW and FT-contracts are forms of external numerical flexibility, as they provide firms with a flexible, external labour force that can be used for a definite period of time when extra capacity is required. These temporary workers can also bring a certain degree of

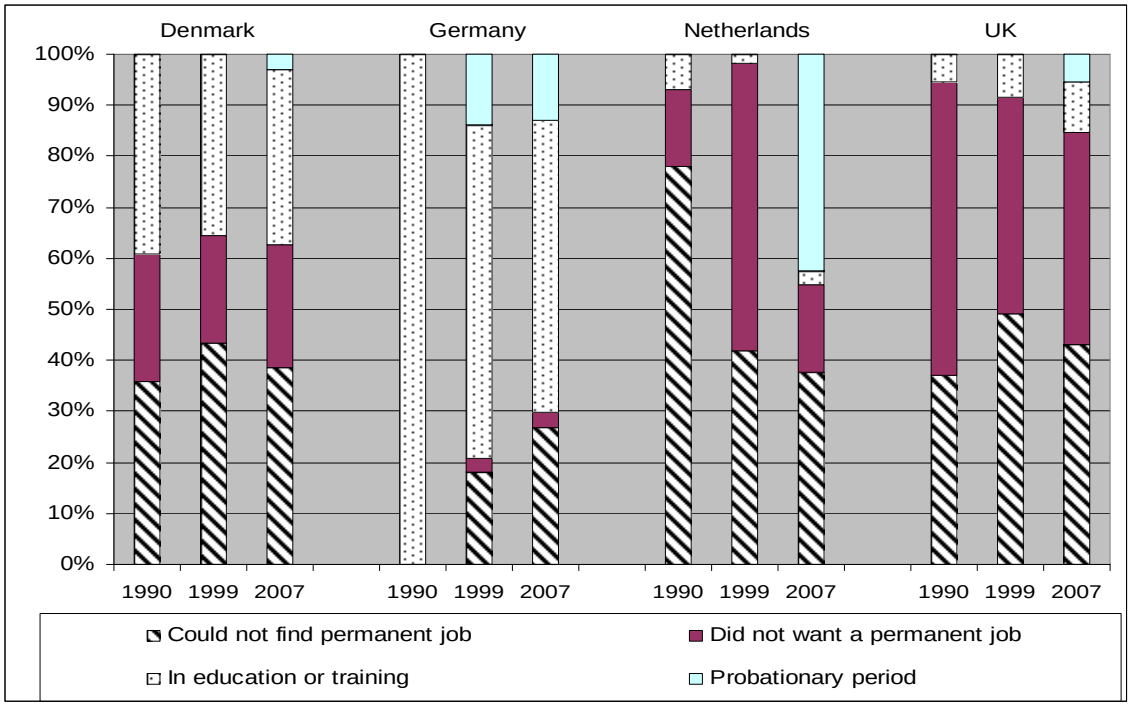
functional flexibility into the firm when for example external specialists are hired on an FT- or agency work basis. Although TAW and FT-contracts are intrinsically numerical flexible, flexibility for TAW businesses or firms making use of TAW or FT-workers can be more or less curbed. Restrictions can for example entail the permitted length and type of assignments for agency workers, restrictions on the use of TAW in certain sectors, or the number of times FT-contracts can be offered consecutively. I argue that when restrictions are few, external flexibility for employers is higher than when there are stringent or many restrictions.

Another type of external numerical flexibility that can function as a functional equivalent to temporary work is protection against dismissal or 'Employment Protection Legislation' (OECD 2004). The extent to which the discussion on lowering dismissal protection for permanent employees is linked to the normalisation and institutionalisation of temporary work in the Netherlands has already been touched upon in the first chapter and will be discussed elaborately in chapter five. OECD data shows that the level of protection against dismissal for permanent workers against individual dismissal is highest in the Netherlands, followed closely by Germany. In the UK and Denmark dismissal protection is less than half of the extent in the Netherlands (for details see OECD 2004, p. 72). Note that these figures are only based on the regulations at national level into account and not what is negotiated in CLAs. The link between dismissal protection for permanent workers and the extent and nature of temporary employment will feature throughout this chapter.

Within both TAW and FT-employment, external numerical flexibility for employers can be combined with various types of security for employees, although both TAW and FT-contracts can in general be considered more insecure than open-ended employment contracts (Pacelli, Devicienti et al. 2008). Insecure, or 'precarious' work is made up of many dimensions (Kalleberg 2009), many of which are (potentially) relevant for FT-contracts and TAW. These dimensions are: fear of losing a job; diminished opportunities to obtain or maintain skills; lower income; less access to benefits, and the unavailability of collective voice (representation precarity) (ibid. p. 2). Despite this precariousness, some people prefer temporary work over more permanent employment. The preferences of people to take up temporary employment are depicted in the figure below. Temporary employment here includes FT-employment and TAW, but also seasonal work and training contracts. The data is available over time and for the four

countries analysed in this chapter[10]. The figure below shows the division of the population of temporary workers according to the reason why they are working on a temporary basis. I present data on three points in time (1990, 1999, and 2007) that correspond with the timeframe I use in this project.

Figure 4.2. Reasons for taking up temporary employment 1990, 1999, and 2007



Source: Eurostat LFS

Figure 4.2 shows that in all four countries, being in temporary employment because of a probationary period is a practice that came up in the late 1990s or later. Apparently, the use of FT-contracts as an extended probationary period is a practice that hardly existed during the 1990s; it is difficult to say why this is the case. In the Netherlands this share is the largest of all four countries and has increased rapidly after 1999; this group now consists of more than 40% of temporary workers. In the Dutch case, it has become increasingly common after deregulations of the rules on FT-contracts to initially hire new employees on an FT-contract, and giving them the prospect of an open-ended contract after one or two FT-contracts of one year. Despite this prospect, reality might however be different: there is no legal obligation for the employer to indeed offer an open-ended contract and under adverse conditions the employer can decide otherwise.

10 Eurostat reports that many of these figures are unreliable, because member states do not adhere to the strict rules that apply to the reporting of these figures.

The reasons for temporary work have in general shifted substantially in the Netherlands and in Germany while they have remained quite stable in Denmark and the UK: in 1990 almost 80% of Dutch temporary workers stated that they could not find a permanent job while this share almost halved during the 1990s. Another major shift in the Netherlands was the temporary surge in the share of people indicating they did not want a permanent job in 1999. This could very well have been caused by the economic boom in that period.

In Germany the composition of temporary workers has also changed quite significantly: whereas all temporary workers were in education/ training in 1990, this share has decreased to little under 60% in 2007, with only a very small group (3%) of people indicating that they did not want a permanent job. This share might in reality be higher; Fuchs (2007a) has argued that temporary apprenticeships can be largely regarded as voluntary FT-work. In Denmark and the UK the figures are much more stable over time; the only noteworthy development occurred in the UK and entailed a decrease in the share of people that did not want a permanent job from almost 60% in 1990 to little over 40% in 2007. This group of voluntary temporary workers is currently the largest in the UK and stands in very sharp contrast to the 3% in Germany. In Denmark and the Netherlands the 2007 figures lie closer together, i.e. 24 and 17% respectively. The shares of involuntary temporary workers (i.e. because they can not find a permanent job) are in each country larger than the people with voluntary temporary employment. A clear difference between Denmark and the Netherlands is the share of temporary workers in education or training. The share of involuntary temporary workers differs the least across all four countries, ranging from 27% in Germany, 38% in Denmark and the Netherlands, to 43% in the UK.

The Dutch figures show that when unemployment figures are low and people are confident that they can find a new job quickly when they become unemployed, they often do not want an open-ended contract. In general however, TAW and FT-employment for less than one year can (still) be considered a precarious type of employment (Nienhüser and Matiaske 2006). This precariousness is mostly based on the fact that assignments are generally short, there is less equality in pay, limited access to training, and agency workers specifically have reduced access to ‘regular’, i.e. permanent and full-time, employment. The precarious nature of TAW and FT-employment makes it relatively unattractive for job-seekers that prefer flexibility; they generally prefer part-time work, flexible working hours, or leave schemes (Chung, Kerkhofs et al. 2007). In these

types of contracts, flexibility in working time is combined with security in the employment relationship; in the case of temporary employment there is flexibility in both respects. Looking again at figure 4.2 above, the share of people that are in temporary employment voluntarily differs substantially across countries. These variations are shaped by different regulations surrounding temporary work influencing the degree of security for temporary workers.

On the basis of the 'flexicurity-table' developed by Wilthagen, Tros and Van Lieshout (2004) (see chapter 1), I discern three types of security that (can) relate to TAW and FT-employment: job, employment and income security. Job security is the security to remain in a specific job with a specific employer. This is the likelihood of moving from an FT-contract into an open-ended contract with the current employer. For agency workers this is the employment status with the agency: the contract between the agency worker and the agency can be an FT or open-ended contract, or an 'agency work contract' based on 'no work no pay'. The second type, employment security, is related to the ease with which an agency or FT- worker finds another job than the current one. This translates on the one hand in access to training, and on the other in the extent to which temporary employment functions as a 'stepping stone' into more permanent forms of employment. The literature states that flexible employment is more 'fluid' than other employment in many respects; temporary workers go through many transitions due to the nature of the work and this also entails regular transitions into other types of flexible work as well as unemployment (Schulze Buschoff and Protsch 2008).

The third type of security, i.e. income security, relates not only to equality in wages compared to workers with open-ended contracts, but also to pensions and access to social security. I analyse what is laid down in formal institutions and where possible give information on practice, although as this is not the focus of the study this can at best be anecdotal. To this I add a fourth type of security: representation security. This is the extent to which temporary workers are represented in trade unions, covered by CLAs, and have representation rights via works councils. Because of the temporary nature of the employment relationship, temporary workers rarely join a union (Arrowsmith 2008, p. 2). As a result they are only to a minor extent represented by trade unions. Representation rights are furthermore the right to vote for employees' representative bodies and to stand for election in these bodies.

In the development of a regulatory regime on TAW, employers' associations and trade unions make certain trade-offs between different provisions increasing flexibility or

security. It has been noted that the very concept of flexicurity can be seen as consisting of a "structural tension of different interests" (Leschke, Schmid et al. 2006 p. 18). I accept this point of view but contend that it varies according to the level of analysis; regulations dealing with only one aspect, for example a restriction to lend out agency workers in the construction sector, either increase flexibility and *therefore* decrease security, or vice versa. When taking into account a set of regulations within a CLA, or even an entire *regulatory framework* on temporary employment, containing of various provisions, the outcome can very well be a balance between flexibility and security.

TAW and FT-work are always embedded within a national labour market as a whole, and should be understood within the general framework on flexible labour at large as well as the informal institutions, i.e. norms and values surrounding flexibility. In the highly flexible labour market of the UK due to low dismissal protection, the use of FT-contracts is for example quite low (see figure one). Other research shows that the use of agency work goes up as regulations on other types of flexible labour (e.g. employment protection legislation, laws on FT-contracts) become stricter (Mitlacher 2007). While in many European countries the incidence of TAW and FT-contracts has increased over the last 10-15 years, the institutional framework has evolved along different lines in different countries. Regarding agency work it has been said that "The size of agency work differs between countries because legislation also differs between countries. (…) Recently, the use of temporary agency work has been deregulated in many countries, leading to an increase in the use of this type of employment." (Berkhout, Dustmann et al. 2007, p.41). I argue that this statement should be treated with caution. It might also be the case that deregulation occurs in response to growing use of TAW, as was the case in the Netherlands in the late 1990s. As the sector was growing rapidly during the second half of the 1990s, the product market regulations for the sector were brought down: the requirement for a license to operate an agency was done away with, as well as the maximum number of agency hours and restrictions for the construction sector. On the other hand however, there was a clarification of the position of agency workers, which could be interpreted as increased (re-)regulation. In any case, the statement by Berkhout et al. might be too simplistic and the relationship between regulation of temporary work and the extent of its usage might be more complex. This issue relates to the theoretical discussion on the link between normalisation and institutionalisation outlined in chapter two. In the conclusion I will come back to an assessment of the interaction between regulation and use in all four countries.

In this chapter I discuss four countries that approximate ideal types taken from the only available typology of regulation on TAW (Storrie 2002)[11]. These countries are Germany, Denmark, the UK, and the Netherlands. The first type in Storrie's typology is based on most continental countries (Germany, France, Belgium, Italy, Spain)[12]. Within this type, there is detailed regulation of agencies and agency work, combined with strict conditions on the use of agency work in certain sectors (e.g. construction) and maximised lending out duration. A second regime type is found mostly in Scandinavian countries, where there is no special regulation of either agencies or temporary work assignments, and temporary work is considered employment that must conform to mainstream labour law. A third regulatory regime is the British-Irish model, which has neither special regulation concerning agencies or agency work, nor much protection through common law regulation of standard employment contracts. As mentioned above, Storrie considers the Dutch regime as quite different from these types, because of its unique combination of flexibility and security.

In addition to Storrie's typology, the choice of the four countries corresponds with other typologies of employment regimes and industrial relations regimes, elaborated in chapter three. The division in employment regimes distinguishes between inclusive, dualistic, and market employment regimes, and the industrial relations typology is split up in Nordic corporatism, social partnership, state-centred, and pluralist. These last two typologies group the Netherlands and Germany together as instances of dualistic employment regimes based on social partnership in industrial relations. However, I argue that with the implementation of the F&S law, or 'flexicurity framework', in 1999 the Netherlands are shifting more towards the Nordic model. This is in line with the view taken in recent reports on employment regimes in Europe, where the Netherlands was grouped together with Nordic countries because of its increasing flexibility in employment relations, normalisation of flexible work, and decentralised industrial relations (OECD 2006; EIRO 2007b; European Commission 2007a; European Commission 2008b).

11 In a 2006 update of the 2002 study, Arrowsmith included the new member states. However, Arrowsmith did not use a new typology but rather created a dichotomy between the 15 old EU member states and the new members.
12 Storrie includes Southern European countries in his continental type, which is contradictory to most labour market or welfare state typologies, which usually include an extra 'Southern type'.

4.3. EU-wide regulation of TAW and FT-contracts

The regulation of TAW, FT-work and also part-time work has been a contentious issue at European level for nearly a quarter of a century, since the Commission first proposed a directive on the issue of temporary work in 1982. Directives on part-time work and FT-work were implemented in 1997 and 1999 respectively. The European Council Directive 1999/ 70/ EC states that workers on FT-contracts are entitled to equal treatment as workers on open-ended contracts. The Directive furthermore requires that in national law a maximum to the number of FT-contracts that can be offered, a maximum duration of FT-contracts, and justifications for use should be taken up. The Directive relates to the employment conditions of FT-workers and therefore excludes statutory social security; this is left to the individual member states. A key element of the Directive 1999/70/EC is that it does not apply to TAW.

Talks on a directive on TAW were launched in 2000 by European trade unions' and employers' associations. Negotiations went on for a year but social partners could not agree on equal treatment between agency workers and comparable workers at the user firm regarding basic working and employment conditions, particularly pay. Then, referring to the 2000 Lisbon commitment to 'more and better jobs', the European Commission launched its own Draft Directive on TAW in March 2002. Again the key issue of this Draft Directive was the equal treatment between agency workers and people directly hired by the user firm. Again, little progress was made due to the objections of some member states, in part the UK and Germany. The primary point of discussion was the issue of comparability and equality of terms and conditions of employment, and the qualification period required for agency workers to benefit from such equal treatment.

In recent years, the European Commission gave new input in the discussion on a directive for TAW, directly fostered by the growing incidence of TAW across Europe (European Commission 2006). In its 2006 Green Paper, the EC asks how labour law across Europe can be "modernised" to increase labour market flexibility while securing rights for atypical workers. The Commission explicitly states that the triangular nature of the agency work relationship can lead to complex situations where the responsibility for compliance with employment rights can be unclear. This situation can lead to a vulnerable position for agency workers, and the employment status of agency workers should therefore be clarified (ibid., p. 12/ 13). An EU-wide social dialogue committee for the TAW sector published a Joint Declaration on TAW in light of the flexicurity debate in 2007, stressing the following issues: Agency work can facilitate transitions from

education and unemployment into work and it can improve a 'work-life balance' for employees. Also, restrictions and prohibitions on the use of TAW should be regularly reviewed and when unjustified or disproportional, they should be removed. Other issues taken up in the Joint Declaration are the fight against unfair competition from fraudulent agencies, a ban on using agency workers to replace workers on strike, the principle of equal treatment, the need for sector-wide dialogue at national level, the right to freedom of association, access to vocational training, and continuity of rights between assignments to improve employment and social protection of agency workers (Arrowsmith 2008, p. 1).

The Joint Declaration was an important basis for agreement on the Agency Work Directive, which was reached in the European Council in June 2008. The most important element of the Directive is the principle of equal treatment from the first day of an assignment. However, social partners can deviate from this principle within agreements reached between social partners (e.g. a CLA). To (further) improve security of agency workers, the Directive incorporates other provisions, such as information on permanent employment opportunities in the user enterprise, access to childcare facilities, and access to training (European Commission 2008c). Regarding representation issues, the Directive states that agency workers should be counted for the threshold to establish an employees' representative body at the agency as well as at the user firm. It however does not contain anything about the extent to which agency workers can elect workers' representatives or can stand for election themselves (Hakansson, Isidorsson et al. 2009). Regarding the market for TAW, restrictions on the TAW sector should be reviewed and justified. The text of the Directive was approved by the European Parliament without amendment in its second reading in October 2008. Member states are now required to implement the provisions of the Directive into their national law over the next three years (Arrowsmith 2008, p. 2).

The Agency Work Directive combines the flexibility of TAW with security in terms of equal pay and access to secondary employment conditions. To what extent this can be understood as a balance between flexibility and security, one should include an assessment of the amount of derogation that social partners in different member states agree upon. The issues of equal pay, equal access to training, and the provisions in sector or company-level CLAs are included in the analysis of the four countries in the next sections. Although the member states have three years to incorporate the Agency Work Directive in their national law, countries such as the Netherlands and Germany have already laid down the principle of equal treatment. Regarding FT-work, all countries

should have already implemented laws on equal treatment. I will show to what extent each national framework entails a balance between flexibility and security in TAW and FT-work, not only in the national law, but also in the CLAs, and to some extent in practice[13].

4.4. Denmark

4.4.1 Fixed-term work

The share of FT-employment in Denmark was 8,7% in 2007, and has decreased from almost 12% in 1995 (European Commission 2007a; European Commission 2008a). Prior to the implementation of Directive 1999/ 70/ EC, FT-work was relatively unregulated in the Danish labour market. However, a few exceptions regarding FT-work were contained in the Act on the legal relationship between employers and salaried employees (Larsen 2008). The Directive was implemented via CLAs, corresponding to the basic structure of Danish labour market regulation. The limits that CLAs, but also employment law, in Denmark now set for successive FT-contracts are "particularly tough" (Schulze Buschoff and Protsch 2008, p. 59). This is in line with OECD data on the regulation of FT-contracts in comparative perspective; Denmark is relatively strict regarding reasons to use and the maximum number of FT-contracts (OECD 2004). The main issues in the CLAs as well as some supplementary legislation are the principle of non-discrimination and a limitation on the use of successive FT-contracts. The new rules on FT-work are somewhat stricter than before in some CLAs, although in other cases the new rules created more transparency (Larsen 2008).

Three-quarters of Danish employers did not change their hiring policies as a result of the new rules, although when employers used less FT-workers this mostly applied to unskilled FT-workers. It has been found that Danish employers recruit FT-workers for open-ended positions more often than before. It has also been found that many employers do not fully comply with the elements of the Directive: FT-workers are often not informed about vacancies, and about half of Danish employers offer no training. A significant proportion of FT-workers have no rights to pension schemes, paid maternity leave, and other work-related benefits. In fact, FT-workers often receive minimum wage, even if they have considerable experience in their field. This suggests that the principle of non-discrimination has been transposed into practice only to a

13 For a complete picture one should take three levels into account: national law, translation of the law in CLAs, and what happens in practice. In this project I focus on national law and what is laid down in the CLA. I only briefly touch upon actual practice to create a more comprehensive picture, but this element is incomplete as it is not the main focus of the study.

limited extent, thus not having full impact on the working conditions of FT- workers (Larsen 2008).

Job and employment security, i.e. the transition rate of FT-contracts to open-ended contracts, was 41% in 2007 (EC 2007). Another element of security is the security of an income when an FT-employee falls sick or becomes unemployed. In Denmark all employees are entitled to basic medical care regardless of their employment status, and unemployment benefits are quite generous, i.e. 70% of previous earnings for a maximum of four years, although maximised to DKK 3,515 (472 Euros) per week. All flexible workers are entitled to a basic pension system, and there is a system of supplementary pensions. This supplementary scheme is, however, not accessible for people in very small jobs (i.e. less than 9 hours per week) and is less advantageous for people with gaps in their employment history (Schulze Buschoff and Protsch 2008, p. 61-63).

4.4.2 Temporary agency work

Throughout the 1980's the TAW sector in Denmark started to rise steadily, and it has been increasing rapidly since deregulation of the sector coupled with clarification of the position of agency workers in 1990 (Mailand 1998). Jørgensen (2004) reports that the number of agency workers in Denmark has risen from 3,000 in 1992 to 21,000 in 1999, with a corresponding increase in the number of agencies from 73 to 396 in the same decade. The number of registered agencies tripled over the last decade to 1,036 in 2007, demonstrating the low degree of industry concentration (Arrowsmith 2008, p. 6). Storrie estimates that the number of agency workers has further risen to roughly 35,000 in 2002 (Storrie 2002), which amounts to an approximate ten-fold increase between 1992 and 2002. More recent figures show that the number of agency workers had further risen to 48.000 in December 2007 (HK-Danmark and AE-rådet 2007). About 50% of this increase can be explained by the favourable business cycle at the time, whereas the other 50% is caused by a structural tendency to employ more temporary workers. The percentage of TAW in total employment is currently estimated at 0.8 percent (CIETT 2009). Danish agency workers are mostly employed in healthcare, production/storage/chauffeurs and administration (Chaidron 2003, p. 67).

The TAW sector in Denmark is still one of the smallest in Europe (see figure 1). This can be explained firstly by the fact that the market for TAW was strictly regulated up to 1990 (Mailand, 1998). A second, maybe more important, explanation is found in the characteristics of the Danish labour market: the so-called 'golden triangle' of Danish flexicurity, i.e. low job security, high income security and high worker mobility, enables

companies to make quick adjustments in their staff (Madsen 2007). Because the Danish system of flexicurity fosters a relatively high degree of flexibility, there is no need for a highly developed TAW sector (Chaidron 2003). TAW is mostly used to facilitate temporary leaves, such as parental leave, sick leave, or a sabbatical. The use of agency workers has become a more attractive option for employers from 1990 with the abolishment of regulations concerning agencies, and the fact that the sector is not yet extensively regulated through collective agreements (Hoffmann and Walwei 2000, p. 15).

Denmark is an example of the Scandinavian way of dealing with TAW, although it differs somewhat as there is relatively less employment protection than in other Scandinavian countries (Storrie 2002). Labour market issues are primarily dealt with in collective labour agreements, in line with the country's focus on decentralised, consensus-based, decision-making (Wilthagen, Tros et al. 2004). The first law addressing TAW in Denmark dates from 1968. Up to 1990, temporary agency workers were not regarded as salaried staff and they were therefore not covered by regulation on pay and employment conditions. From 1990, the agency worker is regarded as an employee of the agency within the triangular relationship of the agency worker, the user company and the agency. In practice the agency worker has one, or in most cases two, contracts with the agency: one general contract for the relationship with the agency, which is mostly FT, and one contract for each assignment (Arrowsmith 2006). In addition, the agency worker can be associated with the agency as self-employed (Jørgensen and Minke 2004, p. 2). The right to refuse work is characteristic of the employment relationship between the agency worker and the agency (EIRO 2002b; Jørgensen and Minke 2004). An agency worker does not build up seniority with the organisation that he or she works at, but with the agency. Regarding the division of responsibilities between the agency and the user firm, the agency is considered to be the employer with regard to issues such as wage and terms of employment; the user firm gives instructions to the agency worker and has obligations relating to working environment and insurance (Jørgensen and Minke 2004, p.5).

Agency workers are from 1990 covered by general legislation on labour market issues that, as mentioned above, is limited. In addition, this legislative change removed all regulations on the establishment and operation of agencies (Michon 1999; Arrowsmith 2006). This shift has been characterised as a shift from restrictive to liberal regulation of TAW (Berkhout and Van Leeuwen 2004, p. 51). Up to 1990, the TAW sector was very small and agencies needed a license. Also, permission to lend out temporary workers was

confined to a limited number of sectors, and agencies had to report on their activities while the authorities monitored the agencies (EIRO 2002, p. 19). In 1990, temporary work placements were permitted in all economic sectors (Storrie 2002), except for the transport sector that still has the requirement of a license to operate. The most recent deregulation in the TAW sector is the removal of a license requirement for temporary work agencies in the nursing sector (Arrowsmith 2008, p. 29). In Denmark there are now no restrictions on the reasons for or circumstances under which agency workers are hired, on the amount of agency workers that can be hired or the duration of hiring, or on the sectors in which agency workers can be deployed. This is similar in the Netherlands and the UK (Arrowsmith 2008, p. 25).

4.4.3 Strategies of Danish social partners

The Danish system of industrial relations is one of the earliest institutionalised bargaining systems in any industrialised, capitalist society. The so-called September Compromise of 1899 set forth the major components of the system. The Danish system of IR is now characterised by a well-established pattern of cooperation between employer organisations and employee unions, both of which have high membership rates: around 60 and 80 percent respectively (EIRO 2007a). An important reason why union membership is high is because trade unions administer the local unemployment benefit funds. The Danish social partners are to a large extent involved in policymaking and social dialogue is well developed. The main source of labour market regulation is the system of collective bargaining (Eurofound 2008), which mainly takes place at sector, and secondly at company-level (Van Klaveren and K. Tijdens (eds.) 2008).

While the trade unions regard the open-ended employment contract as the norm (EIRO 2002a), they have been paying more and more attention to temporary agency workers since the mid 1990's, and have pursued a strategy of bringing them under the wing of (national or local) collective agreements (Kudsk-Iversen and Andersen 2006). Danish employers have a similar stance as they "see non-permanent work as a supplement to a permanent workforce and not as an end in itself (…), while the 'organised' employers believe that there should be a degree of regulation" (ibid. p. 29, quotation marks in original).

The strategies of the social partners regarding TAW are based on regulation of the agency work relationship, while deregulating the agency work market. These two aspects were part of the 1990 regulatory reform; a 'package deal' quite similar to the Dutch case (see below). The policy of the Danish trade unions with regard to agency

work especially focuses on when an agency worker should have the same rights as a user company employee to an open-ended contract (Jørgensen 2004). The issues at stake in collective agreements covering agency workers in Denmark correspond with more general issues in collective agreements relating to employee seniority (e.g. pension schemes, paid leave in case of illness, paid vocational training). Differences between agency workers are not uncommon; this is the result of the fact that they can be covered by different CLAs.

Agency workers' participation in the democratic system of user firms is limited; agency workers are not calculated as part of the threshold for the instalment of participation committees or shop stewards, and they cannot be elected as a representative on these bodies. When agency workers are member of a trade union, and many are, they enjoy equal rights to information, consultation and representation. In Denmark, 80% of the TAW sector is covered by a CLA (Arrowsmith 2008, p. 22), and agency workers are organised in unions following occupational lines (Jørgensen and Minke 2004, p.5). Union density figures for agency workers are estimated at 50% (Arrowsmith 2008, p. 15). Agreements are generally made at sectoral level between unions and employers associations, and at company level between unions and individual firms. There are also provisions on TAW in the CLAs in other sectors (Arrowsmith 2008). In sectors where there is no specific agreement on agency workers, a protocol is added to the general collective agreement. Collective agreements emphasize that wages and working conditions for agency workers should be in line with those applied as a minimum by the user company, whereas social issues (e.g. pensions) are covered by the temporary work agency, which is the legal employer. The main issue in CLAs for TAW is the requirement for equal pay (ibid. p. 34).

ACLA between the Danish Commerce and Services (DHS) and the General Workers' Union of Denmark (SiD) covering employees in temporary work agencies focuses particularly on some of the issues mentioned above including pay, working hours, pension contributions, extra holidays, the term of notice, and paid leave on a child's first day of sickness. In this collective agreement, seniority is measured in hours, and this helps to improve workers' chances of obtaining the necessary seniority. In some sectors where many agency workers are employed, a protocol on TAW is added to the general CLA. This is for example the case in the industry sector; in a CLA between the Confederation of Danish Industries (*Dansk Industri*, DI) and the Central Organisation of Industrial Employees in Denmark (*CO-industri*), the status of employment of an agency

worker is equivalent to that in an ordinary company. This approach is also used by the other large employers' organization HTS (Danish Chamber of Commerce) and the Danish Construction Association (*Dansk Byggeri*), which have added a protocol on TAW to the general collective agreement between themselves and the SiD (Chaidron 2003). In 2007, HTS and DHS merged and formed Danish Business (*Dansk Erhverv*, DE). DE now has 200 agencies as their members and three TAW federations. One of these is the Association of Nurse Temp Agencies (acronym FASID), which negotiates its own CLAs (Arrowsmith 2008, p. 13). The most recent CLA between DE and the United Federation of Danish Workers (abbreviation 3F), includes provisions for a collective fund to finance the education and training of agency workers (ibid. p. 35).

Although equal treatment for FT-workers is taken up in CLAs, FT-workers do not always receive similar wages, secondary employment conditions, and benefits as regular workers. Agency workers too might in practice not always receive equal treatment. This is for example the case for white-collar agency workers, who are not covered by the Act on the legal relationship between employer and employee. This act provides for sickness pay, pension, holiday payment, maternity benefits, and the right to at least one month's notice of termination. These rights could be taken up in a CLA covering the agency worker, but many CLAs have qualifying periods before agency workers receive equal rights. When the agency work is short-term, this means that they are in a disadvantageous position (Arrowsmith 2008, p. 39).

Both employers and trade unions recognise the positive contribution that flexicurity can bring to the labour market (Eurofound 2008, p. 15). However, employers see flexicurity as more activation of job seekers by reducing the amount and duration of unemployment benefits, while the unions on the other hand demand higher unemployment benefits for the uninsured (ibid. p. 15/ 16). Assessing flexibility and security in TAW and FT-employment in Denmark, the above shows that flexibility in the agency work sector was increased with the deregulations in 1990. On the security side, the regulatory reforms of 1990 improved the legal position of the agency worker and brought them under the wing of labour law. In terms of job security, agency workers mostly have a fixed-term contract with the agency. Most issues related to employment and income security are regulated in collective labour agreements, which generally aim for equal treatment between temporary and regular workers. Regarding the stepping-stone function of temporary employment: the transition rate into permanent employment is almost 40% annually (Leschke 2007a).

4.5. Germany

4.5.1 Fixed-term work

The share of FT-employment in Germany has increased during the last decade from 10,5% in 1995 to 14.6% in 2007 (European Commission 2007a; European Commission 2008a). The share of men and women in FT-employment is roughly equal, and the sectors in which it is most found are agriculture and public and private services (Fuchs 2007a, p. 28/ 29). Directive 1999/ 70/ EC has been translated into the German legal framework with the Law on Part-Time Work and Fixed-Term Employment (*Gesetz über Teilzeitarbeit und Befristete arbeitsverträge*, abbreviation TzBfG), implemented in January 2001. The law aimed at full conformity with the Directive but also codified existing practice to a large extent (Fuchs 2007a, p. 30). The TzBfG contains the following elements: A) the principle of equal treatment; B) the duration of the contract should be related to objective conditions such as the completion of a project; C) within a two year period, no justification is required; D) There are no restrictions for workers aged 58 or up, and; E) employers should inform FT-workers about vacancies for open-ended jobs, allow participation in training, and inform employee' representatives about the share of FT-employment in the company (Scheele 2000). The OECD reports that the maximum number of successive contracts in Germany is now four, and the maximum duration is 24 months. These new rules entailed a liberalisation; before, only one FT-contract was permitted, and the maximum duration was 18 months (OECD 2004).

With the introduction of the TzBfG, the legislator explicitly formulated the 'stepping-stone potential' of FT-employment into open-ended employment, mostly regarding young people just finishing their apprenticeship (Fuchs 2007a, p. 30/ 31). The share of FT-workers that make the transition into open-ended employment is 30% per year (EC 2007). In Eastern Germany the transition figures are lower (Fuchs 2007a, p. 29), while a larger share of the workforce is employed on an FT-contract (Scheele 2000). Fuchs argues that long-term prospects for FT-workers are positive, and much FT-employment is voluntary due to apprenticeships (2007a, p. 28/ 29). A 2008 study shows a somewhat different picture of FT-employment, focussing on its fluid nature with many transitions into unemployment (Schulze Buschoff and Protsch 2008). The authors argue that FT-employment "is (…) often part of a very precarious career and earnings pattern." FT-workers have a higher probability of remaining in FT-employment and of becoming unemployed than workers with open-ended contracts (ibid., p. 57). Bringing the data together, it can said that for a group of people FT-employment functions as a stepping

stone, while it is relatively precarious as for the majority of FT-workers transitions to unemployment are more frequent than for workers with open-ended contracts.

The TzBfG as yet does not contain a right to preferential treatment of FT-workers when hiring new staff on open-ended contracts; the unions have made a proposal in this respect (Fuchs 2007a, p. 34). The law also states that FT-workers receive equal treatment regarding provisions on training, in line with the EC Directive. The employer should offer vocational training, although this is not a right but is contingent on the training need of the employee and should be seen mainly in light of the principle of equal treatment (Fuchs 2007a, p. 34). The German state system of health insurance excludes people with an income of less than 400 Euros a month, although the health insurance should cover everyone from January 2009. The minimum earnings of 400 Euros also plays a role in eligibility for unemployment and retirement benefits (Schulze Buschoff and Protsch 2008). As a result of a scheme introduced in 2003 by Hartz II, employers are exempted from payment to social security for 'mini-jobs' paying up to 400 Euros a month, while social security coverage has been extended to these 'mini jobs' (Eurofound 2008). Regarding unemployment benefits, FT-workers might be disadvantaged because the length of time for which benefits are paid ranges from 6-18 months and depends very much on the length of time previously worked. Germany does not have a system of basic old-age pension, but a system of means-tested retirement provision. The retirement provision is also closely tied to a person's employment history and therefore might adversely affect people with small jobs and a fragmented employment history (Schulze Buschoff and Protsch 2008).

4.5.2 Temporary agency work

The share of TAW in the German workforce tripled between the mid nineties till 2005/2006 (Fuchs 2007; Mitlacher and Burgess 2007) and is currently estimated at 1.3 percent (source: www.ciett.org). In the same period, the number of agencies more than doubled. There are many small agencies in Germany, while there is some trend towards centralisation: in 2004, almost 60% of agencies employed less than ten people and only 5% employed 100 or more; in 2007 the figures were 30% and 13% respectively (Arrowsmith 2008, p. 6). German agency workers are mostly male, working full-time and performing lower skilled jobs in industrial sectors (Mitlacher and Burgess 2007; Arrowsmith 2008). The duration of agency work assignments is shorter than three months in 55% of the cases (Arrowsmith 2008, p. 8/ 9). TAW is a means for German employers to incorporate a flexible element in their workforce, within a labour market

that is often characterised as 'rigid' due to high dismissal protection and national wage-setting (EIRO 2007b). Laws standardize the contractual responsibilities between the agency, the worker and the user company, and the contents of the contract between the agency and the agency worker (EIRO 2002c). Nevertheless, the sector has been deregulated in the early 2000s.

Until 1972, agency work in Germany was regarded as a form of employment provision, which was the exclusive prerogative of the Federal Employment Agency. In 1972, the Personnel Leasing Act (Arbeitnehmerüberlassungsgesetz, AÜG) separated the public employment services from private agencies. The AÜG has been amended many times, but still contains the legal basis for TAW in Germany (Vitols 2006). The agency concludes an FT or open-ended employment contract with the agency worker and assumes any of the usual employer's duties such as wage payment, payment of wage taxes and social security contributions (BZA website). The formal employer of the agency worker is the agency, but for the time of the hiring out, the employee is submitted to the supervision and the instructions of the user firm (BA 2004). Between the agency worker and the user firm there is no contractual relationship, although the user firm does have certain rights (e.g. managerial command) and duties, such as supplying information on workplace safety procedures (Mitlacher and Burgess 2007). Before liberalisation in 2002, the AÜG also included guaranteed payment to agency workers between assignments, limits on the lending out period, and a ban on synchronisation between the duration of the assignment and the duration of the contract between the agency worker and the agency.

The principle of equal treatment is a central part of German legislation on TAW; The AÜG stipulates that agency workers are entitled to equal pay, employment conditions, and social security benefits as regular workers (BZA website; Arrowsmith 2008: p. 34/ 35). As a result of a revision of the AÜG in 2002, the agency is obliged to apply similar employment conditions and remuneration as a comparable worker of the user enterprise, unless a CLA applies or during the first six weeks for formerly unemployed workers (BA 2004). As a result of these possibilities to deviate from the AÜG within a CLA, in practice, agency workers generally earn about 40% less than comparable workers at their workplace, although this drops to 18% when taking workers' characteristics and employment history into account (Jahn 2008). There are no provisions on training for agency workers in German law or CLAs (Arrowsmith 2008, p. 35). Transition rates of agency workers into open-ended employment range from ten to 30%

per year (Vitols 2006; Mitlacher and Burgess 2007). In terms of regulation of TAW businesses, a license from the German Federal Employment Agency is required (Mitlacher 2006).

In the early 1970s until the 1990s, depending on the state, many restrictions on the use of agency work were revoked or liberalised via amendments to legislation. In 1994, private agencies were allowed to offer intermediary services, that before was a monopoly of public employment agencies (Wilthagen, Tros and Van Lieshout 2004, p. 13). Large liberalisations further resulted from amendments to the Work Promotion Act of 1997: the duration during which workers can be posted was extended form six to twelve months and a prohibition in the construction industry was relaxed for firms covered by collective agreements and social fund agreements (Barnard and Deakin 2007). For other firms, there is still a ban on using agency workers in blue-collar work in construction. The AÜG further specifies rights for works councils to be informed about the use of TAW in their firm and some possibilities to object.

The 2002 Hartz-reforms entailed further measures affecting the TAW sector, as the Public Employment Services were changed into temporary employment agencies, referred to as Personnel Service Agencies. Any person that is unemployed for longer than six months is assigned to one of these agencies by the labour office, and hired out on a short-term basis (Wilthagen, Tros et al. 2004; Leschke, Schmid et al. 2006). In the light of this new function, the TAW market was deregulated (Leschke, Schmid et al. 2006, p. 10). Mitlacher has noted that these deregulations were aimed at lifting "burdensome restrictions" on agency work (Mitlacher 2006, p. 69) and "increase the low rate of temporary agency work in Germany" (Mitlacher and Burgess 2007, p.415). The deregulations were threefold: firstly, the stipulation on the maximum length of a TAW contract was abolished (Fuchs 2007b, p. 8). Secondly, the synchronisation-ban imposed by the AÜG (Storrie 2002) was abandoned. Thirdly, the prohibition to terminate the employment relationship with an agency worker and re-employ him or her within three months was lifted (Mitlacher 2006; Mitlacher and Burgess 2007). The Hartz reforms of 2002 increased flexibility in the TAW sector, mainly by abolishing the requirement to hire an agency worker on a permanent basis, now linking the duration of assignment to the duration of the employment contract. On the security side, Leschke, Schmid and Griga (2006, p. 10/ 11) note that collective agreements were introduced, which entitled agency workers to social security benefits.

4.5.3 Strategies of German social partners

A central feature of the German system of industrial relations is the basic right, enshrined in the German constitution, of freedom of coalition. Regarding industrial relations, this means that social partners can freely engage in collective bargaining on behalf of their members without state intervention. The statutes governing collective bargaining are deliberately few; their main objective is to strengthen the negotiating privileges of trade unions and employer associations and to establish collective agreements as binding. The dominant level of collective bargaining is the sector-level. However, since the 1990s, there has been a move towards more company-level bargaining. A route through which this happened was by introducing 'opening clauses' for the company level in the CLA. In these opening clauses, deviations from the CLA are possible when negotiated between social partners within a firm (Behrens and Jacoby 2004). In line with corporatist ideals, social partners were given a strong role in the regulation of TAW to reduce political conflicts (Vitols 2006, p. 25).

German unions are very much concerned about the problems involved in organising agency workers. Trade union membership among agency workers is less than five percent (Vitols 2006), compared to 20% in Germany as a whole (Visser 2006). Other representation rights are quite extensive in Germany: Agency workers have the right to vote and to be elected in the works council of the agency. Within the user firm they have the right to vote after three months of working in the establishment though they cannot stand for election (Arrowsmith 2008, p. 37)

Up to the mid-1990s, the unions opposed the use of TAW and refused to negotiate collective agreements in that sector (Storrie 2002). The strategies of the social partners can currently be best characterised as retaining the security of agency workers in terms of contract type, while deregulating the TAW sector to stimulate the use of TAW. Currently, there are three major CLAs in the TAW sector. The Trade Union Congress (DGB) negotiates a CLA with the largest employers' association for temporary work agencies BZA (*Bundesverband Zeitarbeid*), and with the smaller IGZ (*Interessengemeinschaft Deutscher Zeitarbeitsunternehmen*). The third CLA is concluded between the AMP (*Arbeitgeberverband Mittelständischer Personaldienstleister*) that organizes small and medium-sized agencies, and a Christian union CGZP (Arrowsmith 2008, p. 18; Mitlacher and Burgess 2007, p. 416). In addition to these three, there are some company-level agreements on the use of TAW in specific user companies. Examples are an agreement between IG Metall and Adecco, and IG Metall and 16 TAW firms deploying agency

workers at BMW. Finally, about a quarter of other CLAs contain provisions on TAW regarding for example quotas or wage parity (Arrowsmith 2008, p. 22/24).

Equal treatment between workers with open-ended contracts and other types of workers is an important focal point for the German trade unions (Arrowsmith 2008, p. 16). Recently, a new act on equal treatment (*Allgemeines Gleichbehandlungsgesetz*, 2006) regulates that agencies have to make sure that there is equal pay and equal treatment between permanent and temporary workers (Fuchs 2007a, p. 11/12). There are, however, two exceptions to this rule. Firstly, the employer can pay a lower wage during the first six weeks of the employment relationship in the case of an formerly unemployed agency worker. Secondly, the principle of equal pay can be derogated from in a CLA. This possibility is taken up in various CLAs between agencies and trade unions, thereby lowering pay and employment conditions for agency workers relative to directly hired workers (Mitlacher 2006, p. 69). The principle of equality between open-ended contracts and temporary contracts, which is a central element of the regulation of TAW and FT-contracts, therefore not always applies in practice when one takes the possibility to deviate in a CLA into account.

Regarding FT-employment, the German social partners are divided into two camps: the trade union DGB is critical of existing legislation and argues that the new rules on FT-contracts have led to the use of FT-contracts as extended probationary periods and a reduction in the number of open-ended contracts, especially for younger workers. The DGB furthermore aims to legally fix the preferential treatment of FT-workers regarding the filling of vacancies for open-ended positions in an organisation. In contrast, the Confederation of German Employers' Associations, BDA (*Bundesvereinigung der Deutschen Arbeitgeberverbände*) argues that the act on FT-contracts is more restrictive than the EU Directive and does not motivate employers to hire more FT-workers. The employers aim for a situation whereby FT-contracts can be concluded for up to 4 or 5 years without objective justification and all restrictions for workers over 50 are abolished (Scheele, 2000; Fuchs 2007a, p. 30). Parties to a CLA can deviate from what is laid down by law and extend or curtail the maximum number or maximum duration of FT-contracts. There have so far been no studies into the extent of deviations in CLAs, such as are carried out for the Netherlands (see below and chapter five). There is information on the CLAs negotiated by IG Metall, which have an influential position in Germany. In their CLAs, deviations are limited; there have been some reductions in the maximum duration down to 18 months. Because the law was mainly a codification of developments,

the number of deviations form the law in CLAs is believed to be small (Fuchs 2007a, p. 36/37).

Recently, the role of the German social partners has been quite limited in discussions on the design of 'flexicurity policies'. Their role is stronger in the implementation of policies within CLAs. Social partners have been marginally involved and are in many ways not satisfied with the implemented measures. It has been said that due to an increasing focus on flexibility and cost-reduction, trade union influence has been decreasing. Trade unions increasingly focus on providing various services and also training for 'atypical workers'. Employers also focus more on training, and employment of older workers (Eurofound 2008, p. 50/51).

4.6. United Kingdom

4.6.1 Fixed-term work

The share of FT-employment in the UK has slightly decreased over the last decade from 7.2% in 1995 to 5.8% in 2007 (European Commission 2007a; European Commission 2008a). This decrease has been accompanied by a substantial decline (i.e. from 36% in 1992 to 26% in 2007) in the share of people that have an FT-contract because they can not find an open-ended job (Barnard and Deakin 2007). The share of men and women in FT-employment is roughly equal. After labour market deregulation under the Thatcher government, the Blair government, elected in 1997, tightened some of the controls on FT-employment and introduced the Fixed-Term Employees (Prevention of Less Equal Treatment) Regulations in 2002 (FTER). With the FTER, Directive 1999/ 70/ EC was implemented. However, the Blair government also took the view that FT-employment contributed to labour market flexibility and as such should not be subject to excessive regulation (Barnard and Deakin 2007, p. 120).

The FTER introduced three rules on FT-employment: Firstly, dismissal law was changed so that non-renewal of an FT-contract constitutes a dismissal. If the contract is not renewed, an FT-worker can make a claim to unfair dismissal or redundancy compensation. Although FT-workers here receive equal treatment as workers with open-ended contracts, the dismissal protection of open-ended contracts in the UK is quite low from international perspective (Green 2008). Secondly, FT-contracts are deemed as open-ended when the period of FT-contracts exceeds four years; this period can be amended when there is an objective justification, or by means of a CLA or "workforce

agreement"[14]. Thirdly, the FTER implemented the principle of equal treatment between FT-and permanent employees. Unlike in the case of Germany above, the FTER entails a restriction on the use of FT-contracts, as before there were no minimum or maximum limits on the duration of an FT-contract and these contracts could be renewed any number of times.

As a result of the FTER, FT-workers are entitled to equal treatment as workers with an open-ended contract. This applies to, for example, the access to training and the right to be informed about vacancies; access to training is reported to be indeed equal in practice (Green 2008, p. 152). The FTER does not apply to agency workers. There are some drawbacks to temporary work (i.e. both FT-work and TAW): about 25% feels that they are not treated equally to people on open-ended contracts, that their jobs and wages are insecure and that they lack benefits such as sick pay (Barnard and Deakin 2007, p. 117). FT-workers may be disadvantaged regarding pension provisions because their pension entitlement depends largely on earnings level and employment history (Schulze Buschoff and Protsch 2008, p. 67). The pay gap between workers with FT- and with open-ended contracts is around 15%, although this gap decreases over time. FT-workers also have less access to holiday pay and pensions, although this might be related to the low level of job tenure and work experience (Green 2008, p. 151/152).

There is, however, a distinction within the group of FT-workers between those with FT-contracts for shorter than one year and those with a contract for longer than one year. The latter group experiences lower insecurity and higher job quality (Green 2008). The transition from temporary employment into open-ended employment was 47% between 2000 and 2001 (EC 2007). The transition rate in the UK is the highest in all four cases discussed here. It seems there is more acceptance of temporary work as a transition phase with enough opportunity to move into more stable employment; around 50% of temporary workers are not looking for open-ended employment, but 50% of this group would prefer more stable employment at some point in their working life (Barnard and Deakin 2007, p. 117).

4.6.2 Temporary agency work

Simultaneously with the decrease of the share of FT-contracts in the UK, i.e. 1996/ 1997, the share of TAW started to increase (Green 2008). During the 1990s the share of TAW

14 A workforce agreement is one made with specified representatives of the workforce or, under certain circumstances, with a majority of the workers themselves. A workforce agreement may only be concluded for those workers who are not covered by a collective agreement; thus it can only operate when an employer does not recognise a trade union (Barnard and Deakin 2007, p. 128).

tripled (Crompton 1999; DTI 2002), after which it has remained quite stable (Green 2008). The share of TAW in the UK is around 2.5-4.5%, depending on the definition used (Arrowsmith 2006)[15]. Because the data vary substantially across the different sources, the relevant ministry regards them as inconsistent and has recently commissioned a study into the sector (Arrowsmith 2008, p. 4/ 5). The *Labour Force Survey* (LFS), the main data source on non-standard in the UK, includes FT-contracts, TAW, and seasonal workers in its figures on temporary work. The share of TAW within the group of temporary employees as a whole increased from 13.5% to 17.8% in the first quarter of 2007, while the share of FT-employment decreased from 50 to 44%. TAW in the UK is mostly lower-skilled clerical work in the public sector predominantly done by young people (Forde and Slater 2005; Kirkpatrick and Hoque 2006). In the UK, assignments are either short or long term, i.e. there is a large group of very short assignments but also a high share of long-term assignments: 40% of agency workers have an assignment of a year or longer (Arrowsmith 2008, p. 9). The TAW sector in the UK is highly fragmented and the largest five firms account for only 20% of sector revenues. The number of agencies has boomed: rising from 6,500 in 1994 to 16,800 in 2005 (ibid. p. 6/7).

The UK falls within the so-called 'British-Irish model' of regulating TAW. In this model, there is little specific regulation concerning agencies or agency work, nor much protection through common law regulation of standard employment contracts. There are no restrictions on the use of agency workers, apart from using them to replace striking staff. There are no legal restrictions over the permissible reasons for using agency workers or over the occupations/ industries where they can be used, and no limits on the duration of their use (Green 2008, p. 158). There is, however, a prohibition to lend out agency workers to firms where there is a strike (Arrowsmith 2008, p. 25). A report released in June 2005 (TUC 2005) stated that UK agency temps were the least protected in Europe. Within the UK labour market, agency workers are one of the least protected groups (Forde and Slater 2005, p. 250); this has changed from 2008, although the average pay of an agency worker is around 30% lower than of a permanent worker (Forde and Slater 2005). Most of the UK's estimated 600,000 temporary agency workers receive no sick pay, pension or vocational training (Storrie 2002; Labour Research 2005).

The Labour administration had introduced a minimum wage for agency workers in 1997 (Green 2008, p. 150). Also, in light of the recently approved Agency Work

15 It is difficult to find reliable data on the extent of TAW in the UK. This figure is based on data from the TUC, DTI and CBI. Often numbers of around 5% are also provided. These are estimates from the employers confederation REC and also include people hired on a permanent basis by an agency.

Directive, equality with comparable workers at the user firm will most likely be introduced. There was already an agreement in May 2008 that after twelve weeks, agency workers are entitled to equal treatment as comparable directly hired staff (Arrowsmith 2008, p. 13). In the UK there are no special provisions on social security and social benefits such as health insurance and unemployment benefits for agency workers; they are covered by the rules that apply to all firms (ibid. p. 32). The same applies regarding access to training (ibid. p. 35). They may be disadvantaged when employment history is relevant or when they are not considered an employee under labour law. A positive note is that around 40% of all agency workers find a permanent position within one year; transitions are more common amongst higher-educated (Forde and Slater 2005; Zijl and Van Leeuwen 2005; Vitols 2006). This high level of mobility shows the function of TAW as a 'stepping stone' into the labour market.

Agency work has been in existence in the UK since the early 1900s. The regulatory framework consists of the Employment Agencies Act of 1973, as amended by the Employment Protection Act of 1975 and the Deregulation and Contracting Out Act of 1994. As a result of the deregulations in 1994, the licensing system for temporary work agencies was abolished. Secondly, there is the Conduct of Employment Agencies and Employment Businesses Regulations of 2003, which introduced the ban on lending out agency workers in case of a strike. The final part of the regulative framework is made up of the Gangmaster Licensing Act of 2004, which (re-)regulates and licenses labour providers in the agricultural, horticultural, shellfish and associated processing industries. This act reinstalled a license-scheme in these sectors after this requirement was abolished in 1994; the reason was the death of 23 shellfish pickers in Morecambe Bay (Arrowsmith 2008). From 1997, agency workers have also been included in the minimum wage and working time laws passed by the Labour government (Barnard and Deakin 2007, p. 124).

The Employment Agencies Act of 1973 states the terms on which agencies can provide their services. In the UK, there is no regulation of the maximum length of a TAW contract and there are no restrictions on the number of renewals (Vitols 2006). On the other hand, regulations on the minimum wage and working time do have special provisions for agency workers. The Conduct Regulations of 2003 stipulate that there should always be a contractual relationship between an agency worker and the agency that lends him or her out to user firms. If the agency carries out its activities as an employment business, then the workers should be regarded as employees. This type of agency work is associated with the big agencies such as Manpower and Adecco. When

these employees have an FT-contract, they are entitled to equal treatment as comparable permanent employees (Adecco 2006).

Another possibility is a contract for services between an agency and the agency worker. In this case, the agency worker is self-employed and the agency merely acts as a short-term intermediary. British legislation does not require agencies to choose between these two types of operations. In practice therefore, agencies operate under a mixed regime, and it often remains unclear which party is the employer of the agency worker (Kountouris and Freedland 2007). The Trade Union Confederation (TUC) has stated that most agency workers are not employed by either the agency or the user firm and due to this status are therefore not entitled to the "full range of employment rights and protection" (TUC 2005, p. 22). In practice, this means that agency workers often have no access to training and pension schemes (ibid.).

4.6.3 Strategies of British social partners

The system of industrial relations in the UK has historically been described as 'voluntarist'. The volume of existing labour law is relatively small and mainly plays a facilitating role, e.g. by free arbitration services. Since the 1990s, it has been harder to classify the British system of industrial relations. After a series of laws restricting trade union activity and fostering a competitive enterprise culture during the 1980s and 1990s, the Labour government after 1997 gave trade unions a slightly stronger position (e.g. procedures for organising strikes, and informing and consulting employees). Another outcome of the Labour government was the increased use of the term "partnership" in relation to employer-employee relations. The rising use of this term has been said to represent an attempt to shift the industrial relations culture away from adversarial relationships (EIRO 2007c). The level of social dialogue in the UK is currently still weak and collective bargaining plays a limited role (Eurofound 2008). The only level at which bargaining takes place is the company level (Van Klaveren and K. Tijdens (eds.) 2008, p. 41). Within a workplace, there is often a choice between an industry union and a general union.

During the 1960s and 1970s, the British trade union TUC adopted a strategy of protecting agency workers while positioning itself against the TAW industry as a whole and argued for replacing private agencies with public ones (Hakansson et al. 2009, p.14). During the 1990s, the British trade unions adopted an attitude of acceptance towards agency work as such, but are afraid of possible exploitation of agency workers, and the possibility that the use of agency work undermines rights of all workers in the labour

market. TAW is at the forefront of TUC campaigns on 'vulnerable workers'. Their campaign for equal rights seems to have had an effect, resulting in the May 2008 agreement and positive influence on the EC Agency Work Directive. While organising agency workers into the union would create the conditions for dealing with these problems, this can in practice be difficult, as agency workers do not stay in the same workplace for very long. From the early 1990s, the unions have extended their recruitment and representation activities to atypical workers as they came "to recognise the enduring nature of non-permanent forms of employment" (EIRO 2002a, p. 28). Employers in the UK are generally happy with the high flexibility, although some employers also report problems such as less commitment and lower skill levels among temporary workers. These problems can translate into higher costs and coordination problems (ibid., p.30).

Temporary agency workers have the same statutory trade union rights as other workers, including the right to be in a union and protection against dismissal when engaged in union activities. There are no collective agreements at national or sectoral level relating to agency workers, and this group of workers is only to a minor extent covered by collective bargaining. According to the most recent report, the percentage of unionised temporary workers is very difficult to assess and there are no figures available (Hakansson et al. 2009, p.72). Individual agency workers are entitled to be accompanied at disciplinary and grievance meetings with their employer by a fellow worker or trade union representative. In the calculation of the threshold of 50 employees in order to obtain information and consultation rights (valid by law from April 2008), agency workers are explicitly excluded as not being employees of the user firm (Arrowsmith 2008, p. 38).

In May 2008, the government, the TUC and the Confederation of British Industry (CBI) negotiated a first joint declaration on equal treatment of agency workers after twelve weeks in a given job. There is still no sector-level collective bargaining but only company-level agreements. There is an agreement between Adecco and the GMB union since 1997 and there have been agreements between Manpower and the Transport and General Workers Union (TGWU) since the 1960s. Manpower also has an agreement with the Banking, Insurance and Finance Union (BIFU) since 1995. Another significant example is an agreement between a specialist agency for education and lecturing services and the Association of Teachers and Lecturers (Arrowsmith 2008, p. 23). Because most

CLAs are company-level agreements with the big international temporary work agencies, and the top five companies account for only 20% of market share, coverage is still low.

In the UK, there is no flexicurity strategy regarding agency work; the main deregulation took place in 1994, further increasing flexibility in the sector. In 2003, the Conduct of Employment Agencies and Employment Businesses Regulations however attempted to clarify the legal position of agency workers. Flexibility is high in the UK TAW market and security for agency workers, mostly in terms of access to social security and the clarity of their legal status as employees or self-employed, is very low. The main security element is the high mobility rate between temporary and open-ended jobs. However, an open-ended job in the UK is much less secure than in the other three countries discussed here; e.g. the right to employment protection and certain benefits only applies after a 12-month qualification period of continuous employment with the same employer (EIRO 2002a).

4.7. Netherlands

4.7.1 Fixed-term work

The share of FT-contracts in the Netherlands has increased steadily during 1996-2006 from 12% in 1996 to over 18% in 2007 (European Commission 2007a; European Commission 2008a). FT- contracts are slightly more common among women than men and also slightly more common among lower than higher educated employees. What comes out most clearly, however, is that these contracts are especially widespread among young people (Houwing, Verhulp et al. 2007). The legal framework on FT-contracts in the Netherlands is in line with Directive 1999/ 70/ EC, apart from the requirement to offer justifications for using FT-contracts; this does not exist in the Netherlands.

The Dutch debate on FT-work has to be seen in light of discussions on labour market flexibility related to dismissal law. During the 1990s, employers were increasingly circumventing dismissal procedures by employing FT-workers on the basis of a so-called 'revolving door construction'. This entailed that because the law stipulated that after one FT-contract an open-ended contract should be offered, employers often dispatched an FT-worker to a temporary work agency for one month, after which they hired them again. The interval period of more than one month prevented the worker from the right to an open-ended contract. To curb this 'revolving-door' system, the Flexibility and Security (F&S Law) of 1999 introduced a new regulatory framework on FT-employment. The F&S law hereby codified developments that were already visible in the jurisdiction.

The F&S Law mainly increased flexibility for employers because it increased the possibilities to make use of consecutive FT-contracts. Before the F&S law, only one FT-contract was permitted before an open-ended contract had to be offered whereas after the law three consecutive contracts were permitted for a maximum duration of three years[16]. In one aspect the F&S law also increased security for FT- workers: prior to the F&S law, the time between two FT-contracts was one month. With the F&S Law, this interval period was increased to three months. This restricted the 'revolving door' system, and now a longer time period between two FT-contracts does not break the 'chain' of three contracts leading to a permanent contract.

In November 2002 a law was introduced to implement EU directive 1999/ 70/ EG on equal treatment of FT- and permanent workers. There are two exceptions to this equal treatment: unequal treatment is justified when there is an 'objective reason', and it does not apply for agency workers. Despite the fact that inequalities are not permitted by law, it has been found that FT- workers are also less likely to receive training than workers with an open-ended contract (Van Velzen 2004). About a quarter of the employees with an FT-contract report that they have fewer opportunities for training than their permanent colleagues. Regarding pensions, one out of five FT- employees claims not to build up any pension (CNV 2007). There is some inequality in practice regarding wages of FT-workers; these are slightly lower than the wages of employees with an open-ended contract (Zijl 2006).

The share of workers with an FT-employment contract that made the transition to an open-ended contract within one year was 37% in 2007 (EC 2007). The Institute for Labour Studies OSA reports that the group of people on an FT-contract with the prospect of an open-ended contract as a share of total FT-contracts increased from little over one-thirds to well over 50% of all FT-contracts between 1992 and 2006. Note that the figures provided by OSA do not necessarily imply that people with a prospect of moving into permanent employment actually make this transition: there is no legal obligation for the employer to offer an open-ended contract. A recent evaluation study of the F&S Law (Knegt, Hesselink et al. 2007) suggests that the share of employees with FT-contracts that move into a permanent job has decreased from 25 percent in 2001 to 14 percent in 2006.

16 In both cases this law was however 3/4-mandatory, which means that both before and after 1999 deviations were/are permitted within a CLA.

4.7.2 Temporary agency work

The Dutch regulatory regime on TAW has been set apart from the types in the three countries discussed above (Storrie 2002); the Netherlands could be even seen as moving towards the Scandinavian model. The reason for Storrie to set the Netherlands apart from the three other types is based on two pieces of legislation, implemented in the late 1990s. The 1998 Law on the Allocation of Labour through Intermediaries (abbreviation WAADI: *Wet Allocatie Arbeidskrachten Door Intermediairs*), and the F&S(*Wet Flexibiliteit en Zekerheid*). The WAADI liberalised product market regulation for the TAW sector by removing barriers for temporary work businesses, while the F&S Law increased labour market regulation for TAW by bringing the agency work relationship within mainstream labour law. These regulatory changes were introduced in response to the increasing number of temporary workers in the Netherlands throughout the 1990s.

The Netherlands introduced a licensing scheme on TAW in 1965 with the Deployment of Workers Act (*Wet op de Terbeschikkingstelling van Arbeidskrachten*). The act was the answer to the growing number of illegal labour placement agencies, operative since 1945 (Koene 2005). During a time when the TAW industry still faced a large degree of public criticism, the Deployment of Workers Act extensively regulated, and thereby limited (ibid. p. 9/ 10), the hiring of temporary agency workers. Since the 1970s, agency work slowly became more accepted in the Dutch labour market. A licensing scheme for the industry was introduced in 1970 (Koene 2005), and the first collective labour agreement was concluded in 1971 (CBS 2006). The largest employers' association in the TAW sector, ABU (*Algemene Bond Uitzendondernemingen*), lobbied extensively for recognition of the sector. It could do so because they organise over 80% of employers and could always speak on behalf of almost the entire industry (Koene 2005). As a result of their advocating of the industry, combined with growing unemployment in the 1970s and 1980s, the TAW business became increasingly regarded as a useful allocation tool in the labour market in the 1980s.

The share of TAW in the total workforce is currently 2.5%. The increase in agency work during the 1990s preceded the developments in the economy as a whole; TAW boomed at the end of the 1990s, declined from the early 2000s, and picked up again in 2005-2006. In the economic downturn of 2008, the number of agency workers has gone down rapidly, while in July 2009 the first signs of stabilisation are visible (www.CBS.nl and CBS Statline). Due to regulations taken up in sector-wide CLAs after 1999, agency workers build up pension rights and a training budget after 26 weeks. A

2005 report showed that from the 61% of agency workers wishing to obtain a open-ended contract in 2004, 33% found their desired type of job. 50% of these jobs were with the user firm and 50% with another employer (Nauta and Donker Van Heel 2005)[17]. A similar figure is also reported by the trade unions (ETUC 2008).

4.7.3 Strategies of Dutch social partners

In light of the substantial growth of temporary work during the 1990s, the ABU together with the unions were among the architects of the F&S Law and WAADI. The parties drew up a covenant shortly before the F&S Law and WAADI were implemented in which they negotiated to use the room to deviate from provisions of the F&S Law within the sector-level CLA for agency workers. Also regarding the new regulations on FT-employment introduced by the F&S law, the social partners were highly involved within the bipartite labour foundation STAR (see chapter five).

As a result of WAADI 1998, the licensing scheme was abolished and agency work was permitted in all sectors of the economy, whereas it was previously banned in construction. Also, the maximum lending out duration of six months or 1000 hours was abolished. The ban on lending out agency workers to firms to replace striking workers, and the provision that agency workers are entitled to the same wages and compensation as comparable workers at the user firm, were kept in place. This last provision on equal remuneration does not hold when an agency worker is covered by a CLA stipulating otherwise. Other provisions of WAADI are that an agency worker cannot be required to pay a fee to the agency for the lending out service, and the agency has to provide information to the agency worker regarding health and safety regulations at the workplace.

The current position of the largest trade union confederation FNV regarding regulation of TAW is 'equal pay for equal work'. With this slogan they emphasize that employers should use temporary workers to achieve flexibility and not to cut down labour costs. Equality between agency workers and direct hires is therefore one of their main objectives. The F&S Law of 1999 aimed to create more clarity regarding the legal position of the three parties of the agency work relationship; the relationship between an agency and an agency worker was now termed an employment relationship, whereas before 1999 this relationship was not always clear (Grapperhaus and Jansen 1999). The

17 However, it is hard to determine a 'stepping stone effect' when one tries to take into account what the possibilities of obtaining a regular job would have been, had the people observed not worked through an agency (De Graaf-Zijl, M., G. J. v. d. Berg and A. Heyma (2005). Stepping-stones for the unemployed? the effect of temporary jobs on the duration until regular work. Amsterdam, SEO.)

relationship between the agency and the user firm was, and still is, an order contract. Because the legislator felt that TAW should retain an allocation function in the labour market, not all provisions of standard employment contract law apply. Article 649 of the Dutch civil code reads that agency workers are not subject to the principle of equal treatment. Another legal provision applies to the entitlement of an agency worker to an FT or open-ended contract with the agency; which only applies after 26 weeks. These first 26 weeks are characterised by synchronisation between assignment with agency and assignment with user firm, the ending of the working assignment in case of sickness or disability, easy termination of the employment relationship for both parties, and payment only for actual hours worked. This period, which is often referred to as the 'agency clause', can be extended via a CLA. This option has been taken up in the CLAs in the TAW sector.

The ABU negotiates a CLA with trade unions FNV, CNV and De Unie. This ABU-CLA covers around 80% of Dutch agency workers. There is one other CLA in the Dutch TAW sector, the NBBU-CLA, concluded between the representative for small- and medium-sized firms, NBBU (Nederlandse Bond van Bemiddelings- en Uitzendondernemingen) and the union LBV (*Landelijke Belangen Vereniging*)[18]. Both the ABU and NBBU CLA work with a 'phase-system' by which agency workers move from a contract with the agency clause, to an FT-contract, to a permanent employment contract. About 6% of agency workers has an FT or open-ended employment contract (Donker van Heel, Van Nuland et al. 2007, p. 21). The fist phase based on the 'agency clause' is by law limited to 26 weeks but is extended in the CLAs to 1,5 years (ABU CLA) or 2,5 years (NBBU CLA). In line with what is stated by law, both CLAs have their own remuneration schemes that apply during the first 26 weeks of employment; in almost all cases this entails a lower wage than that of comparable workers at the user firm. A number of CLAs that apply in user firms, however, have provisions that their wage applies to the agency worker from day one.

Social partners can also deviate from the provisions on FT-contracts laid down in the F&S Law. The deviations can be concluded at the benefit as well as the detriment of the FT-worker. Studies into the extent to which there are deviations from the law in CLAs (covering about 80-90% on Dutch CLAs) show that in about one-thirds of Dutch

18 In addition to ABU and NBBU there are two other main players in the TAW sector, the NVUB and the VIA for international labour intermediaries. Both have unsuccessfully tried to negotiate their own CLAs and get dispensation from general extension of the ABU CLA (the NBBU has received dispensation). Of these two, the VIA is most active in lobbying for their own CLA that could be applied for international agency workers. See further chapter five.

CLAs, there are deviations from the law on FT-contracts (Houwing and Schils 2009). When all the deviations are taken together, it has been found that the deviations in most cases increase flexibility for employers, thereby decreasing security for FT-workers. The most important reason for this is likely the economic downturn of 2002-2004 increasing the bargaining power of employers (see further chapter five).

Trade union density among agency workers is believed to be between one-five percent (Hakansson et al. 2009, p. 38). There are no separate unions for agency workers. Figures for all temporary workers are not available although in general, temporary workers are less likely to be a union member due to the nature of their employment relationship. Regarding representation of agency workers there is a clear distinction between representation in the agency and in the user firm. Within the agency, members of the works council can be elected by all agency workers with a tenure of at least six months. To be a candidate, one year of service by the agency workers is required. After two years of working in the user firm, agency workers have information, consultation and participation rights in that firm. They are entitled to elect employees in the works council of the user firm after two and a half years. After three years, they can be elected themselves. After two years, agency workers are counted for the 50-persons threshold to establish a works council.

4.8. Balance between flexibility and security in four cases

The main characteristics of the four cases are brought together in the table in the Appendix. The levels of flexibility and security are taken up in the table below:

Table 4.1. Flexibility and security in temporary employment: four countries

	Denmark	Germany	UK	Netherlands
External numerical flexibility	high	moderate	high	high
Job security	moderate	moderate	low	moderate-low
Employment security	high	moderate	high	moderate
Income security	Moderate-high	Moderate-high	Moderate-low	Moderate-high
Representation security	Moderate-high (due to unions)	Moderate-high (mostly works councils	Low	Moderate

4.9. Conclusions

In all four countries discussed in this chapter, there has been a substantial increase in TAW as share of total employment from the 1990s, accompanied by deregulations of the sector. Alongside this, regulations clarifying the employment status of agency workers have been introduced in Denmark and the Netherlands. In the UK, new rules on equal treatment were introduced. The developments in FT-contracts have been mixed: it has increased in Germany and the Netherlands and decreased in Denmark and the UK. This decrease in use took place at the same time as stricter regulations were implemented. The most important difference between the first two countries and the two latter ones is the level of protection against dismissal; in Denmark and the UK the labour market is in general more flexible. This is likely to be the reason why the use of FT-contracts has increased in the two more restrictive regimes. Also, in the labour markets with more restrictive provisions on dismissal and temporary contracts, i.e. Germany and the Netherlands, TAW is used by employers to circumvent these restrictions. In Denmark, TAW is used to facilitate flexibility of the permanent workforce, when they take leaves for education, sickness etc. In the UK, TAW is mostly used as a screening device for both employers and workers. This can be deduced from the high transition figures into more permanent employment.

In Germany, Denmark and the Netherlands, deregulations of the TAW market have mainly been accompanied by income security such as access to social security and pension rights. As a result, there is still a certain balance between flexibility and security in these countries; in the UK there is a more one-sided focus on flexibility. The only type of security on which the UK does score high is the security of making the transition into regular employment. It furthermore shows that the country with the lowest degree of security for temporary workers has the highest degree of people doing this type of work voluntarily (see figure two). It could be that this type of security is most important to make temporary workers feel secure. It is important to note that the security provisions in Denmark, Germany, and the Netherlands are subject to further negotiation within collective labour agreements, the balance between flexibility and security in some cases still tilts towards flexibility. When CLAs apply, which can deviate from national law, these are very important in shaping flexibility and security for temporary workers. For example, the provisions of the Dutch flexicurity law can be further fleshed out within CLAs, and when looking at what is negotiated in the CLA, provisions are negotiated that emphasize flexibility rather than security (Houwing and Schils 2009).

Regarding the relationship between regulation and use of temporary employment, I have found that the developments point in the direction of the argument made by Berkhout, Dustmann and Emmer (2007) that developments in use follow the developments in regulation. Looking back at the analytical model developed in chapter two this is the arrow that points from institutionalisation as outcome back to changing behaviour. In Denmark FT-employment decreased after more regulation, and TAW increased after deregulation. However, in addition to deregulation of the market for TAW, the new rules created more clarity concerning the status of agency workers. In the German case an increase in FT-contracts and agency work followed or corresponded with deregulation. For the UK, I found a slight decrease in FT-employment to corresponded with a tightening of regulations on FT-work by the Labour government in late 1990s and the recent restrictions introduced in light of the EC Directive; the share of TAW increased rapidly. In the Netherlands, there was a (further) increase in the use of FT-contracts after deregulation in the late 1990s, and we can observe a decrease in TAW after regulation introduced in that period. The relationship between changes in regulations and changes in use is difficult to disentangle: both can take place simultaneously. It is however clear that there was no increase in the share of temporary employment after the introduction of restrictions.

It was the growing pressure for flexibility on the side of employers and a concomitant change in the relative price of labour that triggered the growth of temporary employment. This flexibility pressure increased in response to globalisation, technological developments, etc. In line with this pressure, employers pushed for regulations facilitating the use of temporary work, which were in many cases deregulations of the TAW sector. In all countries, product market regulations on TAW were completely liberalised, with the exception of Germany, where a license requirement still exists. Therefore, besides the flexibility that TAW intrinsically provides to user firms, TAW businesses can operate under less to no restrictions, which contributes to their flexibility. Whereas employers in most countries, a little less in Denmark, pushed for deregulation, unions have mostly opposed temporary employment because of its precarious nature. Nevertheless, unions have taken a more accepting position, sometimes under pressure of growing unemployment, and tried to bring temporary workers within the scope of labour law and collective labour agreements.

Regarding the role of the social partners, the level of consensus is the lowest in Germany, while in the UK social dialogue is weak and there is little role for collective

bargaining. The level of consensus is much lower in Germany than in Denmark and the Netherlands. In Denmark and the Netherlands, I found the highest degree of cooperation between social partners regarding regulation of temporary work. The share of flexible labour however varies. The very large use of TAW and FT-contracts in the Netherlands is due to the higher protection of the open-ended contract. The high use of TAW needs further explanation and this is found in the large role of the social partners, mainly those in the TAW sector, that have always lobbied for acceptance and regulation of the sector.

To what extent can we now conclude that the Dutch case is innovative and moving away from the German approach? Reflecting back on the classification of the Netherlands as an employment regime and an industrial relations regime the Dutch corporatist institutions of peak employers' organisations and trade unions still have a strong position in the design and implementation of national-level institutions. In this sense, there has not been any change and the Netherlands has a similar structure to Germany as a social partnership regime. Regarding the nature of the employment regime and, if it indeed has become more inclusive, it seems the increased flexibility offered by the F&S law has been used to a large extent showing in the deviations from national law in CLAs. There are no clear signs for this group of temporary workers to be included more in the Dutch labour market; although agency workers gained improvement in their legal status and access to pensions and training and education.

After the F&S law, the share of people that did not want a permanent job went down significantly and there was a huge increase in employees with FT-contracts as a probationary period. This points to an increasing stepping-stone potential, although this is highly contingent upon economic developments. The recent crisis for example shows that flexible workers are laid off first and agreements that FT-contracts will be converted to open-ended contracts do not constitute a right that an employee can make an appeal to. This increased importance of the economy and market mechanisms might point to a slight move in the direction of the UK, although this should and will be investigated further in the next two empirical chapters. To argue that the Netherlands has moved towards Denmark by creating a more inclusive regime seems untenable; the new room for flexibility has indeed been used, but the extent to which more groups are included in the labour market and whether the share of transitions has increased is at this point unclear, and figures on transitions comparable for all countries are only available for one year. At the same time, the Dutch system of dismissal protection is among the highest

and there is no prospect of reform. While employers demand for more flexibility, the options to do this are only available within the realms of temporary work stressing duality rather than inclusion. This is for example visible in the share of temporary employment in the Netherlands, which is the highest among the four countries studied. To gain more insight into these issues and whether the assertions that the Netherlands is not becoming more inclusive and possibly moving towards the UK model indeed hold, the next chapter contains a more in-depth analysis of the Dutch case over a longer period of time.

Appendix 4.A. Country-comparative table

	Quantitative developments and current share	**Developments in institutional framework**	**External numerical flexibility**: Restrictions on the use of temporary work	**Income security:** Equality in pay, pensions, and benefits	**Employment security**: Training and transitions	**Job security**: Employment status of agency workers	**Representation security**: via trade unions and works councils
Den-mark	Rapid increase TAW in 1990s; decrease in FT. 8.7% FT; 1% TAW	Increasing strictness for Ft-work. 1990: deregulation of TAW sector and clarification of position of agency workers within framework of labour law	- Limits on successive FT-contracts and maximum duration. - Forbidden to replace workers on strike. - no license required since 1990; abolishment of regulations in the nursing sector in 2008 - License requirement for transport sector	FT-contracts: - Equal right unemployment insurance and basic pension, - Supplementary pension not for small jobs (<9 hours), and negative effect of gaps in employment history TAW: - no payment between assignments; Access to social security benefits via CLAs - no statutory regulation on equal pay, often equality laid down in CLA; - Right to pension via agency In general less pay and less access to secondary employment conditions and some benefits due to seniority requirements	40% transitions - Equal right to training, - extra training funds for TAW.	FT- contract with agency, equivalent to length of assignment. Also: self-employment	TAW: Limited participation in representation bodies at user firm, not counted for threshold. Union membership around 50%, against 80% in Denmark as a whole
Ger-many	TAW tripled in 1990s. FT-contracts increased with	Implementation of 1999/70/EC entailed some codification, but	Liberalisation of FT-work in maximum number and duration.	Equal treatment for FT-workers, though eligibility restrictions for people earning less than 400 euros a month.	30% transitions - Right to training for	Agency is employer. FT-(sometimes open-ended)	TAW: Union membership 5% against 20% in Germany as a whole.

	50% between 1995-2007	also liberalisation Main liberalisation of TAW in 1990s, and 2002 Hartz reforms: Restrictions on maximum lending out duration, synchronisation ban, and prohibition to terminate employment relationship and re-employ agency worker within three months lifted	Employee's representatives should be informed about the use of TAW and can object under certain circumstances. - TAW Prohibited for blue-collar workers in construction - License for agency required from PES; - Forbidden to replace workers on strike.	For all temporary workers: gaps in employment history have negative effect for unemployment benefits and pensions. For TAW: - Equal wage, but deviation possible in CLA and during first six weeks for formerly unemployed. - Equal access to social security and pensions via CLAs. - payment between assignments and synchronisation ban abolished in 2002; **In practice** wages on average 20% below comparable workers	FT-workers - No right to training for TAW.	contract.	Right to vote and be elected in agency; only right to vote in user firm applies after three months
UK	Rapid increase TAW in 1990s; slight decrease in FT; 5.8% FT; 2.5-4.5% TAW	- Implementation of Directive 1999/70/EC in 2002, introducing restrictions for FT-employment. - More clarity on legal position of agency workers since 2003 - License-system for TAW abolished in 1994, re-regulation for	- Forbidden to replace workers on strike. - License-system re-introduced for certain sectors since 2004 - No restrictions on maximum lending out duration and number of renewals	- FT-workers are entitled to equal treatment, but reports of less access to benefits - Less build up of pensions due to temporary nature of employment and lower pay, more for FT-contracts of up to one year - Agency workers are entitled to equal treatment after 12 weeks - equal access to social security and benefits dependent on employment history and status	40% transitions - equal access to training for FT-workers but no provisions for agency workers.	Mixed (often unclear) regime: employment contract (employee) or service contract (self-employed)	No CLAs for agency worker sector as a whole, to a minor extent covered by company-level CLAs. Possibility for representation in user firm if union is recognized, limited in practice. Not counted for threshold in user firm. No data available on union membership

		certain sectors since 2004.		as 'employee' → not always clear for agency workers - no pension rights - No income outside of assignments - **In practice** wages on average 15% below comparable workers;			
Nether-lands	TAW and FT-contracts both increased from 1990s; FT now 18%; TAW 2.5%. Share of TAW declined after 2000	- Liberalisation of rules on FT-contracts - Restrictions on maximum lending out duration and license-scheme TAW abolished in 1998, private scheme since 2007 - Regulation of TAW: now within framework of labour law, agency is employer	- Forbidden to replace workers on strike. - ban on TAW in shipping - Ban on TAW in construction lifted in 1998 - no license required since 1998	-Equal treatment of FT-contracts by law, but small pay differential - 20% of FT-workers report not building up a pension. For TAW: - pay equality mostly after 26 weeks - No payment between assignments during first 1,5-2,5 years. - Right to pension via agency after 26 weeks for workers over 21	30% transitions - training fund built up after 26 weeks for agency workers - Both FT-work and TAW less access to training	Agency is employer. Agency work contract for first 1,5-2,5 years.	TAW: Union membership 5% against 25% in Netherlands as a whole. Representation rights in user firm after 2 years (counted for threshold), 2,5 years (vote), and 3 years (be elected). In the agency: agency workers can elect after six months and can be elected after one year

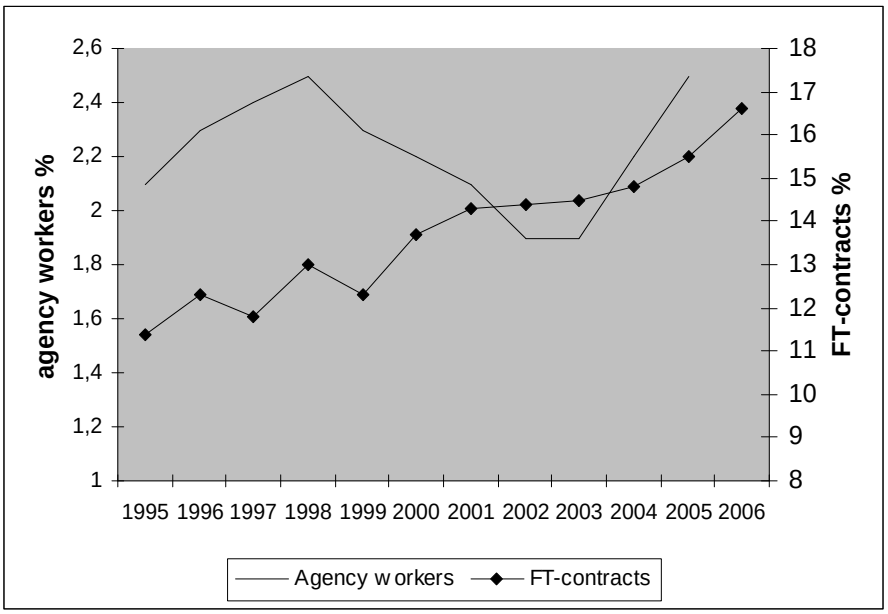
Chapter 5 – Balancing flexibility and security in temporary work in the Netherlands

5.1. Introduction

The development of institutional frameworks on temporary work and its relation to the share of temporary work in the labour force in various countries was the topic of the previous chapter. The share of temporary work and its formal regulation are related in the sense that as the share of temporary work increases, regulation is adjusted accordingly, be it in a more permissive or more restrictive sense. As institutionalisation occurs, the share of temporary work in turn is shaped accordingly, with more restrictions leading to a decline in use. Between behaviour and the formal rules, informal institutions operate as guides for behaviour and as an intermediate step before change in formal rules. Compared to Germany, Denmark and the UK, the Dutch institutional framework on temporary labour, which since 1999 is explicitly aimed at combining flexibility and security, has led to an increase in fixed-term (FT) contracts, and a halt or even slight decrease in temporary agency work (TAW). In this chapter, I zoom in on the Dutch case and look more closely at developments in these two types of temporary labour and the institutional framework – made up of laws and collective labour agreements – on temporary labour. Furthermore, I show the outcomes of these developments in terms of four types of security of temporary workers. Figure 5.1 below shows that the share of TAW contracts (left axis) in the Netherlands increased rapidly in the second half of the 1990s, then declined from 1998, and started to pick up again in 2005. In 2006, the share of TAW jobs equalled that of 1996. This development shows the cyclical nature of TAW, i.e. increasing just before an economic upturn and decreasing anticipating an economic downturn. The share of FT-contracts (right axis) has increased steadily during 1996-2006 from little over 12% in 1996 to almost 17%[19] in 2006 (Eurostat figures). It has been argued that jobs created between 1995 and 2000 were almost all part-time and temporary(WRR 2006; Knegt, Hesselink et al. 2007).

19 Statistics Netherlands (CBS) reports a much lower figure, i.e. 10% of the Dutch population has a flexible employment contract, which includes FT-contracts, TAW contracts, and on-call workers. However, CBS only reports jobs larger than 12 hours per week.

Figure 5.1. Developments in share of TAW and FT-contracts Netherlands



Source: CIETT 2008 and European Commission, *Employment in Europe2007/2008*

In the context of the increasing share of TAW and FT-contracts from the second half of the 1990s, discussions on the flexibility of the Dutch labour market increased and culminated in the implementation of the Flexibility and Security Law (F&S Law) in 1999. In this chapter, I will shed light on the developments leading up to the F&S Law, and go on to discuss the changes that took place after 1999 in terms of flexibility and security for temporary workers. This chapter will provide answers to the first four research questions:
1) What are the developments in temporary work during the last 10-15 years in terms of its extent, security aspects and formal regulation?
2) How does normalisation and institutionalisation of temporary work take place?
3) Which mechanisms and actors explain the developments in the extent, nature, normalisation and institutionalisation of temporary work?
And;
4) How are national-level institutions on temporary work implemented by social partners?
The focus is on the institutionalisation through the F&S law and WAADI. I will show why and how the F&S Law was drawn up and implemented, and how the new laws changed the regulation of FT-contracts and TAW in national law and the way this was translated within the collective labour agreements (CLAs). The final section of the paper will also deal with the new distribution of risks within the employment relationship brought about by the law and the way various actors responded to the new distribution of risks. To analyse the changes in the regulation of temporary work, I will discuss the

national legislation and sector- and company-level CLAs. It is at this level that the social partners have translated the national-level legislation on flexibility and security in line with sector-specific circumstances and pressures. Where possible and relevant, I also provide some information on actual practice, although a thorough discussion of practice lies outside the scope of this project.

This chapter will proceed as follows: in the next section, I will sketch the context of the discussion by providing information on the quantitative developments over the last decades in TAW and FT-contracts. In sections three and four, I will discuss the developments leading up to the F&S Law and the way it altered the legal framework on FT and TAW employment relations. In section five I will discuss the outcomes in terms of CLA-provisions for FT-contracts and agency workers. In section six I will assess changes in the security elements of agency work and FT-contracts in terms of four types of security: job security, employment security, income security, and representation security. It is here that I will incorporate some elements of what happens in practice in addition to what is laid down in national law and CLAs. These security aspects are measured as the nature of the employment contract (only for agency work), transitions into open-ended employment, rights to training, the extent of equality in pay, build up of pension, access to social security and the extent to which temporary workers are represented by works councils and trade unions. I also analyse to what extent the F&S framework has altered the distribution of risks between the temporary worker, a firm and a temporary work agency. The party having to take on more risks experiences higher costs, which can in turn be outsourced to another party. This is mainly visible in TAW, where the new risks for the agency are partly shifted back to the agency worker and partly to the hiring firm. This makes FT-work relatively more attractive, especially in light of the increased possibilities to use FT-work as a result of the F&S law. Both types of flexible employment should be seen in the larger context of the Dutch system of dismissal and the changing distribution of risks related to sickness and disability of employees.

5.2. History of flexibility in the Netherlands

5.2.1 Temporary employment

In most studies, FT-contracts and TAW-contracts are grouped together under the heading ‘temporary employment’ (see e.g. Delsen 1995 and Zijl 2006). Although the two types of temporary employment often coexist as functional equivalents, they are quite

distinct in nature and I therefore mostly analyse the two separately. Both types have a distinct legal background and history and both have been reshaped in different ways with the 1999 'flexicurity' reforms. When developments are comparable I will nevertheless discuss the two types together as temporary employment. In this section, I deal with temporary employment in general with a specific focus on FT-contracts. In section 2.2, I will discuss TAW specifically. People working on the basis of an FT-contract and in TAW are mostly under the age of 25 and lower educated (RWI 2007; OSA 2008). People with FT-contracts are mostly female, although there are slightly more men than women working through a temporary work agency (OSA 2008, p. 116). Both types of contracts are most often found in agricultural and industrial sectors and in commercial services (ibid. p. 117).

In the Netherlands, FT-contracts are not always a means to increase flexibility. Over half of fixed-term contracts are used as an extended trial period before an open-ended contract is offered(OSA 2007). As I will show in section four, this development is a direct outcome of the new distribution of flexibility and security brought about by the F&S law. The Institute for Labour Studies (OSA) distinguishes between regular FT-contracts (including seasonal workers and on-call workers) and FT-contracts with a prospect of an open-ended contract, and finds that the latter category is increasing relatively to the former. The second most common reason to hire a worker for a fixed period of time is uncertainty about the future, of which the majority is explicitly associated with the pressure to increase flexibility. The Dutch Council for Work and Income, RWI, reported figures showing a segmentation within the group of flexible workers, with higher educated people more often working on the basis of FT-contracts (with transition prospects), and lower educated and younger workers working in on-call contracts and TAW, which have less security (RWI 2006, p. 10/11).

During the 1980s, the share of temporary employment started to increase in the Dutch labour market. Because international competition grew and product demand became more volatile, employers increasingly regarded temporary employment as a way to match their labour input as close as possible to product demand. Delsen (1995, p. 45/46) distinguishes between traditional and new rationales for using temporary workers. Traditional reasons include seasonal work and temporary replacement of absent staff. The new reasons involve the shifting of risks that were previously borne by the employer unto the employee. These risks include uncertainty about future workload and about

whether the worker is a suitable candidate for the job. For this last instance, temporary contracts are used as an extended trial period.

5.2.2 The agency work sector

It has been said that agency work in some form has already been around for centuries (Goldschmeding 1998, p. 2). Up until the industrial revolution, a substantial part of the labour force moved from job to job whenever and wherever work was available. People were hired for a specific task with a clear time limit, and the output was the basis for compensation. This meant that workers had a great deal of autonomy in deciding how, when and where the work would be carried out. The contract between the worker and the employer was therefore a 'contract of work'. It was not until the transition from a feudal to a industrial society, that the relationship between a worker and someone who commissioned a job became regulated within a 'contract of employment' (Streeck 2005). In a contract of employment, the worker does not commit to carrying out a specific task, but subjects his or her labour power while the employer retains discretionary power to determine the specific tasks that the worker will carry out in practice in a later stage (Streeck 2005). In the industrial mass-manufacturing of the industrial age, such a hierarchical master-servant relationship in which the employer determines the specific tasks along the way became more efficient.

After the Second World War, TAW in its present-day form started to spread across Europe and the US. The first temporary work agencies were set up in the Netherlands in the 1940s; these were mostly typing bureaus that carried out typing work in a time when type writers were not yet widely available within firms and typing tasks were therefore outsourced. From 1955 the use of these typing bureaus became more and more widespread and especially in the early 1960s the number of agency workers rose. During a time of economic expansion in the 1960s, agency workers were mostly married women earning supplementary household income working in administrative jobs. TAW in industrial sectors was at that time mainly organised by so-called 'gang masters' (*koppelbazen* in Dutch) who did not reserve money out of the wages for social premiums and taxes (Goldschmeding 1998). During an era of strong economic growth and labour market scarcity in the 1970s, TAW also started to grow within the industrial sectors.

The oldest law on the mediation of labour dates back to 1930. This law laid down a monopoly for the public provision of labour with specific additional provisions only for cases in which the private intermediary added a specific and demonstrable value (MvT 1997a). An additional law on TAW was introduced in 1965 with the Law on the

Deployment of Workers (*Wet op de Terbeschikkingstelling van Arbeidskrachten*). This law however remained a paper reality until 1970, when it was effectively implemented and introduced a licensing scheme that outlawed TAW for a period longer than 1,000 hours/ six months and in the construction and metal industry. This system of licenses aimed to fight excrescences and to structure the, at the time still emerging, sector (Goldschmeding 1998, p. 5).

Since the 1970s, agency work slowly became accepted in the Dutch labour market by both employers and trade unions. Social dialogue hesitantly started to develop and the first CLA was introduced in 1971 (CBS 2006). Also, social security laws were applied to agency workers. During a period of economic crisis and rising unemployment in the early 1980s, the allocation role of TAW was increasingly emphasized as the government looked for ways to increase the flexibility of the labour market. During the 1990s, flexibilisation was developed further as management of firms focused more and more on developing their 'core activities' and outsourcing non-core activities. This led not only to an increase in temporary work agencies, but also in other specialized enterprises such as cleaning, security and marketing agencies that took over activities previously carried out within the firm (Goldschmeding 1998, p. 8).

During the 1980s and 1990s, TAW became a more or less acceptable alternative for a standard (full-time, open-ended) employment relationship. The number of agency workers rose steadily throughout the 1970s and '80s, and started to increase rapidly from the beginning of the 1990s (Brusse and Donker Van Heel 2003; CBS 2006). The Dutch TAW industry went from being an industry with a bad reputation in the 1960s, through a process of gaining some legitimacy in the 1970s, to achieving a certain degree of acceptance as a useful tool to temporarily solve labour market rigidities in the early 1980s (Koene 2005).

The government was reluctant towards TAW during the 1970s, but the shift to acceptance became increasingly visible during the 1980s and reflected in the 1990 Law on the Provision of Labour (*Arbeidsvoorzieningswet*), which was amended in 1996. In this law, the set of rules on agency work that had been increasing and had become more and more fragmented since 1965 was laid down. This law integrated and replaced the laws of 1965/ 1970 and 1930, but took over the license requirement for temporary work agencies taken up in both laws. With the 1990 law, labour intermediation for profit became legally possible, where it previously was forbidden by the 1930 law. Also, the 1990 law changed the position of the TAW sector vis-à-vis the public employment services (PES). Up until

1990 (from 1930) the Dutch PES had been a state monopoly. The 1990 Law on the Provision of Labour changed the PES from a government service agency into a private body under public law, still financed largely by the Ministry of Social Affairs and Employment. The PES was thus brought under tripartite control (trade unions, employers' organisations and government), and was financed by the government but run independently (Hemerijck, Unger et al. 2000). The Dutch PES had started its own TAW, called START, back in the 1970s. In recent years, START has become 'Start People', and has become part of the stock exchange listed multinational firm USG People N.V.

During the early 1990s, the largest employers' association for temporary work agencies operative since 1961, the General Federation of Staffing Agencies, ABU (*Algemene Bond Uitzendondernemingen*), was actively positioning itself as a professional actor in the labour market. The ABU engaged in the talks leading up to the F&S Law, and the abolishment of the existing licence-system by means of the 1998 Law on the Allocation of Labour through Intermediaries, (*Wet allocatie arbeidskrachten door intermediairs*) (abbreviation WAADI). The benefits of reform of the legal framework by means of F&S and WAADI for the TAW sector were threefold. Firstly, more regulation through the F&S law indicated that the TAW sector was a professional, trustworthy business. The regulation of TAW has always seemed to greatly benefit its development in the Netherlands; after the first official regulation in 1965, the use of TAW has only increased. It has been shown that a lack of rules does not make agency work more, but rather less attractive for employers. Of course, more rules often entail higher costs, but a lack of rules might also entail high costs, as employers experience more uncertainty (Interview Koene August 2005). Secondly, restrictions were abolished through WAADI which gave the industry space to broaden its range of activities from the provision of short-term employment to long-term postings of workers and HR-services. Thirdly, the removal of a license-system by means of WAADI created the possibility that membership of the ABU would become a quality hallmark for the industry (Koene 2005, p.7). When the licence system was abolished, the ABU used the regulatory vacuum to incorporate some tasks that were previously carried out by the state. It introduced a certification scheme in 2007 (see section four below). Thus, certification of the industry shifted from the national level to the level of this large interest association.

5.3. History of the Flexibility and Security Law

5.3.1 Dutch corporatism

To understand the history of the Flexibility and Security legislation, it is necessary to grasp the Dutch system of industrial relations. Before I discuss developments, I therefore briefly elaborate on this topic. This Dutch system falls within the so-called 'democratic corporatist' tradition based on regular negotiations between societal bodies on socio-economic issues (Katzenstein 1985). The two main institutions where negotiations take place are the bipartite Labour Foundation (STAR) and the tripartite Social-Economic Council (SER). The STAR is made up of representatives from trade unions and employers' organizations; the SER in addition consists for one-third of independent members. The main function of the STAR is the coordination of the process of collective bargaining between social partners, by issuing recommendations on employment conditions, mainly wage increases. Although the national consultation procedures in the STAR serve as informal co-ordination, the social partners usually apply the STAR's recommendations when negotiating CLAs. In the SER, employers' and employee's representatives and independent members negotiate on general socio-economic issues and advice the Dutch government.

The union and employers' organizations represented in the STAR and SER are the largest Federation of Dutch Unions, FNV (*Federatie Nederlandse Vakbeweging*), the second largest Christian union CNV (*Christelijk Nationaal Vakverbond*), and the third largest *De Unie* for professionals and white-collar workers. The three employers' organisations that are represented are the peak organisation (VNO-NCW), the organisation for small- and medium-sized firms (MKB), and the organisation for employers in the agricultural sectors (LTO). The employers' organisations and unions are often addressed as "social partners". They are broadly representative interest organisations, although the level of membership may be moderate (Visser and Hemerijck 1997). Two statutes support the Dutch process of collective bargaining: the 1927 law on collective labour agreements (*Wet CAO*), and the 1937 law on the general extension of provisions in collective labour agreements (*Wet AVV*). These two pieces of legislation are explicitly aimed at stimulating consultation between social partners, or between individual employers and unions directly. The collective agreement law of 1927 does not define any quantitative criterion for representation; unions and employers' associations must merely be independent organisations and register as formal associations, deposing their name, aim and statutes. Together they negotiate CLAs at sector and firm-level.

Over 80% of employment contracts in the Netherlands are covered by a CLA (Van Klaveren and K. Tijdens (eds.) 2008). Since union membership in the market sector as a whole is much lower at around 20%, the high coverage rate is the result of three factors: firstly, the high organization of employers, which is around 85% on average for all sectors; secondly, the application of the contract to non-union members in firms that are member of an employers' federation signing the CLA (the so-called 'erga omnes clausule' in the law on collective labour agreements of 1927, art.14); and thirdly the extension of collective agreements by the government by means of the of *Wet AVV* of 1937. This 1937 law on general extension empowers the Minister of Social Affairs and Employment to declare a CLA generally binding for all firms in a sector (i.e. also those that are not a member of an employers' organisation) when requested by one or more of the CLA-parties. The most important precondition for a CLA to be declared generally binding is that it already applies for a significant majority of employees (i.e. 55-60%) in the sector (Verhulp 2005).

The aim of the 1937 law on general extension was to prevent employers from paying different wages to non-union workers. Therefore the employment conditions negotiated by the social partners also cover non-unionised workers and non-organised employers. It should be noted that by the general extension of CLAs, around 9% of the total number of employees is additionally brought within the scope of the CLA. However, the societal effect of the law is greater since it stimulates employers to become a member of an employers' organisation (Verhulp 2005). As they are likely to be covered by a CLA anyway due to the general extension mechanism, employers will try to secure their interests by becoming a member of the employers' organisation negotiating the CLA.

If an employer wants to apply a specific company CLA instead of the generally extended sector-CLA, he or she can ask for dispensation from this general extension at the Ministry of Social Affairs and Employment. Until 2007, there were no official guidelines whether or not to grant this dispensation apart from the majority-threshold mentioned above; almost all parties that filed for dispensation were granted it. However, since 1 January 2007, there is a new 'examination framework for general extension' (*toetsingskader AVV*). The two new explicit requirements for a CLA to be granted dispensation is firstly that the union negotiating the CLA is independent from the employer. Secondly, the CLA has to contain 'company-specific characteristics', i.e. the provisions should differ in essential respects from the CLA from which dispensation is

requested (SZW 2007). In addition to these requirements, the parties having concluded the CLA from which dispensation is requested make a decision regarding the request.

5.3.2 Developments that triggered the Flexibility and Security Law

The discussion on the requirement to increase flexibility in the Dutch labour market dates back to at least 1968, when the Minister of Social Affairs and Health at the time asked the SER if the system of dismissal protection introduced by the German occupying administration during wartime in 1945 could be repealed (Verhulp 2001b). This system, which is often referred to as a 'dual system', has however remained in place relatively unchanged despite ongoing discussions and a near collapse of the Dutch government due to discussions on the issue in the fall of 2007. It should be noted however that there has been a simplification of a dismissal procedure on the basis of so-called 'mutual consent' in the fall of 2006. The new procedure entails that the employer can agree together with the employee that he or she agrees with the dismissal and therefore does not have to file a complaint against the employer to be entitled to unemployment benefits. It has however been reported that this can entail a decrease in employment protection, especially in the case of collective dismissals.

The Dutch system of dismissal is dual in the sense that both public and private law apply: In 1945 the provision was drawn up that to terminate a regular ('open-ended') employment contract, employers need permission from the regional employment office, since 2000 called the Centre for Work and Income (CWI) and since January of 2009 reorganised and renamed as *UWV Werkbedrijf*. On the other hand, dismissal is regulated in the Civil Code, in the law on the employment contract, which states that an open-ended contract can be ended (*opzeggen*) by an employer, after which the termination can be deemed unlawful and brought to court, which can confer a severance payment for the dismissed worker. Also, a civil court can dissolve (*ontbinden*) a contract by, whereby a judge terminates the contract and the employer again financially compensates the worker. In 85-90 percent of permit requests to the *UWV Werkbedrijf*, permission is granted, although special clauses for older workers and in case of illness may create considerable delays, as the termination can only be carried out after the ill person has recovered. Mainly the route of requesting a permit from the *UWV Werkbedrijf* is criticised by employers as unnecessarily restrictive, a burden on business and source of uncertainty (Houwing, Verhulp et al. 2007).

The discussions on flexibility and security in the 1990s were shaped by the fact that in this period the dismissal route via the regional employment office was

progressively more circumvented; employers increasingly started to file requests to dissolve the employment contract at the civil courts. In this case the dismissal is approved with a pay compensation or severance payment. In 1996, there was already a ratio of 1.4 to 1 of requests for permits filed at the regional employment office against requests for termination by court. According to Wilthagen (1998), ten years earlier the ratio had been 14 (permits) to 1 (court decisions). Since 1997, the courts openly advertised to apply a self-invented, informal 'formula' with which they calculate severance payment on the basis of one month pay for each year of service for workers up to 40 years of age; a month-and-a-half for workers aged 41-50 and two months for workers over 51. Since 1 January 2009, a new formula applies whereby workers up to the age of 35 receive half a months wage; workers aged 36-45 one month; workers aged 46-55 a month-and-a-half, and workers aged 56 or over two months. In addition to this formula, the courts apply a 'correction factor', a unit with which the compensation is multiplied based on which party carries the blame for the termination. For example, if the reason for termination lies fully in the employer's sphere of responsibility, the correction factor is 1, and if the reason for termination lies fully in the employee's sphere of responsibility, the correction factor is 0 (VVA 2009, p. 29).

Another pressing issue during the 1990s was the use of FT-contracts: before the F&S Law, a second consecutive FT-contract was treated as an open-ended employment contract, which could not be ended without permission from the regional employment office or the court. There were however two ways around this rule. First, derogation was possible by means of a collective agreement. Secondly, if more than 30 days lapsed between two contracts, they were not considered consecutive. Meanwhile the employee could continue doing the same job, now dispatched by a temporary work agency. After this one month, the initial often employer hired the worker again. Because the temporary work agency classified as another legal employer, the contracts were not considered consecutive and therefore there was no right to an open-ended contract. It was this 'revolving door' construction that was deemed undesirable and that the government wanted to curtail. From the early 1990s, courts were already ruling the agency and the initial employer to be regarded as consecutive employers; this was later taken up in the F&S law.

Besides the dismissal procedure and regulations of FT-contracts, there was a range of other aspects related to the F&S law. Since unemployment figures and the number of people on occupational disability benefits grew exponentially in the 1980s and

1990s, reform of the Dutch labour market became especially prominent in policy discussions. In the 1980s/ '90s, four policy domains were increasingly discussed together (Wilthagen, Tros et al. 2004): Firstly, and in line with request to the SER of 1968 referred to above, the system of dismissal protection was criticised as being too complex and rigid. Secondly, the labour market needed to be flexibilised and deregulated to increase competitiveness and economic growth. Thirdly, the social security system was questioned in terms of its affordability. And finally, protection for flexible workers was increasingly deemed necessary. These four issues were brought together in 1995 in a Memorandum on flexibility and security drawn up by the Minister of Social Affairs and Employment. Before this, in 1993, the previous Minister had sent a Memorandum to Parliament in which he announced the abolishment of the legal requirement of a permission to terminate employment contracts. However, responding to union pressure, his successor withdrew the proposal arguing that the requirement served a public policy objective by keeping some control over the inflow into unemployment, lowering the demand on social security and public finance.

In the 1995 Flexibility and Security Memorandum the Minister called for a new balance between flexible and regular employment and asked the social partners in the STAR to find a compromise. The memorandum stated that because of changes in the labour market on demand as well as supply side, Dutch labour law had to be modernized. This modernisation would have to be aimed at striking a new balance between flexibility and security, meaning that the process of flexibilisation of employment should occur in a "responsible and balanced manner for both parties" (MvT 1997, p.1, translated). The STAR responded with a unanimous advice in April 1996, taking into account a covenant drawn up during the same year by the social partners in the TAW sector. This covenant was drawn up by representatives of the trade union FNV, the employers' association VNO-NCW and an official from the largest temporary work agency in the Netherlands (Randstad, member of ABU). The covenant contained a proposal for a phase-system in which agency workers acquire more rights with the length of service. The STAR advice adopted this phase-system and the F&S Law almost completely took up the STAR advice. Some elements relating to TAW were taken up in a separate law that was negotiated simultaneously with the F&S Law: the 1998 Law on Allocation of Labour by Intermediaries, WAADI, which I will further discuss at the end of the next section. The reason for adopting the STAR advice virtually unchanged was the fact that the

government attached high value to the broad support of social partners underlying the advice (Verhulp 2001b).

5.4. The F&S law: a new balance between flexibility and security

During the 1980s and 1990s, temporary work was very much considered a precarious type of employment, or, as some authors have called it, "take-it-or-leave-it employment" as an only alternative to unemployment (De Jong, Schalk et al. 2007, p. 497). According to its 'explanatory memorandum' (*Memorie van Toelichting*, MvT), the F&S Law of 1999 intends "to strike a new balance" and promote labour market flexibility combined with more security for flexible workers, hence to redistribute the costs and risks between employers, temporary work agencies, and employees. The F&S Law aimed to increase the security of flexible workers, but this mainly applied for agency workers and not for FT-workers. Regarding FT-contracts the F&S Law mainly increased flexibility for employers because it increased the possibilities to make use of consecutive FT-contracts.

The F&S Law aimed to increase flexibility in three ways. Firstly, the F&S Law enabled more possibilities for successive FT-contracts (article 7:668a CC), i.e. from one to three possible FT-contracts. The new 'chain' provision is the so-called '3x3x3-rule' because A. a maximum of *three* consecutive temporary contracts can be offered for B. a maximum of *three* years that C. count as consecutive contracts if they are renewed within *three* months. This third element is an increase in security as before the F&S law this period was one month; now a longer time period between two FT-contracts does not break the 'chain' of three contracts leading to an open-ended contract. The 'revolving door' construction of a continuous series of FT-contracts interrupted by one month during which workers were re-hired via another employer, in most cases a temporary work agency, has been made more difficult because of a provision on consecutive employers taken up in article 7:668a, sub 2 CC. This provision entails that when a worker is doing the same job, but via two or more different employers, e.g. one of them being a temporary work agency, the these employers can be considered consecutive employers for the 'chain' of contracts leading to an open-ended contract. A second element aimed at increasing flexibility was the simplification and speeding up of dismissal procedures for permanent workers. This entailed shorter notice periods and a simpler procedure to get a permit for dismissal. These measures slightly decreased the costs of dismissal for employers. Thirdly, the market for TAW was liberalised by lifting license requirements and the abolishment of the maximum duration of lending out an agency worker. These pieces of legislation were taken up in WAADI.

To increase security, four measures were taken up in the F&S Law. Firstly, the law introduced two provisions aimed at strengthening the position of workers in small jobs that 1) structurally work more than is stated in their contract, or 2) have no employment contract at all. By means of so-called 'presumptions of law' workers can claim an employment contract or a contract for the hours they actually work. The aim of introducing these presumptions was to discourage precarious types of standby jobs or on-call contracts. The second measure entails that on-call workers are now entitled to a minimal payment of three hours every time they are called to work, even if they have worked less than that. The third measure was the limiting of trial periods to one month for contracts with a duration of up to two years; the trial period of two months for contracts longer than two years remained unchanged. This third security aspect was specifically related to extended possibilities to use FT-contracts: despite the wish on the employers' side to extend the trial period of two months only trial periods for short-term contracts were altered. The flexibilisation in FT-contracts now enabled employers to 'screen' new employees by offering them an FT-contract and effectively use an FT-contract as an extended trial period.

The fourth measure, of central importance in this project, involved an improvement of the legal and social security of agency workers: the F&S Law aimed to create more clarity regarding the legal position of the three parties of the agency work relationship: the agency, the agency worker and the user firm. Temporary work agencies are now considered legal employers and the relationship between an agency and an agency worker is termed an employment relationship. This was taken up in a new article 7:690 in the Civil Code. Before 1999, the legal foundation of an agency work contract was unclear and in some cases the relationship between an agency worker and the agency was considered an order contract (Grapperhaus and Jansen 1999).

Although agency workers are now covered by the law on employment contracts, not all provisions of standard employment contract law apply (exceptions are taken up in article 7:691 CC). The rationale for the legislator to do this is the flexible nature of the agency work relationship that should be maintained to a certain degree. Exceptions apply to the 3x3x3 rule on FT-contracts: this provision only applies after 26 weeks of employment through the same agency or the same user firm. Within these first 26 weeks the employment relationship is based on pure agency work conditions, i.e. the contract legally ends when the user firm terminates the lending-out period. The reason behind these exceptions is that agencies should retain their allocation function in the Dutch

labour market by providing the employer and the employee with a high degree of freely entering into and leaving the employment relationship. However, this state of affairs implies insecurity for the employee in terms of job and income (MvT 1997, p. 10). Therefore, the duration of this period of insecurity is limited to 26 weeks, after which the agency worker builds up rights to an open-ended contract with the agency. With regard to dismissal, derogatory rules apply, making it somewhat easier to lay off an agency worker with an FT or open-ended contract (Verhulp 2001b).

Finally, a number of provisions for the TAW sector are taken up in the 1998 WAADI. With the WAADI, the existing permit system for temporary work agencies with respect to their placement activities was done away with. Before 1998, agencies needed an official license from the Ministry of Social Affairs and Employment. Apart from the abolishment of the license system, WAADI contains a number of other provisions. The wage ratio provision (*Loonverhoudingsvoorschrift*) (article 8 WAADI) states that agency workers are entitled to the same wages and compensation as comparable workers at the user firm, unless the agency worker is covered by a CLA. When the agency lending out the worker is not covered by a CLA and the CLA covering the user firm contains provisions on agency workers, the CLA of the user firm applies. Other aspects of the agency work relationship laid down in WAADI are a prohibition for the agency to charge a fee for the lending out service (article 9 WAADI); a prohibition to deploy agency workers to replace striking workers (article 10 WAADI); and a requirement of the agency to provide information to the agency worker regarding the professional requirements and regarding health and safety regulations at the workplace (article 11 WAADI).

After deregulation by means of WAADI in 1998 and a decade-long absence of a license-scheme, the TAW sector introduced a private-sector initiative in 2007: the so-called NEN 4400-1 norm. This norm has been developed by ABU to distinguish law-abiding agencies from fraudulent ones by offering them certification. After 1998, illegal activities have become a major problem in the TAW sector, and a constant point of concern for the large agencies united in ABU. Most recent estimates show that there are about 6,000 fraudulent temporary employment agencies lending out roughly 100,000 agency workers per year (De Bondt and Grijpstra 2008). De Bondt and Grijpstra outline five types of illegal agency work activities (2008, p. 11). Firstly there is illegal employment, where labour migrants are working without working permits while they should have these. Secondly there is fraud concerning working time when workers are working more

than is permitted by the law on working hours (*Arbeidstijdenwet*). The third is too little or no payment at all regarding the required contribution for wage taxes and social security premiums. The fourth type of fraud is related to wages; the employee is not paid according to the generally extended CLA in the sector. The fifth type of fraud is exploitation when intermediaries offer their workers housing and transportation for excessive prices.

The aim of the ABU with the NEN-norm is that firms will only hire agency workers from these ABU-certified agencies (Schram and Sol 2007). By installing and regulating such a scheme instead of the government, the employers' organisation ABU gains complete control to set the terms for certification and therefore might exclude issues that affect their own members (e.g. observance of CLAs). In addition, the certification scheme is based on the initiative from the agencies themselves so that the large and increasing number of fraudulent firms will probably never apply for NEN-certification. The basis of such a self-regulating scheme is that all parties should abide by it.

5.5. Deviations from the F&S Law in collective labour agreements

Perhaps the most interesting feature of the F&S law is that it encourages the social partners to reassess their situation and find customized solutions on a decentralized basis through the legal technique of '3/4-mandatory law' (*driekwart bindend recht*). This means that deviations from the law are possible within a CLA. Social partners are encouraged to renegotiate existing rules and regulations if they find the new attribution of opportunities, risks and liabilities in the F&S Law too restrictive or too permissive (Houwing, Verhulp and Visser 2007, p. 66). The decentralisation of decision-making power to the social partners is in line with a development visible since the Wassenaar Accord in 1982, which can be termed "organized decentralisation" or "negotiated flexibility" (Visser 1998). This trend found further expression in the "New Direction" central agreement of 1993, negotiated within the STAR, allowing derogation from legal regulations by collective agreement (STAR 1993). The 1993 STAR agreement referred to changing needs of employers and employees, and the need to find a new balance between demands of employers on the one hand and legal protection of employees on the other (STAR 1993, p. 4). In its 1996 flexicurity advice, the STAR systematically referred to its 1993 "New Direction" document. This approach to negotiated flexibility relies on the capacity of trade unions and employers' organisations to engage in negotiations over their interests and find a compromise. In this section I will look at the deviations from the F&S law

within CLAs regarding the 3x3x3-rule on FT-contracts (5.1) and the 26-weeks agency work period (5.2).

5.5.1 Fixed-Term contracts – divergence in the flexibility-security balance

As many of the flexibility and security provisions on the F&S Law, the provisions on FT-contracts and TAW are 3/ 4-mandatory; social partners can deviate from all three elements of the '3x3x3-rule'. Since 1999, the Dutch Ministry of Social Affairs and Employment commissions regular studies into the extent to which provisions in CLAs deviate from the F&S Law. In the three studies carried out so far, a large number (110-120) of CLAs was scrutinized, covering around three-quarters of all Dutch employees (Smits and Samadhan 2002; Smits 2004; Smits and Van den Ameele 2007). In 2001, 32 percent of the CLAs deviated from the 3x3x3-rule. In most of these CLAs the number of three fixed-term contracts was reduced, the maximum duration on FT-contracts was shortened, and the interval period was reduced (see table 5.1 below) (Smits and Samadhan 2002). For the 2004 report, Smits analysed 110 CLAs. In 21 of these CLAs (19%), deviations were found regarding the maximum number of consecutive fixed-term contracts; in nine the number was brought down (usually to 2); in the remaining twelve CLAs the number was increased, e.g. to 5, 7, or even unlimited. In 23% of CLAs the maximum period of 3 years was altered; in 20% of this share it entailed an extension, in some cases to unlimited. The final element of the 3x3x3-rule, the period between two contracts, was shortened in 30 (i.e. 27%) of the 110 CLAs (Smits 2004). Comparing the results between 2001 and 2004, the number of deviations has increased slightly, whereas in 2001 most CLAs restricted flexibility, the 2004 negotiations had tended to focus more on increasing flexibility. This could reflect business conditions; in 2001 the labour market was tight, whereas 2004 was marked by an economic downturn and a rise in unemployment. The CLAs that increased the number of three consecutive FT-contracts rose from 21% in 2001 to 57% in 2004. The CLAs in which the maximum period of three years was extended increased from 18% to 20% (see table 1).

The trend between 2004 and 2006 shows further deviations from the F&S law of which the increase in the number of contracts has gone down again but deviations entailing an increase in maximum duration have more than doubled. In 2006, two more CLAs than in 2004 (i.e. 25 of the 110) contained a deviation from the stipulated three consecutive FT-contracts. In thirteen of these (up from nine in 2001), a smaller number was negotiated (mostly 2). Like in 2004, twelve CLAs had a higher number of FT-contracts, in some cases unlimited. The results for the duration of FT-contracts are more

diverse than in 2004: the period was decreased in 25 CLAs to 1 or 2 years, up from 20 in 2004; in thirteen CLAs the period was 5 or 6 years or unlimited. The amount was only five in 2004. In two CLAs, the provisions on number or duration were nullified, i.e. there were no limits on number of contracts or duration; this was the same in 2004 (Smits and Van den Ameele 2007). In short, the number of deviations has increased, mainly to increase flexibility in the maximum duration of contracts.

Table 5.1. Deviations from provisions on FT-contracts, 2001, 2004, and 2006

	2001	2004	2006
No of CLAs analysed	120	110	110
Coverage % of employees	73	85	73
% of CLAs in line with F&S law	68	62	57
% of CLAs deviating from F&S law	32	38	43
Deviation from maximum number of three contracts, % of CLAs	20	19	23
% more	21	57*	48*
% less	79	43	52
Deviation from maximum duration of three years, % of CLAs	22,5	23	27
% Longer	18	20*	47*
% shorter	82	80	53
Deviation from interval period of three months, % of CLAs	7,5	27	13
% Longer	0	0	0
% shorter	100	100	100

Source: Smits and Samadhan 2002; Smits 2004; Smits and Van den Ameele 2007; own calculations. * 2 CLAs contain no limit

These outcomes showing an increase in the possibilities to use FT-contracts partly fuelled the writing of a proposal by the Minister of Social Affairs and Employment to review the dismissal system (*Voorstel herziening ontslagrecht*) in the fall of 2007. Because the government could not reach agreement over the issue, the "Bakker commission" was installed to give advice, delivered in June 2008. This advice dealt with labour market participation in general and the system of dismissal protection was one of its elements. The commission Bakker stated that the relatively high costs of dismissal prevent job mobility and should therefore be brought down. The commission suggested reserving part of the compensation paid for dismissal for a 'work budget' to be used for training and/ or additional income during unemployment, and should be financed by employers, employees, the government and the social partners (Commissie Bakker 2008). In the semi-annual negotiations between the social partners in the fall of 2008, employers and unions agreed that reform of the system of dismissal is no longer on the agenda.

Two important effects of these studies into the implementation of the F&S law in CLAs is that they create the possibility for feedback loops and learning processes.

Firstly, because the governing bodies gain knowledge of the extent to which social partners deviate from the national-level provisions, they can reflect back on this at the national level. By discussing the customs that have evolved surrounding temporary work, they can create feedback loops that might in turn change the national institutional framework. The provisions on FT-contracts have in some sectors been extended up to the point where they are considered in contrast with the aim of the legislator. The knowledge of these developments has sparked the debate on whether or not to amend the 3/ 4-mandatory provisions of the F&S law (STAR 2005). There is however no uniformity on this issue: employers feel the deviations are needed to retain the function of temporary work in the Dutch labour market, while trade unions feel that increasing flexibility is no longer in line with the intentions of the law (STAR 2007). For trade unions therefore, these deviations constitute an institutional change that we can understand as *drift*. A second possible effect is learning, which can occur as social partners in other sectors are given insight into what social partners in other sectors negotiate. This might then cause convergence in the types of deviations negotiated between sectors over time. Some convergence was observed in two recent studies, which in addition to the studies commissioned by the Ministry, not only shed light on how many CLAs contain deviations from the law, but also information as to how many employees are affected (i.e. covered) by these derogating CLAs (Schils 2007; Houwing and Schils 2009).

The study by Schils (2007) shows that 6.6% of employees are covered by a CLA with an interval period shorter than three months. These CLAs are found in agricultural, trade and health care sectors. Regarding possible deviations from three FT-contracts, Schils found that mostly in the sectors construction (10%), commercial services (15%), and education (almost 30%), workers are covered by CLAs with less than three possible contracts. The CLAs in education also have deviations *increasing* the number of FT-contracts, affecting 20% of workers in that sector. The same applies for about 5% of workers in industrial sectors. In the exact same sectors as those with deviations regarding the *number* of FT-contracts, CLA-provisions deviating from the maximum *duration* of three years are found. Again, the educational sector has deviations increasing the maximum duration (19% of workers) as well as decreasing the maximum duration (almost 30% of workers). Unlimited increases in duration affect four percent of workers in the sector education.

In the study by Houwing and Schils (2009) the three elements were taken together to determine an overall flexibility and security score for FT-contracts. The study furthermore compared two points in time: 2000-2001 and 2005-2006. The outcomes showed that, taking the average for all sectors in the Dutch economy in 2000/ 2001, around seven percent of workers were affected by provisions more flexible than the F&S Law (i.e. more contracts/ for a longer duration/ with a shorter interval period), whereas around ten percent of workers were covered by CLAs with more secure provisions than the F&S Law prescribes. Between 2000/ 2001 and 2005/ 2006, the deviations from the F&S Law diminished, mostly at the expense of more secure provisions; they decreased to five percent of workers whereas the more flexible provisions decreased to four percent of workers. This outcome might point to the fact that in the first CLA after the introduction of the F&S Law, the possibility to deviate was taken up enthusiastically by the social partners, whereas in 2005/ 2006 social partners realised that the F&S Law was sufficiently in line with their needs. Another possible explanation could be that in later years, the social partners for some reason were less able to reach agreement on these issues.

5.5.2 Temporary Agency Work- two steps towards flexibility

In this section, I describe the deviations in CLAs regarding TAW. The most important of these deviations is the 'phase-system', which was drawn up during the negotiations on the F&S law in a 1996 covenant between the social partners in the TAW sector. The phase-system is a deviation from article 7:691, sub 1 CC, which regulates the agency work relationship and was implemented by means of the F&S law. Article 7:691, sub 1 CC states that the period before which an agency worker obtains an FT- or open-ended contract is set at 26 weeks; this article itself is a deviation from the 3x3x3-rule laid down in article 7:668a CC. Below, I will show that with the phase-system in the CLAs for the TAW sector, this legal period of 26 weeks has been substantially lengthened.

There are two CLAs in the Dutch TAW sector: the ABU CLA for the overriding majority of agency work contracts, and the NBBU CLA for small and medium-sized temporary work agencies. The ABU is the largest employers' organisation and the NBBU is the employers' organisation for small and medium-sized firms. The NBBU-CLA is granted dispensation from general extension of the ABU-CLA. Before I elaborately discuss these two CLAs, in the way they differ from each other and how they have changed over time, I briefly mention two recent attempts by other employers' and employees' representatives to negotiate a deviating CLA that would apply alongside the

ABU and NBBU CLAs. These CLAs were however not granted dispensation from the ABU-CLA. In addition, it is important to keep in mind the estimated 6,000 fraudulent agencies that are not affiliated to any employers' association and might not apply a CLA.

The two other CLAs drawn up for agency workers who have requested dispensation from general extension of the ABU CLA are the AVV CLA and the VIA CLA. The AVV CLA was drawn up by a new union (founded in 2005) called the Alternative for Trade Union, AVV (*Alternatief Voor Vakbond*)[20], while the VIA drew up a CLA for agencies specialising in agency workers from abroad. The CLA by the Alternative for Trade Union was drawn up in 2006 together with the Dutch Association for Temporary Work and Intermediary Agencies, NVUB (*Nederlandse Vereniging van Uitzend- en Bemiddelingsbedrijven*). The AVV and NVUB claim their CLA to offer more security for agency workers as agency workers already obtain an open-ended contract after one year. However, the extra degree of security might be limited as the contract ends when the agency is not able to find more assignments for the agency worker. An agency worker does however build up rights with such an open-ended contract. Every year of this open-ended contract the agency worker builds up one month notification period for dismissal. After two years the agency worker receives compensation for dismissal consisting of one-month's wage.

The request of AVV and NVUB for dispensation from the ABU CLA was not granted because, according to the minister, the CLA did not contain 'company-specific characteristics'. This refusal was based on the 2007 'examination framework for general extension' (see section 3.1 above). Company-specific characteristics entail that the activities of the firms requesting dispensation (in this case the NVUB members) have to be fundamentally different from the activities of the other firms, in this case ABU-members. The AVV and a CLA-expert claim that based on this principle, many CLAs, including the NBBU CLA, should not be granted dispensation. Also, this requirement favours the established unions over new actors in the labour market (Het Financieele Dagblad 22 June 2007). New parties threaten the position of large players, i.e. mainly ABU. In December of 2009 Donner, the Minister of Social Affairs and Employment, was reprimanded by the State Council (*Raad van State*) as the refusal of dispensation in 2008 was indeed unjust. The reason given by the State Council was that the representativeness of the ABU is now based on the ABU's assessments alone and is questionable (Nods 2009).

20 Probably not by coincidence their name has the same abbreviation as the general extension procedure: Algemeen Verbindend Verklaring.

The VIA CLA was drawn up between the Association of International Labour Intermediaries, VIA (*Vereniging van Internationale Arbeidsbemiddelaars*) and the trade union *Landelijke Belangen Vereniging*, LBV, which can be translated in 'National Interest Association'. The LBV also negotiates the CLAs with the NBBU. The status of this organisation is somewhat problematic to determine. FNV and ABU both claim that the LBV cannot be considered a 'real trade union', but merely a very pliable employee's organisation (Jorritsma 2005). As mentioned above, to negotiate a CLA, a union does not have to be representative. In addition, a union does not even have to have members falling within the scope of the CLA, i.e. working in the firm or sector that is covered by the CLA (Verhulp 2005). Firms often negotiate their own CLA with unions, which have not been party to the sector-level CLA, to be exempted from general extension of the sector-level (in this case ABU) CLA. The LBV has been described as a union that has "not taken a clear position in the bargaining process on employment conditions and whose member base is not clear" (Verhulp 2005, p. 21). Besides the fact that the LBV is only recently acting as a partner in the TAW sector, it allegedly does not have agency workers in its membership base, which calls into question the interest of the LBV in negotiating a CLA for agency workers. The financial compensation by the employers' association might be of (too) central importance here (Verhulp 2002). Nevertheless, the LBV was the negotiating partner up to 2009 of the other recognized CLA in the sector, the NBBU CLA (see below).

The VIA has about 40 members, together posting around 45,000 labour migrants, mainly Polish, per year. The 2005 VIA CLA, which was to apply to around 30,000 (mainly) foreign agency workers, stated that only FT- or open-ended contracts can be concluded, although FT-contracts can be offered for an indefinite period. The VIA and LBV filed for dispensation in 2005 but this was denied because of possible discrimination on the basis of nationality, which conflicts with (EU) legislation on equal treatment (Breda court, 4 November 2005, nr. 05/3329)[21].

Although the NBBU-CLA and ABU-CLA have protocols specifically for temporary labour migrants, the VIA again drew up a CLA together with another union, the 'Internet Trade Union', in the early beginning of 2009. With its own CLA, the VIA again wishes to be exempted from the ABU or NBBU CLA, although these CLAs can also be applied to foreign agency workers. The largest trade union FNV and the main

21 One might ask whether this ruling is just in light of the international free movement of workers (Van Haelst, M. A. (2005). "ABU-CAO en de knelpunten van de loonverhoudingsnorm." Arbeidsrecht **2005**(10): 27-33.

employers' organisations ABU and NBBU, heavily criticized the VIA CLA. The FNV mainly emphasized the danger of social dumping in a period of rising unemployment in the Netherlands while the ABU and NBBU mostly feared increased competition based on lower wages when suffering from the economic downturn. FNV argues that the VIA-CLA is a 'minimum-CLA' because wages are 5-10% lower and supplements are 10% lower on average compared to the other two CLAs. During the first 3.5 years, the contract between the agency and the agency worker is based on pure agency work condition, i.e. 'no work no pay'. Also, the agency worker cannot leave the agency as he or she pleases and is contractually bound to the agency. The Internet Trade Union and the VIA claim that the VIA-CLA is better for temporary migrant workers as it is specifically tailored for them. The VIA-CLA does offer special benefits such as housing and a free ticket home in the case of illness, but these allegedly do not weigh up to the minimal employment conditions. In early February 2009, the Minister of Social Affairs did not approve the CLA between the VIA and the Internet Trade Union. This was in line with the stance taken earlier by the minister at the end of 2005. The main reasons were that the agreement is discriminatory for foreign workers, it provides lower employment conditions for migrant agency workers, and there is the possibility of the crowding out of (more expensive) Dutch workers.

The VIA has another representation of these facts and claims that it is consistently refused a place at the bargaining table with the unions while they annually post around a substantial amount of migrant workers. This happens despite the fact that their members are required to be certified by the ABU NEN 4400-scheme, and apply to norms for provision of housing and 'decent employership'. They argue that their CLA can help combat the increasing fraud in the agency work sector. It is not entirely clear what is going on here, though it seems justified to conclude that the VIA operates on the 'cleavage lines' in the industry. Are they operating on the margin and the borders of fraud? Are they trying to exploit workers by circumventing labour rights, social security, and taxation? Or are they pioneers trying to gain position in a field dominated by vested interests? To determine if the actions of the VIA border on fraud, it is important to assess the status of the Internet Trade Union. This is very difficult, as there is very little information available on this union. Secondly, a detailed study of both CLAs is needed to accurately assess to what extent agency workers covered by the VIA CLA are worse of than their counterparts covered by the NBBU or ABU CLA. On the one hand, the VIA would probably not negotiate their own CLA if it did not provide some competitive

advantage over the other CLAs. On the other hand, the other two employers' organizations have an interest in securing the largest possible market share for themselves and a new player might take away workers that they could post. Based on the stance of the trade unions, one could however argue that they would probably not refuse to sign a CLA that provides excellent working conditions. Nevertheless, they too might be fighting to secure the interests of their constituency, which is not made up of foreign workers. In any case, the strong role of the large employers' associations and trade unions is being threatened by the VIA, AVV and other new players in the field.

The ABU agreement

The ABU CLA is on employers' side concluded by the largest employers' association in the TAW sector: ABU. The ABU has around 370 members employing around 700,000 agency workers and accounts for approximately 60% of the market for temporary agency work (ABU website, June 2009). The unions signing the CLA are the relevant subdivisions of the three peak trade unions FNV, CNV and De Unie. The ABU has negotiated CLAs for the agency work industry since 1971. As mentioned above, the parties to the ABU CLAs have made use of the ability to deviate from what was laid down in the F&S Law by introducing a phase-system. This phase-system entails that the legal position of the agency worker becomes stronger in accordance with the time that he or she is working through the agency. As time progresses, an agency worker builds up more rights, but as a result becomes less flexible (CBS, 2006a p. 73). The possibility to derogate by collective agreement was considered vital by the temporary work agencies, since the 1999 F&S law tended to restrict their room for manoeuvre, mainly regarding consecutive contracts. This is why the abovementioned covenant was drawn up; in the covenant the phase-system was exchanged for a transparent system of remuneration and increased rights for agency workers regarding training and pensions.

In the 1999-2003 ABU CLA there were four phases (1-4); now there are three (A, B and C). In phase A (previously phase 1 and 2) the agency worker is deployed on the basis of an agency work agreement, or agency work clause: the employment contract between the agency and the agency worker ends when the user firm no longer needs the agency worker. The wage is set per assignment. In stage B, the worker obtains an FT-contract and in stage C an open-ended contract, both with the agency. In stage B and C the agency worker is entitled to wages when he or she is ill or when there is no more work at the user firm. In stage C, the user firm has to continue paying part of the wages

after the contract with the agency has expired. Under the 1999-2003 CLA, agencies could choose for either the phase-system or the 3x3x3-rule in article 7:668a CC. This possibility was done away with in the 2004-2009 CLA. For an overview of the most important changes between the two ABU CLAs, see table 5.2 below.

The NBBU agreement

Another 10-15% of the market in terms of agency workers and turnover is taken up by the Dutch Federation of Intermediary and Staffing Agencies, NBBU (*Nederlandse Bond van Bemiddelings- en Uitzendondernemingen*) set up in 1994 especially for small and medium-sized agencies. The NBBU represented around 560 members employing roughly 100,000 agency workers in 2007 (Donker van Heel and Van Nuland 2008). The NBBU negotiates CLAs with the LBV[22]. As mentioned above under the discussion of the VIA CLA, it is unclear to what extent the LBV can be considered an independent union. The agreement signed by NBBU and LBV provides agency workers with fewer rights than the ABU agreement. This is related to the fact that with this agreement the NBBU aimed for, and was granted, dispensation from general extension of the ABU CLA. The (smaller) NBBU-members do not want to employ their workers on the basis of an open-ended contract. They are focussing on 'traditional' short-term agency work. The NBBU CLA also contains a phase-system, which is different form the ABU phase-system (see table 2). Most notably, the 'agency clause phase', is 130 weeks in the NBBU CLA, while 78 weeks in the ABU CLA. Despite this extended flexibility, over three-quarters of NBBU employers wish to extend the agency clause phase (Donker van Heel and Van Nuland 2008, p.21).

Table 5.2 below contains the main differences between the ABU and NBBU CLA and the developments over time. I analyse the elements relating to three of the four types of security discussed in this chapter: job security (with the agency), employment security (training), and income security (equal pay and right to income when ill or absence of work).

22 The new NBBU CLA effective from April 2009 is also negotiated with the largest trade unions FNV and CNV.

Table 5.2. The TAW agreements compared

	1999-2003 ABU CLA	2004-2009 ABU CLA	1999-2004 NBBU CLA	2004-2008 NBBU CLA
Phase-system (The number of hours worked per week is not relevant for the advancement of the phases.)	**Phase 1:** 26 weeks. Agency clause. **Phase 2:** 26 weeks. Agency clause. Build up of pension and "need-for-training conversation". **Phase 3:** 6 months work for the same agency; 24 months with different agencies. An FT-contract should be offered for at least three months. **Phase 4:** After 18 or 36 months, open-ended employment contract with the agency. [Instead of phase-system, art. 7: 668a CC on consecutive temporary contracts can also be applied]	**Phase A** (previous Phase 1/2): 78 weeks. Agency clause. Intermission period longer than 26 weeks: start again from Phase A **Phase B** (previous Phase 3): FT-contract with the agency, 104 weeks. Maximum of 8 FT-contracts. Intermission period longer than 13 weeks: start over of Phase B. Intermission period longer than 26 weeks: start over of phase A. **Phase C** (previous Phase 4): After a maximum of 3.5 years: open-ended contract with the agency. [art. 7: 668a CC on consecutive temporary contracts can no longer be applied]	**Phase 1:** 26 weeks. Agency clause. **Phase 2:** 26 weeks. Agency clause. Build up of pension and "need-for-training conversation". **Phase 3:** FT-contract with the agency. 1 year in which a maximum of 4 contracts or a minimum of three months each can be offered. **Phase 4:** After 18 months in the same job with the same user firm, or 36 months with different employers: open-ended contract with the agency. Intermission period in each phase: 1 year: start over in Phase 1. 3 months: start over of current phase. [Instead of phase-system, art. 7: 668a CC on consecutive temporary contracts can also be	**Phase 1:** 26 weeks. Agency clause. **Phase 2:** 104 weeks. Agency clause. Intermission period during Phase 1 and 2 and between Phase 2 and 3: 26 weeks; **Phase 3:** FT-contract, 52 weeks, maximum of 4 employment contracts with no minimum duration. Art. 668a CC can also be applied. Intermission period: between 13-26 weeks, start over from Phase 3, longer than 26 weeks, start over from Phase 1. **Phase 4:** open-ended contract. Shorter route of 18 months abolished due to administrative costs. [Instead of phase-system, art. 7: 668a CC on consecutive temporary contracts can also be applied after phase 1]

			applied from phase 3]	
Agency clause:	52 weeks	78 weeks	52 weeks	130 weeks
The end of the assignment by the user firm and sickness entails the end of the working assignment (translation of article 7: 691, sub 2 CC in CLA); In NBBU CLA no notice period required; in ABU CLA no notice required during the first 12 weeks, after that 1 day for agency workers and 14 days for agencies; The agency only pays a wage for the time that the agency worker has actually worked (article 7:628, section 1 CC does not apply); Art. 7: 668a CC on consecutive temporary contracts does not apply.				
Equal wage as comparable worker at user firm.	When CLA of user firm is reported with the *Stichting Meldingsbureau Uitzendbranche* (SMU), this CLA applies to the agency worker instead of the ABU-CLA.	SMU abolished. After 26 weeks wage of user firm, unless wage applies earlier according to the CLA of the user firm. Wage of user firm applies from day 1 for skilled workers (*vakkrachten*).	Wage of user firm from day 1 (according to article 8 WAADI), or NBBU wage.	Wage of user firm from day 1 (according to article 8 WAADI)
Training fund 'STOOF' since 2003 (*Stichting Opleiding & Ontwikkeling Flexbranche*) set up by three largest unions and ABU	Worker in Phase 2 is entitled to "need-for-training conversation". Agency is required to reserve 1.02% of the gross wage sum for training of agency workers.	Agency is required to reserve 1.02% of the gross wage sum for training of agency workers. After 26 weeks, 1% of the individual wage is reserved for a Personal Training Budget that can be used from phase B. When the budget is not used, it is paid in cash on leave of the agency worker.	Worker in Phase 2 is entitled to "need-for-training conversation", initiated from the agency. Agency is required to reserve 0.4% (1999) -1.02% (2003) of the gross wage sum for training of agency workers.	Worker in Phase 2 is entitled to "need-for-training conversation", initiated from the agency *worker*. Training is agreed upon in writing. Agency is required to reserve 1.02% of the gross wage sum for training of agency workers.
Pension	After 26 weeks of working, and aged 21 or older, an agency worker starts building up a pension. For workers in phase A, the agency contributes 2.6%; in phases B and C the contribution is 12.3%. This applies to both CLAs since 2004 via the sector-wide pension fund 'Stiplu' (*Stichting Bedrijfspensionfonds voor Langdurige Uitzendkrachten*), now called StiPP (*Stichting Pensioenfonds voor Personeelsdiensten*). Since February 2009, all agencies (i.e. not only ABU and NBBU members) should provide pensions. Agency workers can also be covered by the pension scheme of the user firm (e.g. in construction skilled workers are covered by the sectoral pension fund)			
Sickness benefits	In phase A, agency workers are by law entitled to sickness benefits consisting of 70% of the last-earned wage, which is supplemented by the agency to 90% in the first year and 80% in the second year. This separate provision of 80% in the second year only applies from 2007 in the ABU CLA; The NBBU CLA stipulates 90% in two years.			

5.6. Outcome: balance between flexibility and security?

Since the second half of the 1990s, when unemployment levels started to drop significantly, the Netherlands has received international praise for its balance between flexibility and security in the labour market (Wilthagen, Tros et al. 2004). Based on the introduction of the F&S law in 1999, the Netherlands has recently been regarded as an "example of flexicurity" (European Commission 2007b). I will now shed some light on flexicurity specifically for FT-contracts and TAW. I have operationalised flexicurity as the security for these types of flexible labour. This is in line with the first "flexicurity pathway" defined by the European Commission, namely more security for flexible workers (ibid. p. 28/ 29). I flesh out security in four elements: job security, i.e. the nature of the contract for agency workers and the transition rates into open-ended employment with the current employer for FT-contracts; employment security, i.e. the right to training and transitions into open-ended employment with another than the current employer; income security, i.e. equal pay, access to social security and rights to build up a pension; and representation security, i.e. the degree to with temporary workers are represented by works councils and trade unions.

The F&S Law and the CLAs negotiated after 1999 have increased flexibility of FT-employment. The use of FT-contracts was liberalised, which is taken a step further in sector-level CLAs. Regarding agency work, the F&S law improved rights of agency workers, but in the CLA the legal period before an FT or open-ended contract is obtained (i.e. the agency clause) was substantially extended (see table above). This extension increased flexibility for both employers and agency workers as they can both end the employment relationship on very short notice. Following the reasoning of the memorandum to the F&S Law (1997, p. 10), extension of this period however entails a decrease in security for agency workers. Correspondingly, an FT contract and especially an open-ended contract for an agency worker entails less flexibility for the agency (Knegt et. al 2007, p. 77). In exchange for the increase in flexibility in the CLA by means of an extension of phase A, the requirement of equal pay after 26 weeks was made more transparent.

5.6.1 Job security: is temporary work a dead-end job?

With regard to TAW and FT-contracts there is a possibility that a gap arises between people in these short-term, flexible employment relations, and people in long-term, open-ended employment. This situation is referred to as a segmented labour market,

characterised by great difficulty of moving from a small, short-term job with little security – also often termed a 'precarious' job – to stable employment with a strong legal position and high security. The degree to which the Dutch labour market is segmented is related to whether an FT or agency job is a 'dead-end job' or there is a high transition rate into regular employment. I already noted under 2.1 above the difference in transition potential between FT and agency workers: People with FT-contracts are often better educated than people on agency work contracts and (therefore) have better prospects of transition into open-ended employment (RWI 2006, p. 10/ 11). Here, I first discuss the job security of agency workers and then move on to job security of workers on FT contracts.

Regarding TAW, there are in fact four possibilities: obtaining an FT or open-ended contract with the agency, or an FT or open-ended contract with another employer (e.g. the user firm). In sectors employing many agency workers such as public transport, the unions negotiate provisions on hiring agency workers by the user firms. The degree of transitions to open-ended employment is not only shaped by the relevant CLA-provisions, but also by preferences of flexible workers. In 2006, 65% of agency workers saw agency work as a way to acquire an open-ended employment contract (Donker van Heel, Van Nuland et al. 2007). In 2006, 35% of agency workers found an open-ended job with another employer; 6% of this group was not looking for this type of employment. Of these open-ended jobs, 16% was with the user firm that had first hired the worker through the agency (ibid. p. 39). Another report shows a similar figure: the total share of agency work transitions to another employer in 2006 was 31%, of which 24% entailed an FT-contract and 7% an open-ended contract (Knegt et al. 2007, p. 84). These last figures however do not distinguish whether the open-ended contract was with the user firm or with another employer. On the basis of these figures, agency work in the Netherlands does not appear to be 'dead end street employment' for at least one-third of agency workers. However, it is hard to determine a 'stepping stone effect' of agency work when you try to takes into account what the possibilities of obtaining a regular job would have been, had the people observed not worked through an agency (De Graaf-Zijl, Berg et al. 2005).

Apart from obtaining an FT or open-ended contract with another employer, agency workers can also acquire these contracts with the temporary work agency. The F&S Law aimed to increase job security for agency workers by creating the possibility to obtain an FT or open-ended contract with their agency over time. Probably related to

this, there was a substantial increase in lay-offs of agency workers through the subdistrict courts just before the introduction of the F&S Law in January 1999 (Van het Kaar 1999). Temporary agency workers, working for the same employers for very long periods of time, were sent home to prevent them from obtaining a permanent employment contract (Dirks 1998). In response to pressure from FNV, the ABU decided to repair the damages by offering 1,500 agency workers an open-ended contract or financial compensation (Grijpstra, Hesselink et al. 1999). Besides sending agency workers home, around 3,500 agency workers obtained an FT-contract for three months and 5,000 an FT-contract for 1 year (Grijpstra, Hesselink et al. 1999). The unions regarded these contracts as a way for employers to circumvent the law by preventing workers to build up rights that would eventually lead to an open-ended contract (Boersema 1999). A way to use the law to their advantage was also displayed on the side of agency workers: they called in sick which, according to the formulation in the CLA, leads to the termination of the employment contract. Because they obtained a new employment contract when they returned to their job, they were closer to an FT- or open-ended contract with their agency (Van den Braak 1999).

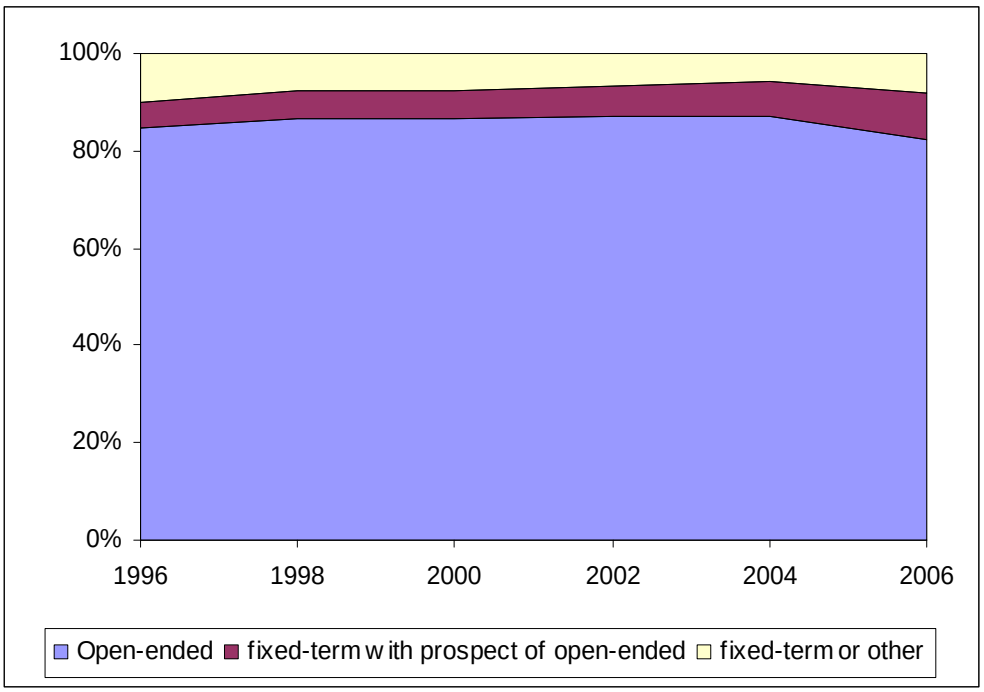
The overriding majority of contracts of Dutch agency workers is covered by the ABU CLA, containing the phase-system. Phase B entails an FT-contract with the agency and phase C an open-ended contract with the agency. Recent figures show that 6% of agency workers are in phase B or C (Donker van Heel, Van Nuland and Van der Ende 2007, p. 21). At the beginning of 2000 this figure was higher for all agency workers (i.e. not only ABU agency workers): an estimated 20 percent of agency workers had an FT or open-ended contract with the agency (Wilthagen and Rogowski 2002, p. 260). This difference in figures is likely the result of the fact that 10% of agency workers covered by the NBBU agreement have an FT or open-ended contract with NBBU-members, with an additional 3% of NBBU workers hired on an FT-contract on the basis of 668a CC (Donker van Heel and Van Nuland 2008, p. 21). Another report calculating transitions showed that in 2006, almost 13% of agency workers made the transition to an FT-contract with the agency and 3.4% to an open-ended contract with the agency (Knegt et al. 2007, p. 84).

Just after the introduction of the F&S Law in 1999, about half of the agencies expected an improvement in legal security of agency workers (Grijpstra, Hesselink et al. 1999). However, the improvement in legal status (i.e. employment on the basis of a fixed-term or permanent contract) is likely to be highly dependent on the business cycle

(Moolenaar 2002). The logic is that when the demand for agency work or work in general is low, the agency might be inclined to prevent agency workers to ever reach a phase B or C contract and prevent risks for the agencies in case there is no more work for the agency worker: "when economic times are bad, agency workers have as little security as they had under the old law" (Moolenaar 2002. p.133/ 134). A report commissioned by ABU supports this claim by showing that in 2004 the number of agency workers obtaining an open-ended contract had decreased significantly (Nauta and Donker Van Heel 2005). The sector is highly sensitive to business cycle fluctuations and this is reflected in the level of job security for agency workers.

The share of workers with an FT-employment contract that made the transition to an open-ended contract within one year was 37% in 2007 (EC 2007). As these figures on transitions do not distinguish between the current or another employer, transition rates indicate job as well as employment security. The Institute for Labour Studies OSA groups FT-contracts together with seasonal and on-call contracts and reports that the amount of people with a flexible contract of this type as a share of the total workforce increased from 11.8% in 1992 to 17.5% in 2006 (OSA 2008) (OSA 2008, p. 108). The OSA divides this group into people with an FT-contract with the prospect of an open-ended contract, and the remaining group with an FT, seasonal, or on-call contract. As can be seen from the figure below, the group of people on an FT-contract with the prospect of an open-ended contract as a share of total flexible contracts increased from little over one-third to well over half of all flexible contracts between 1996 and 2006 (OSA 2008). This development shows that after the F&S law was introduced, and in line with the intentions of the legislator, FT-contracts were increasingly used as extended trial periods.

Figure 5.2. Share of open-ended contracts, FT-contracts with prospect of permanent employment, and other flexible contracts 1992-2006



Source: OSA 2008

The OSA figures would mean that FT-contracts are functioning more and more as a stepping stone into open-ended employment. However, these figures do not necessarily imply that the people with a prospect of moving into open-ended employment actually make this transition. The current economic crisis shows that temporary workers are the first to be laid off (Hoeberichts and Stokman 2009). A recent evaluation study of the F&S Law (Knegt, Hesselink et al. 2007) suggests that the share of employees with FT-contracts that move into an open-ended job has decreased from 25 percent in 2001 to 14 percent in 2006. The study also found that terminations of the employment relationship are more common among older workers. Another study, conducted by the Christian Union Federation CNV in 2007, found that the share of FT-employees with the prospect of a permanent job decreases with the duration of the FT-contract: it drops from around 40 percent in the first year to 26 percent after two years (CNV 2007). Zijl recently found that temporary jobs in general raise employment levels and tend to shorten unemployment duration, but there is no evidence that these jobs in fact *increase* the probability of finding a permanent job and serve as a 'stepping stone' (Zijl 2006).

5.6.2 Employment security

The next type of security I analyse is employment security, which I understand here as training opportunities for temporary workers. Provisions on training are not related to the F&S law although they are often taken up in CLAs. Transitions discussed in the previous section also contain an element of employment security although there is no distinction made between the types of employer, so it is therefore not possible to clearly outline the employment security element of these transitions. In November 2002 a law was introduced to implement EU directive 1999/ 70/ EG on equal treatment of temporary and permanent workers. There are two exceptions to this equal treatment: unequal treatment is justified when there is an 'objective reason', and it does not apply to agency workers. Equality between workers on FT and open-ended contracts is taken up in article 7:649 of the Dutch civil code. An employer is forbidden to distinguish between employees on the basis of the FT-nature of their employment contract, unless there is an objective justification for a distinction. Despite the fact that inequalities are not permitted by law, it has been found that FT-workers are less likely to receive training than workers on a permanent contract (Van Velzen 2004). About a quarter of employees with an FT-contract report that they have fewer opportunities for training than their permanent colleagues (CNV 2007).

As a result of provisions in the CLAs for the TAW sector, agency workers are entitled to training. The 2004-2009 ABU CLA elaborated the education scheme that was laid down just after the introduction of the F&S Law. Whereas previously, agencies were only required to reserve money for training and education, agency workers now receive a personal budget, which creates the possibility for education better targeted at the needs of the worker. It is taken up in both the ABU and the NBBU-CLA that agencies are required to reserve 1,02% of the total gross wage sum per year for training and education of agency workers. Whether these education budgets in practice lead to more training and therefore employability of agency workers is difficult to assess. Out of the NBBU members, 54% actually spent this amount on training (Donker van Heel and Van Nuland 2008, p. 25). Another report shows that 46% of agency workers are in need of training while 18% of agency workers have actually completed some kind of training (Knegt et al. 2007, p. 87). The need for training on the side of agency workers is reported to be quite low (Grijpstra, Hesselink et al. 1999; Van den Toren, Evers et al. 2002). Agencies report that requests for training are often voiced by user firms, or the agencies themselves

analyse what skills are sought after in the market[23] (Van Velzen 2004). In the new ABU and NBBU CLA that will be effective from April 2009, provisions are taken up to stimulate and increase monitoring of the actual spending of money reserved for education (Flexservice.com 2008a).

5.6.3 Income security

Income security is the difference in wages between a temporary employee and a permanent employee. Also, income security is based on income from other sources than employment, i.e. social security and pensions. This type of security is again not regulated in the F&S law but is an important aspect of the CLA, mainly in the case of agency work, as equality for agency workers is not stipulated by law. Although FT-workers are legally entitled to equal treatment, their wages are found to be slightly lower than the wages of employees with an open-ended contract (Zijl 2006). Zijl also finds that the risks of a temporary contract are not compensated with a positive wage differential, but rather punished with a small negative differential. In a follow-up to her 2006 study, Zijl finds that the negative wage gap can be largely attributed to "qualitative insecurity" of employers (De-Graaf-Zijl 2009). Because employers are insecure whether a newly hired worker will be able to perform his or her job up to standard, they initially hire new workers on FT-contracts, which then function as extended trial periods (see above). This type of trial period, which became very popular after the F&S law increased the possibilities for using FT-contracts, reflects the qualitative insecurity of employers, and concomitantly leads to a lower wage.

A recurring point of conflict in the agency work business between 1999 and 2005 was which wage should apply to an agency worker: the wage paid by the agency or that of the user firm? The most important elements in the discussion were not only equality between agency workers and direct hires at the user firm, but also the autonomy of the social partners in the TAW sector to negotiate their own employment conditions. When the CLA of the user firm 'overrules' the TAW CLA, this autonomy would be jeopardised (Grapperhaus 2003). In the 1999-2003 CLA, the ABU and the unions FNV and CNV already agreed that provisions on the remuneration of agency workers in the CLA of the user firm applied, provided that these CLAs were reported with a foundation for the sector called the SMU (*Stichting Meldingsbureau Uitzendbranche*). This provision was altered in the 2004-2009 CLA to create more clarity: now the wage of the user firm always

23 It is hard to make general statements what people receive which type of training at which point in time, and which party (agency, user firm, or agency worker), makes the final decisions in these respects.

applies after 26 weeks, unless it concerns skilled workers that therefore receive the same wage from day one. This does not apply to secondary employment conditions such as holidays and extra allowances, although additional provisions on application of these remuneration components can be taken up in the CLA of the user firm. The user firm is always free to apply its own CLA from day one, which in almost all cases entails a wage higher than the ABU-wage.

Agency workers generally receive less pay than people working directly for a firm, due to the low wages negotiated in the ABU and NBBU CLAs. The 26 weeks-provision saves the agencies a lot of administrative work as agency workers frequently switch between short-term jobs (i.e. shorter than 26 weeks) (Van Haelst 2005). The average number of days that an agency worker works in ABU-phase A is 145 days. The average number of days for all agency workers is 153 days (Donker van Heel, Van Nuland, and Van der Ende 2007, p. 21). In both cases, the number of weeks worked is less than 26, meaning that on average, agency workers are not entitled to an equal wage as people working directly for the user firm. Furthermore, this figure is calculated per agency worker per year, and could therefore include multiple agency jobs during the year. The 26-weeks rule only applies to wages and agency workers are therefore in most cases not entitled to the total remuneration package in comparison to employees of the user firm. For agency workers hired out by NBBU-members, the wage of the user firm applies from day one, although a 2008 report shows that observance of this rule is often problematic, leading to unequal competition between NBBU firms (Donker van Heel and Van Nuland 2008, p. 24).

Pension arrangements for agency workers were introduced after 1999, and apply to all workers aged 21 and up that have worked for the agency at least 26 weeks. Agency workers are in this case covered by the pension foundation for the sector, but can also be covered by the pension scheme of the hiring firm. This double coverage can sometimes be problematic for a clear build-up of pension (De Graaf 2008). In the most recent ABU and NBBU CLAs implemented 1 April 2009, pension arrangements for long-term agency workers are extended (Flexservice.com 2008a; Flexservice.com 2008b). Because of article 7:649 CC, FT-workers are entitled to equal rights for building up a pension. There is some evidence pointing to a discrepancy between the legal regulations and equality in practice; one out of every five FT-employees claim they do not build up any pension (CNV 2007). Although these figures might be partly caused by the fact that people are not always aware of the extent to which they build up pensions, they probably also point

to a certain discrepancy between what the law on equal treatment states and equality in practice.

5.6.4 Representation security

The last type of security I analyse is representation security which I understand as the extent to which FT-workers and agency workers are represented by trade unions and works councils. For agency workers this can be the works council in the agency that employs them or in the user firm. In general, temporary employees are less often member of a trade union; figures for the Netherlands show shares of 26 percent density for regular workers compared to 10 percent for what Visser (2006, p. 46) calls "casual workers". This gap is equal in other EU countries and can, according to Visser, be attributed to "greater difficulty of union organizing ("union supply") and/ or a lower attachment to the labour market, and possibly a lower "demand" for union representation" (p. 47, quotation marks in original). Visser however points to the possible impact of the regulatory framework when he argues that unionisation rates can be related to the extent to which a certain type of employment is 'normalised' within an institutional setting (Visser 2006). Unfortunately, there are no figures available on unionisation rates of Dutch temporary workers over time, but based on Visser's assertion it could be expected that these go up with an increase in regulation and normalisation.

For the establishment of a works council, FT-workers are counted as part of the threshold of 50 employees. The law on works councils, WOR (article 1, sub 3) states that agency workers should also be counted for this threshold. Just as regular workers, temporary workers having worked for more than 26 weeks are entitled to vote for the works council, and when employed for over a year, they can be elected. In the WOR, both types of temporary employees are regarded equal to regular employees, possibly reflecting the degree of 'normalisation' of these types of work in the Netherlands. The boundary of 26 weeks is a recurring element in the building up of rights for agency workers and as shown above the majority of agency workers do not cross this threshold.

In a study on how representation of agency workers within works councils takes shape in practice, it was found that in many cases, agency workers are represented in special works councils within their agencies. In about one-sixth of cases agency workers and regular employees working within the temporary work agency were together in a works council, in the remaining quarter to one-fifth, agency workers were not represented, even though the law requires it (Hofstee and Schuringa 2007)

5.6.5 Shifting of risks

Any employment relationship is characterised by risks that are borne by the parties involved – the number of parties to an employment relationship is usually two, with TAW the number is three. These risks are basically twofold, i.e. the risk that there is no more work for the employee, or that the employee is no longer able to perform the job. For example, in an open-ended contract the risk of absence of work is borne by the employer while the employee might receive a wage lower or higher than his or her output; the employee receives a fixed wage despite fluctuations in the market value of the output (Marsden 2004). Precarious employment is characterised by a shift in risks from employers to employees (Kalleberg 2009). The 1999 F&S law changed the distribution of risks in the sense that risks were shifted from employers to FT-workers as they now bear more of the risks of uncertainty of the amount of work available. In cases where FT-contracts are used as trial periods, FT-employees bear the uncertainty regarding the match between their qualifications and those required by the firm. In the case of agency work, risks were partly shifted from the agency worker to the new legal employer, the agency. With the possibilities of an FT or open-ended contract with the agency, the agency takes over risks previously borne by the worker, mainly the risk that there is no more work available.

The use of temporary employment has to be regarded in relation to the institutional framework distributing the costs for employment risks, i.e. costs for dismissal and costs related to sickness and disability of employees. When costs for these risks of permanent employees are high for employers, the hiring of a worker involves a higher potential risk when the employer no longer needs the worker or when he or she falls ill. By hiring a worker via a temporary work agency, user firms outsource these risks to the agency that, in a pure agency work relationship, shifts these to the agency worker. This entails that when the user firm no longer needs the agency worker or the agency worker falls ill, he or she can be sent home, i.e. the aforementioned ‘agency clause’. The practice whereby an agency worker is sent home when he or she falls ill is in fact not enabled by Dutch law but by the CLA. The law (7:691, sub 2 CC) states that when the user firm ends the period of hiring, the contract between the agency and the agency worker is considered terminated. In the ABU CLA this is taken a step further with the provision that when the agency worker calls in sick, it is assumed that the period of hiring is terminated by the user firm (Verhulp 2001a). Then, because the hiring period is terminated, the contract between the agency worker and the agency is also terminated.

By hiring a worker through an agency, both risks of absence of work and sickness are shifted from the user firm to the agency. In an FT-employment contract these risks are limited to the duration of the contract. Before the 1999 F&S Law, risks could be more easily shifted from an agency to the state or to the agency worker, e.g. when there was no more work at the user firm the agency worker was sent home. With the introduction of the F&S Law, the agency became the legal employer of the agency worker, and therefore had to take on more risks. However, these risks apply to the agency mostly when an agency worker is in phase B or C, i.e. hired by the agency on the basis of an FT or open-ended contract. Agencies ask a higher price for agency workers in phase B or C because of the increased risks they run. In about one-thirds of the cases, the employment relationship between the agency and the agency worker is ended because an agency worker is entitled to a phase B (FT) contract. For phase B or C agency workers, dismissal rules apply although these are less strict than dismissal rules for open-ended contracts. When there is no more work for the agency worker in a certain occupation, he or she has to accept a position with lower qualification levels. If the agency worker refuses "a reasonable offer for a substitutive job" (article 13 ABU CLA), the agency can start a dismissal procedure.

Regarding the termination of FT-contracts, it is found that in almost 83% the relationship ended because the FT-worker was entitled to an open-ended contract (Knegt et al. 2007 p. 48). Employers clearly strive to retain the flexibility that these types of employment provide, and only in a limited number of cases flexibility is decreased to increase the security of these FT and agency workers. When the agency worker is at the point where he or she is entitled to a fixed-term or open-ended contract with the agency, the agency will evaluate the risks associated with offering the worker a contract. This involves an assessment of absenteeism of the agency worker and the likelihood that the user firm will have enough work for the agency worker. To prevent themselves form having to continue to pay the agency worker when he or she is no longer needed at the user firm, agencies try to get a guarantee (usually taken up in a so-called "Service Level Agreement") from the user firm that they will have enough work for the agency worker. This is mainly the case when the worker is about to enter into an FT-contract. Due to this demand for a guarantee of work, user firms experience less flexibility, and therefore prefer to hire agency workers on the basis of the agency work clause (Donker van Heel and Van Nuland 2008, p. 22). Sometimes firms want to hold on to a specific person, but because the agency is not keen on running more risks, they advise the firm to replace the

worker with a new phase-A worker (Interview temporary work agency metalektro May 2006).

The risk of sickness or disability of the agency worker is borne by the agency when agency workers are in phase B or C. This is a complicated issue as sickness and disability is often work-related and the agency has little supervision over the workplace and labour conditions. Agencies try to pressure firms to get some insurance that they provide good labour conditions and abide by health and safety regulations. A number of laws define the user firm as the party for which an employee works, thereby designating the user firm as the legal employer. These laws are the Health and Safety Act, the Law on Working Time, the Law on Work of Strangers, and the Law on Works Councils. Furthermore, on the basis of article 7:658 sub 4 CC, the user firm is also liable for any damage suffered by the employee while performing his or her work.

The ABU has reported that agencies have experienced increasing costs as a result of the introduction of the F&S law. This cost increase is related to the expansion of rights for agency workers and therefore the risks for the agency (Flex&Figures, June 2005; Knegt et al. 2007). After the introduction of the F&S Law, administrative costs for agencies increased as they now felt obliged to keep good track of the employment records of their employees. The reason that agencies were very keen on documenting this carefully was that they didn't want to be confronted with employees having the right to a permanent employment contract unexpectedly (Van den Braak 1998). Other costs were related to administration surrounding training schemes and pension arrangements. Agencies and user firms often make agreements that the agency will notify the user firm of changes in the costs of the agency worker. The first change occurs after 26 weeks when, according to the 2004-2009 ABU CLA, agency workers are entitled to the same wage as comparable workers at the user firm. After this, the costs increase with the transition to phases B and C. For large firms, developments in the costs of agency workers play a very small part as they negotiate long-term contracts with large agencies in which a certain use of agency work (measured in hours) by the firm is guaranteed in exchange for a favourable price. For other firms, the costs of agency workers are an important consideration for the decision to hire an agency worker (Knegt, Hesselink et al. 2007). Institutionalisation of more rights for agency workers in those cases puts a downward pressure on the share of TAW used by employers.

Costs of sickness of an employee are often borne partly by the employee, partly by the employer, and partly by the state, depending on the regulative framework in place. In the Netherlands, costs of sickness and disability have increased for employers due to four pieces of legislation introduced between 1996 and 2004. The first, introduced in 1996, is the law on extension of payments to sick employees (*Wet uitbreiding loondoorbetaling bij ziekte*, WULBZ). This law obliged employers of sick employees to pay 70% of the last-earned wage for one year. From 1994, this period had been six weeks, and before there was no obligation for employers to pay wages in case an employee fell sick. In 1998, a law on disability premiums shifted the premiums for disability from employees to employers, and put a higher burden on employers in sectors with relative high numbers of people in sickness and disability schemes. Another law introduced in 1998 decreased the possibilities for employers to determine the risk of sickness and disability of a potential employee during a selection procedure. This is the law on medical examinations (*Wet medische keuringen*, WMK) (Zijl, Sol et al. 2003; Evers and Wilthagen 2007).

In 2002 and 2004, two laws were introduced with the name 'gatekeeper'. This name refers to the functions that the laws should fulfil: preventing more people entering disability schemes by increasing the efforts to keep people employed or reintegrate them into the labour market after a period of illness. With the introduction of the Law Improvement Gatekeeper (*Wet Verbetering Poortwachter*) in January 2004, employers are required to pay 70% of the last-earned wage for two years instead of one, and in many CLAs the level has been increased up to 80-100%. The risk of, and costs associated with, a worker falling sick have been allocated from the state and workers to employers. TAW and FT-contracts, where these risks can be partly shifted unto the worker have as a result become more attractive.

Although the price firms have to pay to hire an agency worker has increased after 1999, a report commissioned by the ABU claims that agency work is still attractive when compared to a worker hired on an FT-contract (IBM 2003). When comparing the costs of an agency worker with the costs of a worker hired on an FT-contract, IBM (2003) included the costs that the firm has to pay to hire the agency worker, but also costs for recruitment and selection. Agency workers were found to be more productive, as user firms do not pay costs related to sick leave and holiday absence. Costs that were not included because they are hard to quantify, but also play a role are those related to the cost savings for the employer when he or she can send an agency worker home as soon as there is no more work. Furthermore, by hiring multiple agency workers one after

another, employers can prevent workers from age-related salary increases. Finally, because the user firm runs no risks related to sickness and disability, an agency worker is potentially significantly cheaper than a direct hire. However, this involves a risk assessment that can not easily be calculated. Nevertheless, by outsourcing this risk to an agency, a user firm 'buys security', although this is also hardly quantifiable.

To summarise: by making use of an agency or FT-contract, firms can outsource the risks associated with an employment relationship. Due to an increase in the costs related to sickness and disability for employers, TAW and FT-contracts have become more attractive as a way to reduce risks. There might possibly be a higher desirability of TAW as now all risks are borne by the agency or the agency worker. Before 1999, risks could be outsourced by the agency to the agency worker, but this possibility is now limited to workers in phase A. The F&S Law changed the distribution of risks by shifting more risks to the agency. Agencies have experienced rising costs as a result of these risks, which they can outsource partly to the agency workers by extending the phase A period and partly to the user firms by asking higher tariffs for their agency workers or by getting guarantees from the user firms regarding health and safety, and the future availability of work. Because the F&S law increased the flexibility of FT-work, this might become relatively more attractive to TAW.

5.7. Conclusions

In this chapter I have shown that the design of the F&S law should be seen in light of the discussions dating back to the 1960s on the regulation of the agency work sector and the Dutch system of dismissal protection, which is still strict in international perspective and discussed until the present day. Related to the perceived or actual restrictions posed by the system of dismissal protection was the increase in both FT-contracts and TAW during (mainly the second half of) the 1990s. Regulation of the Dutch TAW sector dates back also to the 1960s and this regulation is believed to have increased its attractiveness for employers; a higher degree of normalisation and institutionalisation of the sector decreased uncertainty for employers regarding this type of employment, positively impacting its use. In the 1960s and 1970s, when the TAW sector had serious image problems, the employers' association ABU and the largest agency Randstad actively lobbied to improve the image of the industry. During the 1980s, the TAW sector became a recognized partner in labour market policy and the social partners in the sector were highly involved in the design and also in the implementation of the F&S law.

The 1999 F&S law was almost entirely designed by the social partners within the STAR and aimed to strike a balance between flexibility and security in the Dutch labour market. Because this institutional change was to a large extent backed by coalitions of employers and employees, it can be seen as a *reform*(Hall and Thelen 2009). The new 'flexicurity' framework was to provide an answer to global pressures to flexibilise labour markets, already visible in the increase in share of flexible employment in the 1990s. The F&S law thereby increased the alternatives to dismissal of regular employees. In line with the Dutch model of industrial relations, the social partners are also highly involved in the implementation of the F&S law by means of 3/4-mandatory provisions.

Regarding FT-work, the F&S law substantially increased flexibility by extending the number and total duration of consecutive FT-contracts. This enabled an expansion in the use of FT-contracts as extended trial periods. The agency work relationship on the other hand became more normalised and institutionalised and increasingly considered a regular employment contract. In 1998, related to the introduction of the F&S law, a law on labour intermediaries was introduced to deregulate the agency work market by lifting restrictions and the license requirement for temporary work agencies. Almost a decade after the abolishment of a license-system for the industry in 1998, the ABU introduced its own certification scheme in 2007, strengthening its image as a reliable partner in the industry by equating itself with a hallmark for quality. The ABU successfully managed to take over these regulatory functions from the Dutch government and shape the framework on fraudulent behaviour in the TAW sector.

Within the CLAs, the F&S law is believed to be implemented in line with the needs of the social partners in various sectors of the Dutch economy. In about one-thirds of CLAs, deviations from the F&S law regarding FT-contracts are found. Deviations increased both flexibility and security just after the implementation of the F&S law, but mostly increased flexibility in more recent years. For TAW, there are two CLAs covering almost the entire sector, the ABU and NBBU CLAs. In these CLAs the flexibility for employers was significantly increased by extending the agency work phase from 26 to respectively 78 and 130 weeks. The first phase containing the 'agency clause' is comparable to the nature of agency work as it existed before 1999. Besides these two CLAs, other parties are also trying to negotiate CLAs for agency workers, but so far have been unsuccessful. Whether the reason for this is that these other employers' organisations and trade unions try to undermine the employment conditions of agency workers by operating on the fringes of the law, or whether they are actors trying to gain

foothold in a sector dominated by the interests of the main trade unions and employers' organisations remains an open question. Here the analysis at least shows the way these now marginal actors are operating on the fissures of the existing structure of interests.

Although not all security elements of FT and agency employment are dealt with in the F&S law, I analysed them in this chapter to assess the 'flexicurity balance' for these types of employment. In line with EU directive '99/ 70, there should be equality between workers with FT-contracts and those with open-ended contracts. Nevertheless, FT-employees and agency workers are not always treated equally as workers with an open-ended contract in terms of wage and access to training and pension, although the difference is much larger for agency workers. The legislator allows for some more inequality regarding agency work due to the desired flexible nature of this type of employment. Transition rates into permanent employment are around 40% although it is difficult to claim that FT and agency work perform a stepping stone function. One should try to contrast the effect with the likelihood that these people found a job without doing FT or agency work before.

After the introduction of the F&S Law, the number of agency workers went down. Although this decline is predominantly attributed to the economic recession that was nearing at the time, institutionalisation through the F&S Law is also believed to have some part in it. The institutionalisation with the F&S law changed the risk-distribution for the parties involved. The increased security for agency workers after 1999 in the sense that they are entitled to an FT or open-ended contract after a certain amount of time has increased the investments agencies make in administrative procedures. Agencies chose to better administrate the duration and number of contracts of agency workers to restrict the inflow in phase B and C contracts. The F&S law has increased the risks of having to continue paying agency workers when they are sick or when there is no more work for them when they move into phase B or C. These risks are partly shifted back from the agency to the agency worker by extending the phase A period, or to the user firm by increasing hiring fees and/ or laying down guarantees on future availability of work. For user firms, these increased costs are an important consideration when hiring an agency worker, perhaps leading some employers to prefer FT-contracts. At the same time, the F&S law increased the possibilities for employers to increase their flexibility by using FT-contracts. Here it becomes clear that TAW and FT-contracts can be functional equivalents, as the risks of the employment relationship are redistributed over the various parties involved. The costs for the employers when an FT-worker falls sick are however

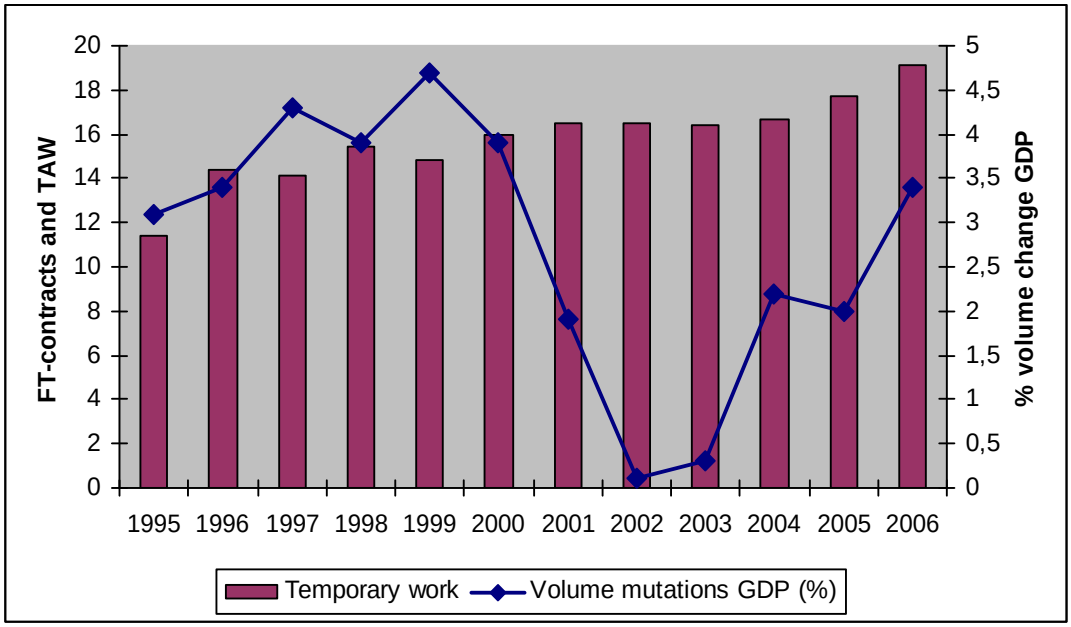
still higher than for a phase A agency worker. However, due to increased risks for employers as a result of changes in legislation relating to sick and disabled workers, TAW as well as FT-contracts have possibly become more attractive.

Chapter 6 – Flexibility and security at sector-level

6.1. Introduction

The previous chapter with a case study analysis of temporary employment in the Netherlands started with a figure showing the developments in fixed-term (FT) contracts and temporary agency work (TAW) between 1995 and 2006. In the figure below I present the same statistics, now including data on developments in the business cycle measured as volume mutations of GDP. FT-contracts and TAW are grouped together as temporary work to improve the clarity of the figure. This chapter sets out to explain the nature and extent of temporary work by relating it to external pressures as economic changes and the (resulting) power imbalances between social partners. The increase in the use of flexible labour in the second half of the 1990s has been attributed to the economic upturn in that period (De Beer 2004); figure 6.1 reflects this development. This is in line with the notion that in general the use of flexible labour goes up as the business cycle goes through an upturn (Wilthagen, Grim et al. 2006; Zijl 2006). The figure furthermore shows the stagnation in the growth of temporary work when the economy went through a slump between 2001 and 2004. The figure in the previous chapter five showed that it was the share of TAW that decreased considerably in that period, while the share of FT-contracts increased only very slightly.

Figure 6.1. Development of temporary work and business cycle in the Netherlands 1995-2006



Source: CBS Statline; CIETT 2008; *Employment in Europe2007/2008*

In 1999, at a time when the Dutch economy reached a peak, the Flexibility and Security (F&S) law was implemented. This law reflected the normalisation of flexible labour throughout the 1990s that was mainly triggered by changing behaviour of employers. The institutionalisation of a new regulatory framework on temporary work with the F&S law changed the regulation of FT-work and TAW and left room for social partners to find a 'tailor-made' balance in their collective labour agreement (CLA). In this chapter, I look at the way the use of FT-contracts and TAW within sectors, and provisions on these two types of labour in CLAs, have developed after the introduction of the F&S Law. The research questions I will answer in this chapter are questions three four and five outlined in chapter one:

3) Which mechanisms and actors explain the developments in the extent, nature, normalisation and institutionalisation of temporary work?

4) How are national-level institutions on temporary work implemented by social partners? And;

5) Did the Dutch flexicurity regime lead to convergence or divergence between sectors within the Dutch economy?

Research question three is answered for the sector-level and the period 1998-2004, and mainly deals with the extent and nature of temporary work, whereby extent is the share in total employment in a sector and nature is the level of security for temporary workers. The propositions related to this question that will be tested in this chapter are

proposition 4 on the importance of informal institutions and proposition 1 that as external pressures change, the behaviour of employers and employees changes in the sense that the share of temporary work increases or decreases. Related to research question four, I developed propositions 7 and 8 on whether changes within sectors constitute drift or (reversed-) conversion, and propositions 11 and 12 on the importance of power. Finally, research question five relates to proposition 10 on convergence and divergence.

The fact that the F&S law stimulates 'tailor-made solutions' by means of 3/ 4 mandatory law is the main reason to extend the analysis from the national to the sector-level. The second reason is that many factors influencing the share of temporary work, the external pressures in my model, vary across sectors. One of these pressures is for example the level of economic openness. Practices at sector-level might have become increasingly diverse because of the possibilities that the F&S law offers to negotiate provisions in line with sector-specific needs. However, the opposite might also be the case. Because of regular evaluations commissioned by the Dutch government on the extent of deviations from the F&S Law, social partners across sectors might learn from each other causing sector-level provisions to converge.

I will carry out a repeated cross-sectional analysis for the years 1998, 2001, and 2004. I start with the year 1998 because it was just before the introduction of the F&S law, and take 2004 as an end point, to include the economic downturn of 2002-2004. Therefore both an institutional and an economic development are taken into account. In addition, I measure the external pressures of increased international competition, i.e. 'globalisation' or 'marketisation' discussed in chapter one. The impact of the economic downturn in sectors works partly via the power balance between social partners. The external pressures and power balance are operationalised into four sector-characteristics: business cycle sensitivity, labour scarcity, openness to national or international competition, and the position of the unions. To analyse which (combinations) of these factors lead to certain flexibility and security outcomes, I combine qualitative case-study analysis with fuzzy set Qualitative Comparative Analysis (fsQCA). I incorporate fsQCA to systematically present the qualitative data on eleven sectors. These sectors, derived from an earlier study into the effects of the F&S law (Van den Toren, Evers et al. 2002), are: horticulture, leasing of agricultural machines and labour (abbreviation LAML), metal- and electrical engineering, production and distribution of energy, construction, supermarkets, department stores, cleaning, architecture, security, and home care.

Throughout this chapter I will combine case-study data with other (statistical) sources. The chapter is set up as follows. Section 2 starts with a qualitative analysis of informal institutions to determine their impact on institutional change. Section three then discusses the measurement of flexibility and security in the eleven sectors and the developments in both between 1998 and 2004. In section four, I outline which sector-characteristics are relevant when analysing developments in flexibility and security and show how I will use the method of fsQCA in the analysis of eleven sector-level case-studies. Drawing on the logic of fsQCA, I show in section five which (combinations of) characteristics are necessary and/ or sufficient in understanding developments in flexibility and security outcomes within sectors. Section six concludes the findings.

6.2. Path-dependent change? Informal institutions at sector-level

To understand how employers and parties negotiating a CLA value flexibility in relation to the specificities of the economic sector in which they are embedded, I engaged in interviews with key respondents. From this qualitative data I was able to construct a representation of the customs and traditions characteristic of each sector. These are the informal institutions that have evolved over time in relation to the nature of the production process, traditions on how to organise the work, and relations between employers' associations and trade unions. This effectively is the 'starting point' that serves as the basis for a further analysis of institutional change. In chapter two I proposed that in sectors with strong informal institutions on temporary work, changes in the formal institutions at national level will bring about little change in sector-level formal institutions and behaviour. Informal institutions therefore are an important shaper of institutional change as they can introduce path dependency. In the table below I present a concise overview of the structure of informal institutions on external temporary work and assess the strength of these informal institutions. This qualitative analysis shows that in three sectors there are strong informal institutions on the use of external temporary workers: in horticulture, in construction and in supermarkets. I expect that because of these norms, changes in flexibility and security in these sectors will be lower.

Table 6.1. Informal institutions on temporary work in eleven sectors

Sector	Widespread use of temporary work	Acceptance of temporary work	Strength of informal institutions
Hortic.	Use (mainly TAW) widespread: Seasonal peaks in workload traditionally dealt with by means of shifts in working hours, seasonal labourers and agency workers, now often from Central-and Eastern Europe (mainly Poland).	Acceptance of TAW under discussion discussions due to strong growth in illegal agencies after liberalisation in 1998. Small increase in self-employment.	High/ medium
LAML	Low sensitivity to business cycle apart from firms that prepare construction sites; most peaks are seasonal. Use of external temporary work via temporary unemployment substituted by internal flexibility schemes due to changes in government policy.	Traditionally small, often family based businesses. Employers prefer internal flexibility to retain workers because of required skill levels. Some seasonal workers hired via family and friendship ties, some via specialized agencies.	Low
Metalec.	Low use of external temporary work. Substantial number of large (multinational) firms. High sensitivity to business cycle and international competition. No strong tradition of external flexible work apart from some outsourcing and TAW.	Traditional sectors with majority of men working full-time with long tenure. Therefore little tradition of flexibility and temporary employment. Also strong unions stressing internal rather than external flexibility.	Low
Energy	Use of temporary workers increasing due to liberalisation of the energy market that puts pressure on firms to increase efficiency, and to invest in more customer-oriented services.	Low need for flexibility due to low sensitivity to the business cycle, no tradition of flexible work. However, increasing acceptance due to changes in regulations.	Low/ medium
Constr.	Widespread use of external temporary labour other than FT-contracts and TAW. Use of TAW low because the ban for the sector was only lifted in 1998 via WAADI. Until 2000, workers could receive unemployment benefits in between projects. Now rules are stricter but dismissal is easier than in other sectors. Self-employment rising sharply, mainly from Poland.	Sector traditionally based on high external flexibility because it is highly sensitive to the business cycle and weather conditions. A couple of very large firms with long subcontracting chains including many small firms and self-employed workers. Project-based work; contracts related to duration of project.	High
Super-markets	Widespread use of external temporary labour, some FT-contracts, most flexibility from 'on-call-workers': Large number	Low sensitivity to business cycle, and relatively predictable peaks during the year. Tradition of part-time	High

	of young people (students) with supermarket job 'on the side'. Low cost as average age of employees is declining, and youngsters are highly flexible in terms of working hours.	employment (for mothers returning to the labour market). Increasing use of youngsters (from age 15) replacing older workers, therefore no 'need' for TAW (with exception of distribution centres).	
Dept. stores	Use of external flexibility low but slightly increasing due to wish of employers to increase flexibility of the workforce via FT-contracts. Agency work low due to required skill levels.	Medium/high sensitivity to business cycle, and relatively predictable peaks during the year. Employees often mothers returning to the labour market with part-time, open-ended contracts. Tradition of internal flexibility by means of annual working time accounts.	Medium/ Low
Clean.	Low use of external flexible contracts due to high flexibility in part-time contracts with small and fluctuating number of hours, often open-ended.	Sensitive to business cycle as companies save on these external services first. Traditionally high internal flexibility in working hours and locations.	Low
Archi.	Low use of external flexible contracts due to high internal flexibility by means of overtime. Some external flexibility in outsourcing certain tasks to specialised agencies.	Few large and many small firms, with the latter highly sensitive to the business cycle. Work traditionally project-based. Culture of creativity and person-specific skills not compatible with extensive planning of work.	Low
Sec.	Increasing demand due to socio-political developments. Demand for flexibility mostly dealt with internally with part-time work and overtime → expensive for employers due to overtime premiums. Low use of TAW due to required skill levels.	Discussions to further increase internal flexibility: employers would like annual working time accounts assuming predictability but peaks in demand hard to predict according to unions.	Low
Home care	Low use of external flexibility to retain workers and the work is by itself highly flexible in terms of working hours and location. Increasing demand due to ageing population entails pressure to retain workers. Attempts to further decrease dependence on TAW via internal 'flex-pools'.	Traditionally a sector with a high number of females working part-time. Peaks in workload over the day/week: high flexibility in hours/locations. Due to policy change increase in external temporary work → self-employment..	Low/ Medium+

Source: interviews and document analysis

The number of sectors in this study exceeds the common number of cases for elaborate case studies. To show comparisons and patterns across the eleven cases, I delineate patterns, while preserving the in-depth knowledge of the sectors by means of qualitative data. The method that is most useful for this is fuzzy set Qualitative Comparative analysis (fsQCA). An elaborate discussion of this method is taken up in chapter three.

6.3. Variations in flexibility and security strategies across sectors

To understand how and why flexibility and security outcomes change over time, I analyse both CLA provisions on, and actual use of, TAW and FT-contracts. The security outcome is made up of three CLA-provisions on TAW, and three on FT-contracts. Flexibility strategies are made up of three CLA-provisions, only for FT-workers, and the use of both FT and TAW. The flexibility strategy is therefore made up of three plus two is five elements.

6.3.1 Security at sector-level

Three aspects of security in a sector are based on CLA-provisions on TAW, three on FT-contracts. Despite the fact that most issues related to TAW are taken up in the CLAs negotiated by social partners in the TAW sector (see previous chapter), the CLAs in other sectors also regulate certain issues related to TAW. Three of such provisions that entail security for agency workers are 1) wage (and fringe benefits) of the user firm apply[24]; 2) it is possible for the user firm to hire the agency worker on an FT or permanent contract; and 3) the agency worker has a right to training. Very common is the first provision, i.e. agency workers are entitled to the wage and benefits of the sector from the first day that they work in that sector. The fact that in most sectors agency workers are entitled to the wage applied in that sector is mostly the result of unions' lobbying for equal pay for equal work, one of their core issues. The CLA states that employers should make sure that the agency indeed pays their wage to the agency worker; interviews with trade union representatives show that this can in practice lead to enforcement problems.

The other three elements of a company's security strategy are CLA-provisions on FT-contracts. The F&S Law (article 7: 668a Civil Code) introduced the 3x3x3 rule (see chapter five). As social partners can deviate from each of the three elements of the new rule, I contend that security for workers on FT-contracts is increased when 4) the

24 I also included cases where this only applies for skilled agency workers. This is the case in construction, and in the sectors LAML and security in 2004. These are sectors where agency workers are generally skilled workers. Also, I included the supermarkets, where this provision only applies after three months.

maximum duration that the employer can offer FT-contracts is *shorter* than three years; 5) the number of FT-contracts that can be offered is *less* than three, and/ or; 6) the interval period between two FT-contracts is *longer* than three months, i.e. a longer break between two FT-contracts does not prevent employees from building up the right to a permanent contract. When CLA-provisions are in line with the F&S law, sectors score a 0 on these three security aspects.

For the analysis with fsQCA, I have scored each sector for the years 1998, 2001 and 2004 on the presence (1) or absence (0) of these six provisions. Based on the presence or absence of provisions that increase security for workers, all sectors get one final score on security strategy ranging from zero to six. As appendix B shows, there are no sectors that have more than three of the CLA–provisions and therefore a score above three. I therefore decrease the set to 0-3, while noting that the overall level of security is quite low. Deleting scores that do not occur in reality is in line with the practice advocated by Ragin to cut irrelevant variation (2000, p. 162). A score of one of the security elements is a membership score of 0.25 in the security set, a score of two elements entails a score of 0.75 for set membership, and a score of three elements entails full membership, i.e. a score of 1 in the set. This scoring was carried out for all eleven sectors, for three points in time. An overview of there scores is taken up in appendix A.

6.3.2 Flexibility at sector-level

The flexibility set is made up of five elements; three dealing with CLA-provisions on FT-contracts, one with use of FT-contracts, and one with the use of TAW. For the first three elements, I again consider the provisions on FT-contracts as laid down in the F&S law as the basis (i.e. no deviations means a zero). When the CLA provisions on FT-contracts either *lengthen* the period during which FT-contracts can be concluded to more than three years; *extend* the maximum number of FT-contracts that can be offered to more than three; and/ or *shorten* the period between two FT-contracts to less than three months, e.g. one month is common in many agricultural sectors, flexibility is increased. To assess the flexibility strategy, I therefore assign a score of one for each of these elements that is present and a zero when they are absent. My scores do not distinguish between sectors that deviate a lot and those that deviate a little from the law. I however only found one substantial deviation from the law regarding flexibility: in the energy sector an unlimited number of FT-contracts is permitted for an unlimited period of time. Because there is only one deviation and the trade union official that negotiated the CLA

stated that this is never used in practice; I therefore retain my coding system of a 1 for all deviations.

Seven out of the eleven sectors have CLA-provisions deviating from what is laid down in the F&S law on FT-contracts. Of the seven deviations, four increase the flexibility, two increase security and one, home care, increases both flexibility and security (or *flexicurity*) as it offers the possibility for an unlimited number of FT-contracts with an interval period of one month (increasing flexibility), but only for a maximum period of one year (increasing security). The only changes in provisions on FT-contracts during the economic downturn (2002-2004) occurred in two of the three department store company-CLAs; in the maximum period during which FT-contracts can be offered was increased from 24 to 36 months. With these adjustments, flexibility was increased and at the same time the CLA provisions were brought in line with those of the F&S law.

As I use the provisions on FT-contracts for both security and flexibility, it might seem they are the mirror image of one another. This is however only partly the case and flexibility and security are better seen as two separate dimensions. The scoring entails that a zero on a provision increasing security does not automatically entail a one on the flexibility scale or vice versa. However, a one for one element (for example extended flexibility in the duration of FT-contracts) does automatically mean a zero on the (in this case security) scale for that same element, and vice versa. There is therefore a small degree of interrelatedness, but this only makes up part of the total flexibility and security scores. I would also like to stress here that the scores over time primarily reflect *developments* in the share of temporary work within a sector, rather than share relative to other sectors. For example, a modest increase in agency workers in construction will be reflected by a move from 0 to 1, although it might still be a small share compared to other sectors.

Quantitative data on share of FT-contracts and TAW

The last two elements of a flexibility strategy are the share of FT-contracts and TAW in a sector. The qualitative case-study analysis showed that the use of FT contracts increased mainly during the 2002-2004 economic downturn in seven sectors: metalectro, supermarkets, department stores, architecture, LAML, cleaning, and home care. The reason for this increase was falling product demand, and uncertainty about future demand. In the home care sector, the uncertainty was caused by a new law aimed at increasing competition in the sector, implemented in 2007. In 2004, the expectation of this law already caused a rise in uncertainty for employers regarding the future demand

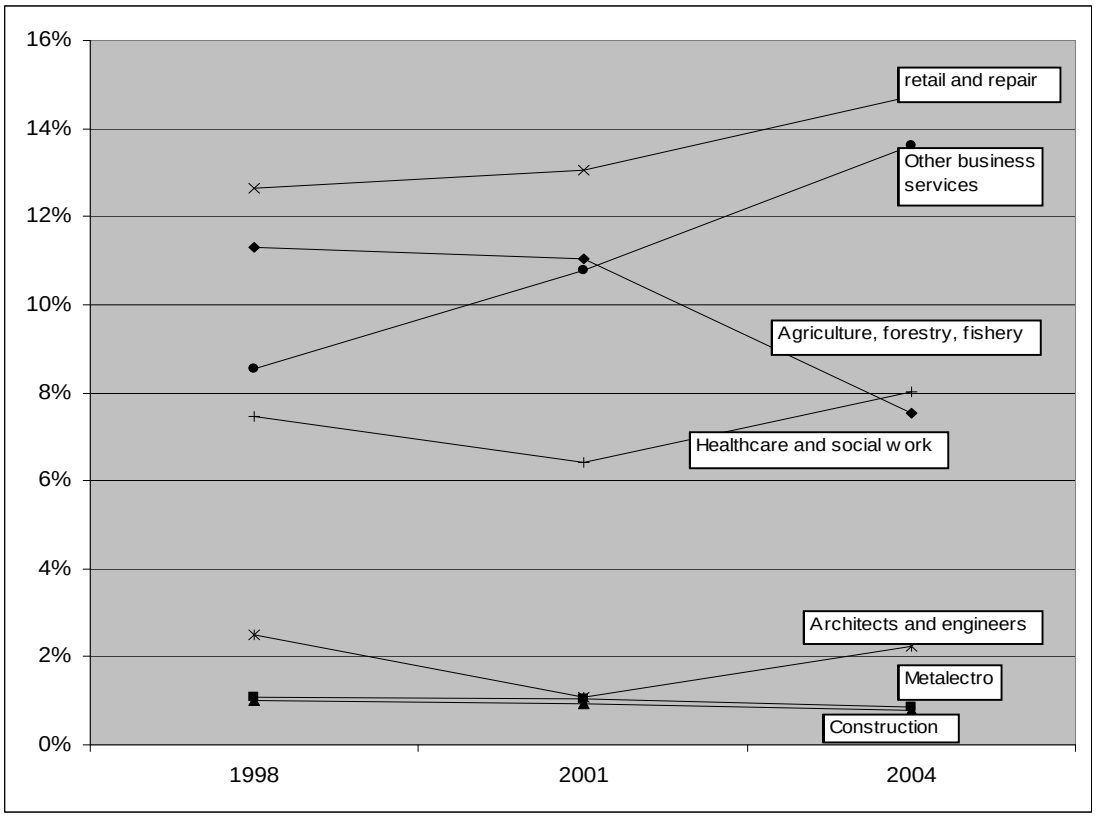
for their services translating in a reluctance to offer open-ended employment contracts (Van der Meer, Schaapman et al. 2007; Interview Home Care Trade Union January 2007). The share of TAW increased between 1998 and 2004 in four out of the eleven sectors: metalectro, horticulture, energy, and construction. It remained constant or decreased in the remaining seven sectors. In the security sector, neither increased, and only in the metalectro sector both FT-contracts and TAW increased. In construction the increase in TAW took place almost by definition, as TAW was prohibited in the sector before the introduction of WAADI in 1998. Social partners in the construction sector as well as representatives of the TAW sector had lobbied actively for the lifting of the ban. The use of agency workers in construction is, however, still modest, around 5%, because agency work suffers from a bad image in the sector and there is already a large degree of external flexibility via outsourcing.

In the horticulture sector, the use of foreign agency workers, mostly Polish, has increased substantially in recent years. The reasons for this increase are a) because the required skill-levels are low, b) they are cheaper than Dutch workers, and c) employers report difficulties to find Dutch people to do the job. There has been a strong increase in illegal temporary work agencies in the horticulture sector after the abolishment of the license-system as a result of WAADI. The TAW sector has responded by setting up a certification scheme and employers are encouraged to use only certified agencies. In the energy sector the use of FT-contracts and TAW rose because of privatisation in the early 2000s. To deal with the administrative procedures linked to the privatisation and a pressure to decrease costs in light of increasing competition, a substantial number of agency workers were hired since 2001 (Poel, Tijsmans et al. 2008). In 2005, over 25% of the people worker in the energy sector was externally hired as an agency worker or a posted worker (The Boston Consulting Group 2006). In contrast to the increase in these four sectors, the home care sector actively aimed to *decrease* the share of agency workers by setting up internal flex-pools. These pools are made up of "permanent employees with the flexibility of agency workers" (Poel et al. 2008, p. 49).

To extend this qualitative data, I add the available quantitative data on the share of TAW and FT-contracts at sector-level. In figure 6.2 below, the y-axis indicates the amount of flexible jobs as share of total jobs. This data is from Statistics Netherlands (CBS) that distinguishes between open-ended and flexible jobs. The CBS category 'flexible jobs' includes FT-contracts and TAW, but also on-call workers. As the sector-division does not entirely overlap with the eleven sectors studied in this project, I

selected the closest corresponding sectors. CBS does not have data on flexible positions in the energy sector.

Figure 6.2. Developments in share of flexible jobs across sectors



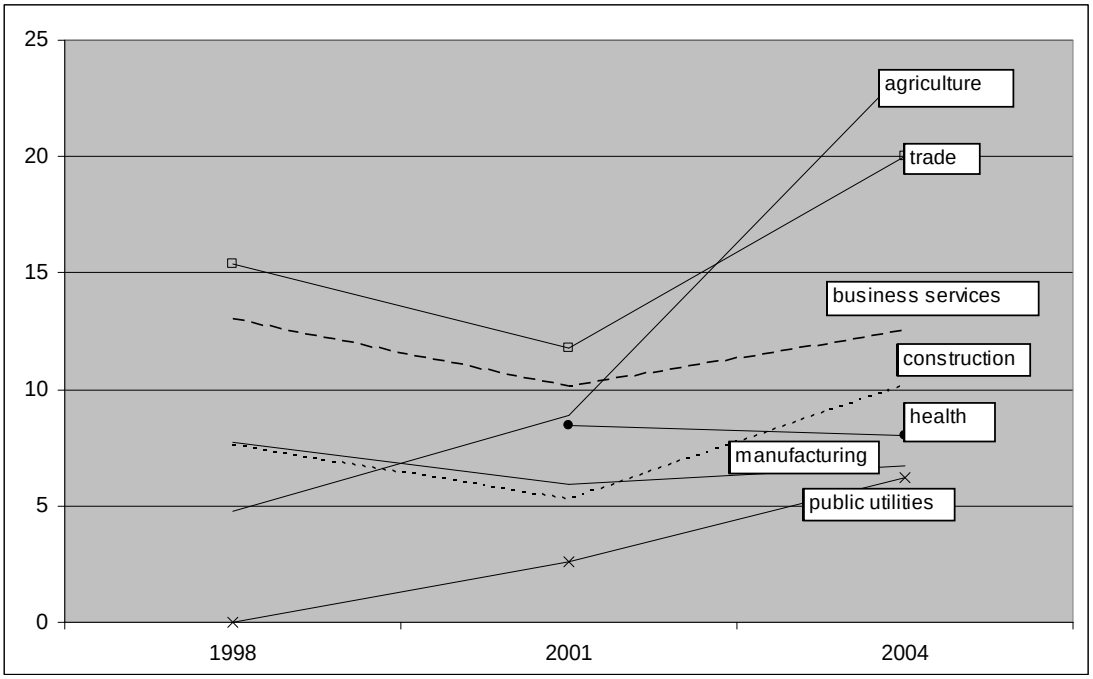
Source: CBS Statline

Note: horticulture and LAML are grouped under "agriculture, forestry and fishery"; supermarkets and department stores under "retail and repair"; cleaning and security under "other business services", and home care services under "healthcare and social work".

The sectors can roughly be divided into two groups: in the sectors agriculture, metalectro and construction the use of flexible contracts declined, while in the remaining four sectors there was an increase. The decrease was very small in metalectro and construction and substantial in the agricultural sectors. An increase was most prominent in 'other business services' (excluding the TAW sector), where the share went up with about 50%. In retail and repair, healthcare and social work, and architects there was a dip in the use of flexible contracts around 2001, coinciding with the economic boom. The share of flexible workers in the sector architects picked up to almost its level of 1998 but remains below average. The sectors construction and metalectro too have a below-average share of flexible positions. This data shows a discrepancy with the interview data; the CBS data is however less accurate as it includes on-call workers and is based on a different sector-classification.

Figure 6.3 below presents the data available via OSA; I group together the two OSA-categories 'FT-contracts' and 'FT-contracts with the prospect of an open-ended contract'. Because the number of people in my sector-classification is less than 50, I provide figures that are at higher sector-level. The sector agriculture, however, still has a small number of observations (from around 80 in 1998 to less than 40 in 2004), making it difficult to draw conclusions for this sector. The next two figures show the development in the share of FT-contracts and TAW-contracts. Again, the Y-axis indicates share of temporary jobs in the total number of jobs.

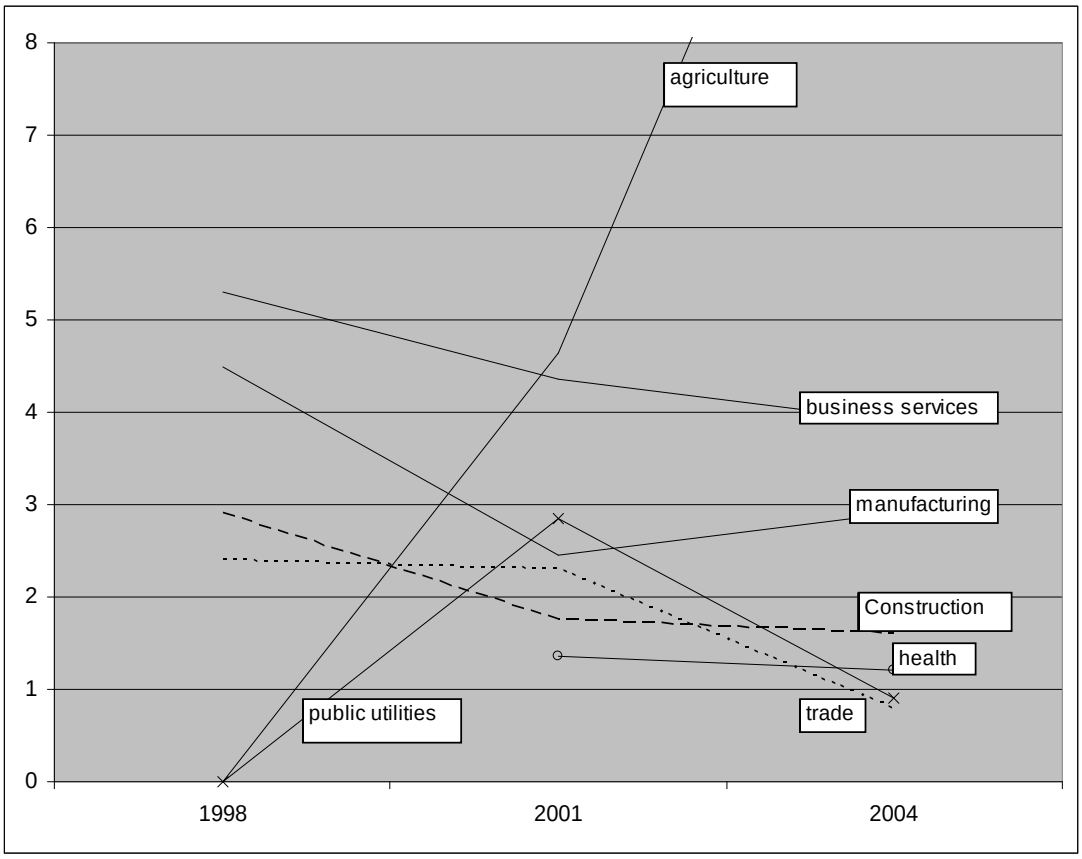
Figure 6.3. Developments in share of FT-contracts across sectors



Source: OSA supply data

Note: horticulture and LAML are grouped under agriculture; metalectro falls under manufacturing, and energy under public utilities. Supermarkets and department stores are grouped under trade; architects, cleaning and security fall under business services, and home care services falls within the sector health.

Figure 6.4. Developments in share of TAW across sectors



Source: OSA supply data

Figure 6.3 shows that there was a dip in the use of FT-contracts around the top of the economic boom in the sectors trade, construction, and business services. This is probably related to the tendency of employers to replace FT-contracts by open-ended contracts when labour becomes scarcer. The strongest increase after 2001 has taken place in the trade sector, with a share of FT-contracts of 20% in 2004. The data for agriculture shows quite an extreme increase but might be unreliable due to the low number of observations. Figure 6.4 shows that in almost all sectors, the share of TAW has gone down between 1998 and 2004. Here, I also consider the extreme figures for the agricultural sectors unreliable. A dip around 2001 is visible in the sectors manufacturing and construction, while a clear peak around 2001 can be seen in the sector public utilities (encompassing the energy sector). The share of agency work contracts is highest in the business services sector, which might be explained by the fact that here this sector *includes* the TAW-sector.

Before combining the CBS and OSA data with the qualitative data, I first combine the CBS and OSA data to arrive at quantitative scores for the sectors. For the agricultural sectors, I solely use CBS data, which show a drop after 2001. In the

metalectro sector, the share of flexible jobs has remained quite stable: there were not many changes in the share of FT-contracts, and the share of TAW decreased around 2001 but then increased again. Because CBS does not have figures on flexible contracts in the energy sector, I use the OSA data on 'public utilities'. This data shows an increase in the use of FT-contracts and an increase followed by a small decline in TAW. In the construction sector, the share of overall flexible jobs has remained quite stable, while the share of FT-contracts and TAW showed opposite trends: FT-contracts increased and TAW decreased. It is remarkable to see a share of TAW of around 3% at a time in which it was not legal in the sector. It might be that employment relations comparable to agency work existed in the sector, and the respondents in OSA's panel therefore reported that they were agency workers. In the retail sector, the use of flexible jobs is the highest according to CBS data, and increasing. The OSA data shows an increase in FT-contracts and a (smaller) decrease in TAW. Because the CBS data gives figures specifically for the sector architecture (albeit including engineers) I use those figures to determine the trend in use of temporary work. The CBS data shows an average share of flexible workers of around 2.5-3%, showing a drop around 2001. In the business services, including cleaning and security, CBS reports a strong increase in flexible contracts. OSA, however, reports a decrease in TAW and a stable level of FT-contracts, with a dip around 2001. The discrepancy between CBS and OSA data is likely to be caused by the fact that CBS and OSA do not reflect the same types of temporary work and the aggregation level varies. The healthcare sector, including home care, also shows the dip in use of flexible contracts around 2001 according to CBS. The OSA data is only available as of 2001 and shows stable levels of FT-contracts and TAW.

The next step is the translation of these qualitative labels, i.e. higher, lower, increased, decreased etc. into scores of ones and zeros for use of FT-contracts and TAW. I hereby combine the qualitative data with the OSA and CBS figures and score each sector on high use (1) and low use (0). These scores are supplemented by the scores on the three CLA-provisions that can increase flexibility for FT-contracts. The maximum possible score is therefore five. The highest score was however four (in energy in 2004); a score of three was found twice. Because the scores 3 and 4 are infrequent, both are given a score of 1, i.e. full membership in the flexibility set. This is not argument based on 'theoretical and substantive knowledge' as Ragin would suggest, but rather based on patterns that show from the data: all scores weigh equally in the set, i.e. there is a linear relationship between the number of scores and the level of flexibility. Furthermore, two

elements counts as more in than out (0.75) of the flexibility set, and one element as more out than in the set (0.25). Zero elements present means a sector is fully out of the flexibility set. All 33 outcomes (eleven sectors, three points in time) are taken up in appendix A.

6.3.3 Outcomes: developments in flexibility and security 1998-2004

The sectors are assigned scores for both flexibility and security for three points in time, i.e. 1998, 2001 and 2004. I argued in proposition one in chapter two that as external economic pressures for flexibilisation increase, employers will use more temporary work. This external pressure is partly the economic downturn between 2002 and 2004 translating into uncertainty about product demand in the direct future. This could therefore have led to an increase in temporary work. On the other hand, the share of temporary work might have gone down as these groups are the ones laid off first when employers downsize their workforce. The economic downturn could also have changed power balance between bargaining parties leading to different CLA-provisions; the effect of this will be assessed in the next section.

Because the Dutch Ministry of Social Affairs regularly publishes reports on deviations from the law (see chapter five), social partners might learn from practices in other sectors. Also, the majority of union members in the Netherlands are affiliated with a union that is a member of the main union federation FNV and policies and guidelines of FNV usually affect all sectors. The outcomes will therefore shed light on question two and proposition nine developed in chapter two: If variations between sectors increase over time, this is a process of divergence, possibly pointing to the realisation of 'tailor-made' lower-level solutions. If variations between sectors decrease over time, this is a process of convergence, possibly brought about by benchmarking or 'learning'-processes when actors know what actors in other sectors negotiate (Arrowsmith and Sisson 1999). Before developments in flexibility and security over time, table 6.2 below shows which sectors combine high flexibility with high security, i.e. flexicurity, at any of the three years.

Table 6.2. Flexicurity within sectors

Sector	**Year**	**Flexibility**	**Security**
Supermarkets	1998	0.75	0.75
Home care	1998	0.75	1
Home care	2001	1	0.75
Home care	2004	1	1

The table above shows that in home care and supermarkets high flexibility is combined with high security, i.e. *flexicurity*. In contrast to the supermarkets, this combination remains almost constant over time in home care. In the qualitative interviews, respondents in the home care sector stressed the combination of flexibility and security to retain workers. In 1998, there was more security, in 2001 more flexibility and in 2004, flexibility and security were balanced. The table below shows the changes in flexibility and security in the eleven sectors over time. The symbol -- indicates no change. The last row indicates the result of all sectors added up and shows the direction of change.

Table 6.3. Changes in security and flexibility over time

Sectors	**Security 1998-2001**	**Security 2001-2004**	**Security 1998-2004**	**Flexibility 1998-2001**	**Flexibility 2001-2004**	**Flexibility 1998-2004**
Horticulture	- 0.75	--	- 0.75	+0.75	--	+0.75
LAML	--	--	--	--	+0.5	+0.5
Metalectro	--	- 0.5	- 0.5	--	+0.75	+0.75
Energy	--	--	--	--	+0.25	+0.25
Construction	--	--	--	--	+0.25	+0.25
Supermarkets	- 0.5	+ 0.75	+ 0.25	- 0.5	--	- 0.5
Department stores	+ 0.25	--	+ 0.25	--	--	
Cleaning	- 0.25	--	- 0.25	--	+0.25	+0.25
Architecture	+ 0.25	- 0.25	--	- 0.5	+0.5	--
Security	- 0.25	--	- 0.25	--	--	--
Home care	+0.25	--	+ 0.25	- 0.25	--	- 0.25
RESULT	-1	0	-1	-0.5	+2.5	+2

Source: own calculations

Table 6.3 above shows that the sectors with little change (i.e. of 0.25 or less in both aspects and both periods) are energy, construction, department stores, and security. Proposition four states that in sectors with strong informal institutions on temporary work, changes in the formal institutions at national level will lead to little or no change in sector-level formal institutions and behaviour. Table one shows that the sectors with strong informal institutions are horticulture, construction and supermarkets. Of the sectors with little change, only construction indeed has strong informal institutions. This evidence is too weak to confirm proposition four that strong informal institutions lead to little change. Proposition four is therefore not confirmed but on the basis of this small amount of data also not entirely rejected; more research combining qualitative with quantitative techniques is needed to arrive at a more conclusive answer.

Table 6.3 also shows that most developments in security took place between 1998 and 2001, and entailed increases as well as decreases in security, although overall, the level of security decreased. This is peculiar considering the fact that in this period there was an economic boom, which should have increased the bargaining power of the trade unions and therefore an increase in security for workers. A possible effect of union power will however be tested in the next section. The part on flexibility shows that most change took place between 2001 and 2004; in all cases increasing flexibility. This is in line with the expectation raised in the 2001 study of the F&S Law (Van den Toren et al. 2002); in 2001 employers were not able to take full advantage of the newly offered flexibility options of the law due to high labour scarcity. The expected rise in flexibility strategies after 2001 did indeed occur.

Does this entail a situation in which the CLA remains intact but its content diverges more and more from the way it was intended? If this is indeed the case, the process at work might be an instance of the institutional change type *drift*. Is the content of the CLAs drifting away from what was intended by the actors that drew up the F&S law? In August 2007, social partners within the labour foundation STAR published an advice on the possibility to revise the 3x3x3-rule in which various positions are expressed regarding whether or not CLA-provisions on FT-contracts are in line with the law (STAR 2007). Employers' associations argue that CLA-provisions do not undermine the intentions of the F&S law because there is no large scale-deviation. According to the employers the law should not be revised, as the flexibility it creates is highly necessary. Trade unions on the other hand argue that the possibilities to deviate deteriorate the position of workers and stretch the rules that the law prescribes. For the trade unions, the developments indicate *drift* and they argue that deviations increasing the maximum duration of three years should be banned.

Combining the developments in security and flexibility levels in table three leads to the following picture:

Table 6.4. Combinations of flexibility and security 1998-2001 and 2001-2004

1998-2001 **Security**	**Flexibility**		
	+	-	No change
+		Home care Archi-tecture	Depart-ment stores
-	Horti-culture	Super-markets	Cleaning Security
No change			LAML Metal-ectro Energy Constr-uction

2001-2004 **Security**	**Flexibility**		
	+	-	No change
+			Super-markets
-	Metal-ectro Archi-tecture		
No change	LAML Energy Constr-uction Cleaning		Horti-culture Depart-ment stores Security Home Care

Table 6.4 most importantly shows that there was no sector where security and flexibility increased simultaneously either between 1998-2001 or 2001-2004. In the supermarkets there was a decrease in both between 1998 and 2001. Between 1998 and 2001, there was an increase in security for three out of eleven sectors, while between 2001 and 2004 there was an increase in security in only one sector, supermarkets. In that same period, there was an increase in flexibility in six out of eleven sectors. In metalectro and architecture, this increase in flexibility was coupled by a decrease in security. The remaining four sectors did not undergo any change. Four sectors experienced no change at all between 1998-2001, while almost all sectors experienced no change or an increase in flexibility between 2001 and 2004. Three sectors (LAML, energy, and construction) went through the same development from no change at all to increasing flexibility. The sector architects experienced an increase in security and a decrease in flexibility in 1998-2001, while the reverse, i.e. an increase in flexibility and a decrease in security, took place between 2001and 2004. There is no sector where there was no change at all between 1998 and 2004, and the sectors show quite varying changes.

The overall grouping of sectors is more dispersed in 1998-2001 and less so between 2001-2004. This entails a convergence between sectors in the range of changes. During the economic boom, the strategies across sectors were more diverse, while during the economic downturn, sectors became more similar and focused on increasing flexibility. Therefore, between 2001 and 2004, there has been some convergence between

sectors. Question six and proposition nine are hereby answered although only for the second period. The reason for this convergence could be that social partners are more aware of what happens in other sectors due to the reports by the Ministry. Despite some convergence towards flexibility, the extent and nature of flexibility and security varies across sectors. What could explain the observed differences between sectors? To answer this question, I look at sector-characteristics that shape security and flexibility outcomes by changing external pressures and/ or the power balance between social partners in the next section.

6.4. Explaining the nature of change with sector-characteristics

The previous section showed the developments over time and the testing of proposition four on the role of informal institutions. I will now test proposition one that external pressures increase the extent of temporary work and propositions eleven and twelve on the role of power in flexibility and security outcomes. In propositions ten and eleven, I argued that irrespective of the strength of informal institutions, power changes in favour of employers will lead to CLA-provisions more permissive than what is laid down in the F&S law, and power changes in favour of employees will lead to CLA-provisions more restrictive than what is laid down in the F&S law. The informal institutions in the previous sections explain the *extent* of change, while the power balance explains the *nature* of these changes in terms of flexibility and security and convergence and divergence.

Chapter three showed that the literature points to four factors that shape flexibility outcomes: openness to competition, scarcity of labour, business cycle sensitivity, and union strength. These factors on the one hand constitute the external pressures in the analytical model while on the other they impact the power balance between parties negotiating a CLA. Openness to competition and business cycle sensitivity can put a certain pressure on employers to use more temporary labour, while it can increase the bargaining power of employers. The other two factors, labour scarcity and union strength, more directly shape the power balance; higher levels of labour scarcity and higher levels of union membership increase the bargaining power of unions, who will strive to increase security. When membership and scarcity is lower, employers' associations will have more power, leading to increased flexibility.

An important development in most countries during the 1980s and 1990s is an expansion of market relations in the political-economic sphere (Streeck and Thelen 2005). This increased openness to market relations is often connected to increased competition and a process of flexibilisation of labour relations. Visser (2003) showed that in order to

understand developments between sectors, it is very useful to divide them not only on the basis of international competition (i.e. national/ sheltered and international sectors) but also on the basis of high or low-skilled work[25]. In line with the importance of analysing the sector rather than national-level stressed in chapter three, Visser advocates the importance of analysing the sector rather than the national-level (Visser 2003). I argue in line with Visser that international competition and high vs. low-skilled work are indeed important conditions for flexibility and security in employment contracts; I however modify his argument in three respects. First of all, within the context of one country, not only international, but also national competition is an important factor increasing the need for flexible contracts. National competition is increased with for example privatisation of previously state-owned companies. In the Netherlands, the home care sector is a good example where home care organisations now have to compete with other providers of home care services after a legal change in January 2007. Already in the years before the introduction of this law, employers were uncertain about the demand for their services and required more flexibility, mainly in FT-contracts.

The second modification I make concerns skill-levels. Instead of skill-levels I will use the sector-level characteristic 'labour scarcity'. There is not a one-to-one relationship between skill-levels and scarcity and labour scarcity is somewhat more encompassing. High required skill-levels are often related to high scarcity, but high scarcity is related to many more factors. Again the home care sector is a good example where demand for home care services increases due to the ageing of the Dutch population. The skill-level required is for most positions however quite low. Thirdly, I would like to make an addition to Visser's model by including business cycle sensitivity as this also shapes flexibility pressure for employers. This factor played an important role in the 2001/ 2002 evaluation study and was mentioned in the qualitative interviews as a key influence on the share of temporary work. Business cycle sensitivity has an impact on the type of contracts that employers wish to use. A good example is the construction sector, which is highly sensitive to economic upswings and downturns, and where workers are traditionally hired only for the duration of a specific project. Here the factor business cycle sensitivity is already translated into informal institutions on how to organise the work. As I mentioned above I will add union strength measured as membership levels in a sector as another indicator of the power balance in which collective bargaining outcomes take shape.

25 Visser bases this division of sectors on Torben Iversen's 1999 book, Contested Economic Institutions. Cambridge University Press.

In the interviews with employers and social partners, these four elements also came up as important drivers of the use of and CLA-provisions on, temporary work. However, there was an additional factor mentioned frequently by employers and social partners and should therefore be included in the analysis: *internal flexibility*. Actors consider temporary work in direct relation to the types of internal flexibility used and/ or available in a sector. The two cannot be analysed separate from each other. How the two exactly relate, i.e. if they are substitutes for one another, like 'functional equivalents', or if use of internal flexible labour stimulates the use of external flexible labour will be dealt with in the sections below, where I discuss each sector-characteristic more elaborately.

6.4.1 Openness to competition

It has been noted that when firms are more open to (international) competition, the demand for their products becomes more unpredictable. As a result, firms might want to use more flexible labour (Rubery and Grimshaw 2003; Stone 2007). During the interviews I held, it became apparent that in most sectors, existing or increasing openness to competition has played an important role over the past years. Only in the sectors LAML, department stores and security this has played a very minor role. Due to increasing international competition, metalectro companies for example focus more and more on cost efficiency by outsourcing their production units, concentrating on R&D and logistics, and deploying labour more in line with product demand to remain competitive.

The home care sector went through increasing openness to mostly national market forces over the last 10-15 years (Van der Meer, Schaapman et al. 2007). This development has recently been intensified as a result of legislative changes in effect from January 2007, which put the home care sector in direct competition with the cleaning sector by opening up the market for cleaning and simple nursing services within private homes. Although the year 2007 is not analysed, uncertainty about of the amount of work after 2007 made employers more cautious to offer permanent employment contracts already in 2004/ 2005. The energy sector has also been characterised by a significant increase in both national and international competition due to the liberalisation of the energy market in the early 2000s. This openness led energy firms to recruit a large number of young, externally flexible workers to assist with new administrative systems. The horticulture sector is connected to the international economy as the sector has many production facilities in Africa and Latin-America (in the case of flowers), and largely produces for export. Due to increasing international competition (e.g. from African

countries), employers look for ways to keep their labour costs down and flexibility is a way to do that. Labour costs make up about one-thirds of production costs, so an efficient use of labour has a considerable cost-saving effect.

To arrive at membership scores in the set 'high openness', I combine the qualitative analysis with a measure from CBS, a measure for international competition derived from De Grip, Van Loo and Sanders (2004), and the aforementioned analysis from Visser (2003). The CBS-measure is derived from the OECD, but is only available for agricultural and industrial sectors. The indicator developed by De Grip et al is based on the export share of production in a sector (De Grip, Van Loo et al. 2004). This measure is unfortunately only available for the year 2004 (see appendix C in chapter 3). Visser distinguishes between exposed and sheltered sectors (2003, p. 35) in the early 2000s, but also reflects on future developments. I therefore consider his analysis relevant for the years 2001 and 2004. These sources taken together translate into the following set-membership scores (see table 6.5). I again use a five-value range of scores to indicate fuzzy membership in the set "high openness to (inter)national competition". In table 6.5 and in the following tables with sector-characteristics, the scores represent the following labels: 0= fully out of the set; 0.25= more out than in the set; 0.75= more in than out of the set; 1= fully in the set. The score of each sector initially reflects differences between sectors, but developments in the scores mostly indicate developments *within* the sector.

Table 6.5. Data on openness to competition

Sectors	**Openness to competition – fuzzy set membership scores**		
	1998	**2001**	**2004**
Horticulture	0.75	0.75	0.75
LAML	0	0	0
Metalectro	0.75	0.75	1
Energy	0	0.75	1
Construction	0	0	0.25
Retail: Supermarkets	0.75	0.75	0.75
Retail: Department stores	0.25	0.25	0.25
Cleaning	0.75	0.75	0.75
Architecture	0.75	0.75	0.75
Security	0.25	0.25	0.25
Home care	0.25	0.75	0.75

6.4.2 Scarcity of labour

A second condition that affects the use of flexible workers is the level of labour scarcity (Gryp, Van Hootegem et al. 2004). Scarcity of labour can have various causes, some of

which are: high required skill levels; labour supply lagging rapidly growing demand for a product or service, and a bad image of the sector, possibly related to bad employment conditions. I hypothesize that the higher the level of labour scarcity, the less flexibility will be an issue for employers at the bargaining table. They will be more focussed on retaining highly sought-after personnel. Also, higher labour scarcity increases the bargaining power of the trade unions, enabling them to realise more security for workers in the CLA. The interview-data shows that the sectors with a constant high level of labour scarcity are metalectro, energy, architects, security and home care. The home care sector for example is traditionally a sector with a high in and outflow of workers. Retaining these workers is important because the demand for home care services continues to increase due to the ageing of Dutch society. In addition, the sector went through a process of 'marketisation', which led to increasing competition for labour (Van der Meer, Schaapman et al. 2007).

The interview-data is complemented with data taken from the earlier study into the F&S Law (Van den Toren, Evers et al. 2002), desk research, and a measure for labour scarcity taken from CBS. These four sources together constitute a fuzzy membership score in the set "high labour scarcity". The interviews and desk research translate into a qualitative label, while the CBS measure indicates the share of vacancies per 1000 jobs. The CBS data was discussed in chapter three and taken up in appendix C in that chapter. As CBS does not provide data at the level of the eleven sectors studied here, I take the closest corresponding sectors (see note under table 6.6). The CBS values show quite different outcomes, but these are less valuable as the data applies to a higher level sector-classification. If the data is more than one membership score-level (i.e. 0.25) away, I adjust the qualitative label by one level to bring them closer together. However, if the difference between the two values passes over the crossover-point of 0.5 distinguishing high and low, I adjust the qualitative label in line with the CBS data. Exceptions are the sectors retail and security: because the CBS value for these sectors is just on the edge of the fuzzy set value, I leave them unchanged. The fsQCA scores are presented in table 6; the initial scores and the translation scheme for the scores are taken up in table three, appendix C in chapter three.

Table 6.6. Data on labour scarcity

Sectors	**Labour scarcity – fuzzy set membership scores**		
	1998	**2001**	**2004**
Horticulture	0.25	0.75	0.75
LAML	0.25	0.75	0.75
Metalectro	0.75	0.75	0.75
Energy	0.25	0.25	0.25
Construction	0.25	0.75	0.25
Retail: Supermarkets	0	0.25	0
Retail: Department stores	0	0.25	0
Cleaning	0.25	0.75	0.25
Architecture	0.75	0.75	0.25
Security	0.25	0.75	0.25
Home care	0.25	0.75	0.25

Note: Horticulture and LAML both fall within the CBS-sector agriculture; Metalecro falls under manufacturing and industry; energy under public utilities; Supermarkets and department stores fall within trade and repair, Cleaning, architecture, and security are all commercial services, and home care is part of the sector Health and social work.

6.4.3 Business cycle sensitivity

The use of temporary labour closely corresponds with developments in the business cycle of an economy: it is highest just before an economic boom (De Graaf-Zijl and Berkhout 2007), and lowest during the top of the economic cycle (OSA 2006). In an economic downturn, the use of flexible workers is very low as these workers are laid off first when employers feel the need to bring down their workforce. Fluctuations in the business cycle do, however, not affect all sectors equally; there is a mediating condition, i.e. business cycle sensitivity at the sector-level. The case-study analysis showed that the sectors with a high degree of business cycle sensitivity are construction, architecture and metalectro. In the sectors construction and architecture, the workload is related to the number of building projects, which is largely determined by the business cycle. Especially in architecture, there is a difference between small firms that are more sensitive to the business cycle, and large firms that are less sensitive because they are always involved in a certain number of large long-term projects (e.g. the building of a hospital)[26]. The metalectro-sector is sensitive to the (international) business cycle because it produces high-value consumer products, depends on resources such as oil and steel, and is largely geared towards export. The 2002-2004 downturn was reflected in a decrease in employment in the metalectro sector of 17% (Van Loo, Grip et al. 2006), although this was also triggered by technological innovations and outsourcing aimed at improving

26 There is however not a one-to-one relationship between business cycle sensitivity and firm size, and I leave it out of the further analysis.

competitiveness. Of the remaining sectors with a low(er) degree of sensitivity to the business cycle, the home care and security sector have experienced a continuous increase in demand in recent years, despite business cycle fluctuations. This is due to the ageing of society in the case of home care, and political reasons in the case of security.

To assign the sectors' membership scores in the set 'business cycle sensitivity'; I combine the data of Van den Toren et al. (2002) with the qualitative interview-data, and a measure developed by ROA (the Research centre for Education and the Labour Market of the University of Maastricht). The ROA measure is based on the fluctuations in employment levels corresponding with economic changes (ROA 2007) (see table 1b, appendix C, chapter three).

Table 6.7. Data on business cycle sensitivity

Sectors	**Business cycle sensitivity – fuzzy set membership scores**		
	1998	**2001**	**2004**
Horticulture	0.25	0.75	0.75
LAML	0	0	0
Metalectro	0.75	0.75	1
Energy	0.25	0.25	0.25
Construction	1	1	1
Retail: Supermarkets	0.25	0.25	0.25
Retail: Department stores	0.75	0.75	0.75
Cleaning	0.25	0.25	0.25
Architecture	1	1	1
Security	0.25	0.25	0.25
Home care	0	0	0

N.B.: the ROA sector-division does not entirely overlap with my sector-division: Horticulture and LAML fall within agriculture and fishery; supermarkets and department stores in trade and repair, cleaning, architecture and security within hotel& catering and commercial services, and home care services within health care. Note: the figures for the energy sector do not correspond.

6.4.4 Internal flexibility arrangements

The two types of flexible labour analysed in this project are both external numerical forms of flexible labour. The use of this type of flexible employment is shaped within the context of the overall flexibility arrangements in a sector, which consist of various internal and external flexible elements. It has been argued that if the flexibility arrangements in a certain sector are focussed towards internal flexibility, the use of external flexibility is likely to be low. Firms initially respond to a need to become more flexible by increasing internal flexibility, such as the extension of working hours and overtime. This is related to uncertainty about the qualifications of externally hired personnel (Tijdens 1998). Only when internal flexibility is insufficient, they turn to

external flexible labour (De Kok, Westhof et al. 2007; OSA 2007). However, there is also a trend since the 1990s whereby firms have increasingly shifted from the most optimal organization of the workforce within the firm, i.e. the internal labour market, to a focus on new flexible employment relationships external to the firm, i.e. an external labour market (Grimshaw, Ward et al. 2001). By using external flexible labour, firms restructure their labour force into an internal core of permanent employees and a periphery of temporary labour, which reduces labour costs and increases flexibility (Gryp et al. 2004, p. 37; Mitlacher and Burgess 2007, p. 402). Bringing these various arguments together it can be concluded that internal and external flexibility always combine to a certain extent as substitutes or complementarities. They are interrelated and employers are always looking for the right balance between the two (Scheele 2002; Gryp, Van Hootegem et al. 2004; De Kok, Westhof et al. 2007).

The balance between internal and external flexibility is shaped by a series of other elements such as the nature of the work, the size of establishments, and traditional ways of structuring the work in the sector. In the cleaning sector, internal flexibility is high: most cleaners (over 75%) work less than 36 hours per week and the work is organised in a highly flexible manner in terms of location and working hours. Due to this existing high internal flexibility, the use of externally flexible agency workers is low. This initial internal flexibility is quite stable, although there are some shifts visible from the case-study analysis (see appendix B). A desire to shift from external to internal flexibility can be observed in the home care sector over the last 10 years. This is related to the level of labour scarcity in home care services and the resulting need to attract and retain employees (Van der Meer, Schaapman et al. 2007). In the horticulture sector, possibilities to deploy permanent workers more flexibly (i.e. internal flexibility) have been increased through an annual working-time scheme initiated by employers and introduced in the CLA in 2001. Employers in the security sector have unsuccessfully pushed for the introduction of such an annual working time scheme. The main flexibility strategy in this sector is also traditionally internal in the form of part-time contracts and overtime. In the sector architecture, external flexibility is mainly realised with posted workers or freelancers. This external flexibility is used in addition to a tradition of internal flexibility by means of overtime hours, which is a feature closely linked to the creative work of architects. These are some examples of the way firms and social partners organize flexibility, and thereby also security, differently across sectors.

To construct scores on the last sector-characteristic the internal element of the total, flexibility arrangements in a sector is analysed. Appendix B contains an overview of the various flexibility elements in the sector and a descriptive table with the most important developments regarding internal flexibility arrangements based on the qualitative data-analysis and the previous evaluation of the F&S Law (Van den Toren, Evers et al. 2002). The scores in the table below are based on the extent to which 1) firms in that sector report internal flexibility as a main flexibility strategy, and 2) provisions on internal flexibility are laid down in the sector-level CLAs.

Table 6.8. Data on internal flexibility arrangements

Sectors	**Internal flexibility – fuzzy set membership scores**		
	1998	**2001**	**2004**
Horticulture	0.25	0.75	0.75
LAML	1	1	0.75
Metalectro	0.25	0.25	0.25
Energy	0.25	0	0
Construction	0.25	0	0
Retail: Supermarkets	0	0	0
Retail: Department stores	1	1	0.75
Cleaning	1	1	0.75
Architecture	1	1	1
Security	1	1	1
Home care	0.75	1	1

The table in appendix B contains a descriptive overview of the internal flexibility arrangements, how they have evolved and the way they relate to external flexibility, i.e. FT-contracts and TAW. These descriptions show that in some sectors the existing ways to organise flexibility were restricted by means of legislative changes. In order to continue with certain practices, employers and social partners found new tools that in fact enabled a continuation of existing practices. The main examples of this are visible in the sectors construction, LAML and home care. The work in LAML and construction is organised in temporary projects, which in LAML are related to the seasons. To deal with the flexibility in work organisation that this required, employers used the option that employees could be unemployed for brief periods while receiving unemployment benefits. Because the Dutch government felt employers were too much putting the burden of this flexibility unto society, the possibilities for temporary unemployment were restricted by law in 2000. Actors in both sectors have dealt differently with this new institutional framework: in LAML employers wanted to retain their workers and offered them open-ended contracts with various internal flexibility schemes, such as the shifting

of working hours and 'bridging periods'. In the construction sector, employers have shifted to more external flexibility by means of subcontracting to other firms and to a rapidly increasing number of self-employed (Polish) construction workers.

In the home care sector flexible workers were often agency workers. With the increased legal and social security for agency workers introduced with the F&S law, agencies were charging higher fees. This is related to the increased risks that agencies run when user firms for example send workers back to the agency (see chapter five). To retain flexibility, home care agencies therefore looked for alternatives and developed internal labour pools with directly hired people that were as flexible as agency workers in terms of working hours and working location. What is occurring in these sectors is that new methods are redirected towards existing ends. This comes very close to an instance of institutional change analytically developed by Streeck and Thelen (2005) and reflected in proposition seven in chapter two. This is a type of change that they have called *conversion*, whereby existing provisions are used towards new ends. However, what I find is rather that practices remain unchanged while the heading under which a practice is labelled changes. I therefore term this process *reversed-conversion*. These practices, and to a lesser degree also the practices in the sectors horticulture and cleaning, show that proposition seven can be confirmed, albeit regarding the second type: reversed/conversion.

6.4.5 Union membership

The final factor influencing the use of temporary work is the bargaining position of the unions (Gryp et al. p. 109). A shift in the balance of power between unions and employers' associations is likely to result in different collective bargaining outcomes. In general, unions take a critical stance towards temporary work, mainly because their main constituency is working on the basis of open-ended contracts. Flexibilisation and flexible workers often pose a threat to the position of these 'insiders' in the labour market (Lindbeck and Snower 2002), although they can also function as a 'buffer' to protect insiders. Flexible workers have this 'double face': on the one hand they can protect the insiders while they also pose a threat as they show that the insiders might also become outsiders.

The extent to which unions are able to realise their vision is determined by their strength at the bargaining table. The bargaining power of unions can be affected by increasing openness to international competition. Raess and Burgoon have, for example, found that higher openness undermines the position of the unions in a sector and can

lead to 'concession bargaining' (Raess and Burgoon 2006). One can imagine that the effect of openness is smaller in sectors with higher union density. Also, the position of the unions is shaped by flexible labour in the sense that declining union membership can be caused by an expanding flexible work force (Smith 2006). Because of less attachment to their jobs, flexible workers are less likely to become a member of a union. I argue that sectors with high trade union density levels will have higher levels of security, and a lower use of FT-contracts and TAW.

I measure union bargaining strength as their membership base in the sector. Union bargaining strength can be more complex than membership numbers only and might also be related to factors such as the degree of professionalisation, the total number of unions in the sector, and very important in the Dutch case, collective bargaining coverage. In the Netherlands, union membership is generally low around 25%, but collective bargaining coverage is high, between 80-85% (Van Klaveren and K. Tijdens (eds.) 2008). A recent study into the different bargaining levels across sectors showed that this average coverage share differs very little across the sectors studied here. Although not at the exact same level of measurement as the eleven sectors, the study showed that the level of collective bargaining coverage is around 80-85%, with the exception of commercial services, where it is 46% (ibid. p. 215). Because union membership levels are also low in commercial service sectors (see table 6.9 below), I do not further take the level of bargaining coverage into account when assigning set membership scores. The scores are only based on the level of union density, i.e. share of union members in the total workforce in a sector. Statistics on union membership at the same level as the eleven sectors are not available from CBS. The correspondence of the sectors with the CBS classification is taken up in the note under table 6.9.

The membership levels of CBS as share of total employment for the closest corresponding sectors in 1998, 2001 and 2004, and the directive for translating membership levels into fsQCA scores, can be found in table four in appendix C in chapter three. The scoring is an attempt to 'truncate irrelevant variation' (Ragin 2000, p. 161-165): The categories 0.75 and 1 for example show that when membership is relatively high, i.e. above the national average of 25%, small differences are no longer very relevant. The main variations are captured around membership levels of 14-25%.

Table 6.9. Data on union membership

Sectors	**Union membership – fuzzy set membership scores**		
	1998	**2001**	**2004**
Horticulture	0.25	0.25	0
LAML	0.25	0.25	0
Metalectro	0.75	0.75	0.75
Energy	1	1	0.75
Construction	1	0.75	0.75
Supermarkets	0	0	0
Department stores	0	0	0
Cleaning	0.25	0	0
Architecture	0.25	0	0
Security	0.25	0	0
Home care	0.25	0.25	0.25

Note: The sectors horticulture and LAML are grouped under agriculture and fishery; metalectro falls under mining and industry; energy is part of the sector energy and water; both retail sectors fall under the sector trade; cleaning, architecture and security are all part of the sector business services, and home care falls under the sector health and well-being

6.5. Necessary and sufficient conditions for flexibility and security

6.5.1 Individual conditions relating to (changing) outcomes

The next step for fsQCA is to make one table containing both the set membership scores for the five sector-characteristics and the scores for the outcomes. This table, taken up in appendix C, allows determining which characteristics can be found together with high flexibility or high security. According to QCA-language I hereafter refer to the characteristics as 'conditions' and flexibility and security as 'outcomes'. With conventional statistical measures, it is problematic when conditions ('independent variables') are interrelated, which is not a problem and rather a core feature of QCA. The combinations of conditions are discussed in the next section 5.1. The connectedness of conditions is furthermore a basic element for the notions of necessity and sufficiency, which are the conclusions that can made with QCA. With QCA, I determine which conditions are necessary, and which conditions are sufficient for an outcome. Necessity and sufficiency are two different qualifications, i.e. they are not linear related to each other and it can therefore not be concluded that one is for example 'more' or 'higher' than the other. It can ,however, be stated that a sufficient condition can by itself bring about a certain outcome, though not always, whereas a necessary condition always leads to the outcome when combined with other conditions.

Based on Boolean logic, a condition is necessary when it is always present in combination with a certain outcome. It might for example turn out that every time there are strong unions in a sector, there is a high level of security. However, there are also

instances where I find strong unions, while there is no high security. I then conclude that strong unions are necessary for a security strategy, but strong unions by themselves are not enough, i.e. strong unions have to combine with other conditions to result in high security. Instances of the outcome are therefore a subset of instances of the condition. Because fsQCA is not based on absence or presence of conditions but on scores between 0 and 1, a condition is considered necessary when membership scores for the condition will be higher than or equal to membership scores for the outcome; a high score on the condition combines with an equal or lower score on the outcome (Ragin 2000). A condition is sufficient, if it always leads to the outcome. However, other conditions can also lead to the outcome. I find, for example, that every time there is high flexibility in a sector, it is also sensitive to business cycle. However, I also find sectors with high flexibility that are not sensitive to the business cycle. In that case, business cycle sensitivity can alone lead to high flexibility and is therefore sufficient, but there are also other conditions leading to high flexibility. In the case of sufficient conditions therefore, membership scores for the condition are equal to or lower than membership scores for the outcome. High scores on the outcome will have equal or lower scores in the condition. The condition is a subset of the outcome; although there are other ways to achieve the outcome, the condition will always lead to the outcome.

To determine the extent to which conditions are a subset of the outcome or vice versa, i.e. which conditions are necessary and which are sufficient, I plotted the conditions on the X-axis against the outcomes on the Y-axis in scatterplots, or X-Y plots in QCA language (Wagemann and Schneider 2007). Because scores for necessary conditions are higher than or equal to scores for the outcome, in case of necessary conditions the sectors will be located in the lower right corner of an X-Y plot, under an imagined diagonal line from (0,0) to (1,1). As sufficient conditions have scores that are equal to or lower than membership scores for the outcome, the sectors will be located in the upper left corner of the plot when a condition is sufficient. If a condition is both necessary and sufficient, all sectors will plot exactly upon an imagined diagonal line from (0,0) to (1,1) in an X-Y plot. Appendix D contains all the X-Y plots: 30 in total. I made 30 plots because there are five conditions for two outcomes, five times two is ten, for three points in time. The diagonal lines in the scatterplots do not represent a relationship but were added to divide the plots in an upper-left and lower-right corner. Note that not all X-Y plots contain 11 dots (i.e. sectors) because sectors with equal scores on both

condition and outcome overlap. Looking back at the original table in appendix C allows a determination of what the overlapping sectors are.

The plots, first of all, show that there are no conditions whereby all sectors plot exactly on the diagonal, i.e. both necessary and sufficient. Secondly, there are only a small number of plots where there is a clear pattern of sectors located in either the lower right or upper left corner. Because there are no plots in which *all* sectors are located in either corner of the plot, there are no *pure* necessary and sufficient conditions. I therefore introduce a 'measure of consistency' to evaluate the results. This measure is calculated as the sum of the *consistent* membership scores in a condition, divided by the sum of *all* membership scores in a condition (Ragin 2005, p.10). A common minimum consistency score is 0.75 (Rottiers, Marx et al. 2008). For my plots, it means that there cannot be more than two sectors to fall outside the general pattern of being in either the upper left (sufficient conditions) or lower right (necessary conditions) corner of the X-Y plot. Note that the number of outliers is not always immediately visible as some sectors overlap. To calculate the consistency, I therefore looked back at the scores to determine if a dot in the plot represented more than one sector. Based on this minimum rate of consistency, the following conditions are either necessary or sufficient. I excluded sectors with a score of zero on both the condition and the outcome (see note under table 6.10).

Table 6.10. Necessary and sufficient conditions for flexibility and security

Outcome	Necessary /Sufficient	Condition	Year	Consistency and outlier(s)
Security	Sufficient	**Openness**	1998	0.9 Outlier: architects *
	Sufficient	**Scarcity**	1998	0.8 Outliers: Energy and architects
	Necessary	**Scarcity**	2001	0.8 Outliers: Department stores and Home care
	Sufficient	**Unions**	2001	0.9 Outlier: Energy
	Necessary	**Internal flexibility**	2004	0.8 Outliers: construction and supermarkets *
Flexibility	Necessary	**Openness**	2001	0.9 Outlier: LAML **
	Necessary	**Internal flexibility**	2001	0.8 Outliers: Energy and supermarkets **
	Necessary	**Openness**	2004	0.8 Outliers: LAML and home care
	Sufficient	**Scarcity**	2004	0.9 Outlier: Security ***

Note. * Energy excluded; **Construction excluded; *** Department stores excluded

The results show that business cycle sensitivity is not a necessary or sufficient condition for high security or flexibility at any point in time. For security strategies, all other four conditions play a role at one point in time. Scarcity is the measure that plays a role in both 1998 and 2001; it is sufficient in 1998 and necessary in 2001. In 1998 scarcity could by itself lead to security, while it required other conditions in 2001. This, however, does not indicate a stronger effect of scarcity in either of the two years; the effect is instead different. Openness was another factor that by itself could lead to security in 1998. Strong unions are sufficient for security in 2001, and internal flexibility is a necessary condition for security in 2004. Finally, it shows that the energy sector is in all but one instance either excluded (i.e. has a score of 0.0) or an outlier to the general pattern. The pattern found in this sector diverges quite a lot from the pattern found in most other sectors. For flexibility, openness and internal flexibility are both necessary in 2001, openness alone is necessary in 2004, and scarcity is by itself sufficient for flexibility in 2004. There are less clear outliers than for the security strategy, but LAML is the outlier for openness in both 2001 and 2004.

As expected, openness and scarcity play an important role for the outcomes, although the conditions do not always influence the outcome as expected. Scarcity is sufficient for high security in 1998, necessary in 2001, and not important for high security at all anymore in 2004. In 2004 the Dutch economy was slowly climbing out of the downturn. It could therefore be that some sectors were indeed experiencing some scarcity again, but due to insecurity about future developments this led to an increase in flexibility rather than security. In line with the expectations, a high degree of openness is mostly related to high flexibility, while high labour scarcity is related to high security. The relationship is, however, not entirely clear-cut: openness is necessary for high flexibility in 2001 and 2004, although it also leads to high security in 1998. It could be that before the F&S Law, openness was a reason to increase security, whereas after the law introduced new flexibility possibilities, openness triggered the use of these new options.

As expected, strong unions are only found in combination with high security, although their role is only sufficient in the year 2001. This might be explained by the fact that the unions do not (yet) bargain extensively for security for temporary workers, because these workers are not among the core of their membership base. Also, the year 2001 indicates the economic boom. It might also be the case that unions can only influence security strategies when they have a strong bargaining position, although then it

would also be expected for labour scarcity to play a role. Finally, I find a mixed effect of high internal flexibility: it is necessary for a high flexibility in 2001 and necessary for high security in 2004. In 2001, just after the economic boom, it might be that internal and external flexibility were increased simultaneously to deal with the high need for labour power. In 2004, just after the downturn, employers and social partners might have preferred to hold on to workers and increasing security for temporary workers.

6.5.2 Paths leading to high flexibility and high security

One of the starting points of QCA, which distinguishes the method from for example regression analysis, is that conditions can be interrelated. Therefore, the next step is to look at which combinations of conditions lead to high scores on flexibility and security. In QCA-language, these combinations are often referred to as *configurations*. I will however also term these *paths*, because I feel this is a clearer term and it is in line with the notion of 'pathways to flexicurity' (Wilthagen 2008). To analyse configurations, an important requirement is fulfilled, namely that there are conditions that are by themselves necessary or sufficient. This is required because the overall score of the configuration always equals the lowest scores of the separate conditions in the configuration (Rottiers, Marx and Van den Bosch 2008, p. 14). With the data gathered for this project, it is however not possible to determine if entire configurations are necessary or sufficient, because there were not enough sectors to make a scatterplot; for any path found there was a maximum of two sectors in which a path applied.

Configurations not only combine the five conditions, but also the absence of these conditions. To indicate absence, I use *negation* which is nothing more than the subtraction of the membership level in a condition from 1: (membership in set *not*-B) = 1- (membership in set B). For example membership in the set business cycle sensitivity is 0.75, then the membership in the set not high business cycle sensitivity is 0.25. In QCA the term 'not-high' is preferred over 'low' as they might entail two distinct categories. The number of possible combinations of presence and absence of all five conditions then amounts to 32 (two to the power of five). For each sector and each year, there are 32 possible combinations of presence and absence of combinations leading to a high score for flexibility or security strategy. I brought this large table back to a table only containing the configurations that score 0.75 or higher and that lead to a high score (i.e. >/= 0.75) for flexibility or security, see appendix E.

To construct the paths I now use letters to indicate conditions: O stands for openness, S stands for scarcity of labour, B stands for business cycle sensitivity, I stands

for internal flexibility strategy, and U stands for strong unions. When a condition is present, this is indicated by an upper-case letter; a lower-case letter indicates absence. A path can therefore look like this: O*s*b*I*u, where upper-case O and I indicate high openness and high internal flexibility strategy, and lower-case s, b and u indicate absence of scarcity, business cycle sensitivity and strong unions. The * indicates the *logical and* in Boolean algebra. *Logical and* indicates the intersection of sets, which amounts to the lowest value of any condition in the set. After analysing all 32 combinations, I looked which configurations scored 0.75 or higher, and combined with a score of 0.75 or higher on security and/ or flexibility. Some configurations were contradictory: this means that the same path in one sector leads to a score of 0.75 or higher on flexibility and/ or security, and in another sector to a score of 0.5 or lower. I therefore cannot conclude that this configuration leads to a high score on one of the two. When contradictory configurations occur within the same year (see table in appendix E), I exclude them from the analysis.

The table in appendix E shows that in 1998, the paths leading to high security are all unique, i.e. there is not one condition that is absent or present in all configurations. However, *absence* of labour scarcity is present in all paths except for the one in the metalectro sector. In 2001, again all combinations are unique, although now *presence* of scarcity is present in all paths except for one, in the sector department stores. There are two paths in 2001 that also led to high security in 1998: O*S*B*i*U and o*s*B*I*u. In the first path all elements are present save internal flexibility strategies, and in the latter path high business cycle sensitivity and internal flexibility combined with the absence of the other three elements leads to high security. The latter combination also leads to a high security strategy in 2004. In 2004, three paths lead to a high security strategy, and they all contain the *absence* of labour scarcity. Looking at all three years, the paths leading to a high security strategy are mostly unique, although scarcity of labour plays a role in most cases. Contrary to what I expected, the *absence* of labour scarcity is found in combination with high security in 2004, and in all but one path in 1998. In 2001, presence of labour scarcity is found in almost all paths leading to high security. These findings point to a consistent focus on security in the sectors cleaning, department stores, metalectro and construction; a focus that is independent from cyclical movements and corresponding levels of labour scarcity.

In 1998, there are two different paths leading to high flexibility, found in the sectors energy and architecture. It is striking that the two paths are the mirror images of

each other: in the energy sector only strong unions are present while in architecture all elements are present except for strong unions. In 2001, there is only one path, in the energy sector, that leads to high flexibility. In this combination, high openness and strong unions combine with absence on the three other conditions. This same combination leads to high flexibility in the energy sector again in 2004. In 2004, there are two other paths that lead to high flexibility, one in metalectro and the other in the sectors horticulture and architecture. These paths all share one element: high openness to competition. In line with what I expected, high openness is present in every path leading to high flexibility in 2001 and 2004. From 2001 therefore, high openness is a consistent element in all paths leading to high flexibility.

I now look at the paths leading to *flexicurity*, i.e. the simultaneous occurrence of a high flexibility and a high security strategy. As shown in section 3.3, there was flexicurity in supermarkets in 1998, and in all three years in home care services. However, when analysing the paths leading to these outcomes, the table in appendix E shows that the paths contain contradictory elements: in other sectors the same paths lead to a *low* score on flexibility and/ or security. Therefore, there are no paths that unambiguously lead to flexicurity.

As a final step I want to look at which paths are important in analysing *developments* in flexibility and security strategies. Table 6.3 showed that there is one clear development that stands out: flexibility increased between 2001 and 2004. The sectors in which this change took place are LAML, metalectro, energy, construction, cleaning, and architecture. Only in the sectors construction, cleaning, and architecture this change occurred together with a change in the path leading to high(er) flexibility[27]. These changes are taken up in the table below:

Table 6.11. Changing paths leading to increased flexibility

Sectors	**2001**	**2004**	**change**
Construction	o*S*B*i*U	o*s*B*i*U	From S to s
Cleaning	O*S*b*I*u	O*s*b*I*u	From S to s
Architecture	O*S*B*I*u	O*s*B*I*u	From S to s

27 Note that these developments towards increased flexibility do not always result in a high score on flexibility strategy (i.e. 0.75 or higher).

These developments in the paths all show one clear development; there is only one condition that consistently shifts over time. In all three sectors, the development towards higher flexibility was accompanied by a shift from the presence to the absence of labour scarcity. A decrease in the scarcity of labour between 2001 and 2004 due to the economic downturn has probably enabled employers and their representatives to wage their power and extend the flexibility options offered by the F&S Law. The increase in flexibility between 2001 and 2004 was also visible in the national-level analysis in chapter five, where I referred to a statement by the trade unions in which they argue that this increase deviates too much from what the law intended, indicating an instance of *drift*.

6.6. Conclusions

In this chapter I analysed the occurrence of and developments in flexibility and security in eleven sectors of the Dutch economy. A central element of these flexibility and security outcomes are the CLA-provisions as they can deviate from what is laid down in the F&S Law, both to increase flexibility and/ or to increase security. I chose to look at three points in time: 1998, 2001 and 2004, to include two main developments in the Dutch labour market; one is an institutional development, i.e. the introduction of the F&S Law in 1999, and one is a development in the Dutch economy, i.e. a downturn between 2002 and 2004. The first step was to show if proposition 4, that strong informal institutions lead to little change is indeed true, but I did not find enough evidence to draw this conclusion. There are four sectors with very little change, and only one sector, construction, is the same as the sectors with strong informal institutions. The next step was to determine in which sector and when, high flexibility combined with high security, i.e. flexicurity. Table 6.1 shows that in the sector home care flexicurity exists and has become more balanced over time. The interview-data revealed that employers and social partners look for ways to balance flexibility and security in order to retain workers.

The next step shows that most changes in flexibility and security took place between 2001 and 2004, and entailed an increase in flexibility in six out of the eleven sectors: LAML, metalectro, energy, construction, cleaning and architecture. There was a decrease in security between 1998 and 2001 despite the economic boom: The explanation for this could be that the unions focus too little on security for flexible workers, and mainly bargain to maintain security for 'insiders', i.e. their main constituency. Regarding the increase in flexibility between 2001-2004, it seems that while between 1998 and 2001 the new flexibility options of the law were not yet fully used, they were developed further after 2001. Here the economic and the institutional changes

reinforce each other: institutionalisation with the F&S Law offers possibilities, but the economic situation has to create favourable circumstances to enable parties to make use of these possibilities. Peak organisations of trade unions have indicated that extensions of the use of FT-contracts further than what the law intended is undesirable. I therefore argue that for trade unions, these deviations entail an instance of *drift*.

The analysis of these changes shows that there is some convergence between sectors over time, i.e. the pattern has become less dispersed. The explanation for this could be that social partners across sectors take over each other's provisions as they become more aware of what social partners negotiate in other sectors. However, other options could be that in times of an economic downturn social partners were less willing, or maybe less able, to agree on how to deviate from the national framework.

In a next step I analysed five sector characteristics that measure external pressures and the power balance in collective bargaining. By using the logic of necessity and sufficiency and X-Y plots in fsQCA, I found that openness and labour scarcity were the most important factors, with openness mainly corresponding with high flexibility and labour scarcity mainly with high security. These outcomes are in line with the expected effects of changing power relations. However, there were two remarkable observations: openness was sufficient for security in 1998 and scarcity became sufficient for flexibility in 2004. For the issue of scarcity it might be that scarcity was indeed rising in 2004 but because there was still much uncertainty regarding future demand, flexibility was more important for employers and social partners. On the other hand, openness was important for high security in 1998, while it was necessary for high flexibility in 2001 and 2004. Here, it could be that while before the F&S Law, openness was a reason to increase security, the new options available after 1999 incited employers to expand their flexibility strategies.

Strong unions were sufficient for high security only in 2001, and thereby played a smaller role than expected. It might be that unions focus little on security for temporary workers as they are not their main constituency and/ or they only play a role when they have a strong bargaining position, as was the case during the 2001 economic boom. The results show that internal flexibility plays a small and mixed role: it was necessary for high flexibility in 2001, and necessary for high security in 2004. The relationship between internal and external flexibility is therefore mixed: in the sectors horticulture, LAML, and department stores internal and external flexibility are combined, while in the sectors home care and construction they are used as substitutes for one another. As one type of

flexibility is substituted for another while practices do not change, we here find instances of a type of institutional change I have termed *reversed-conversion*. Finally, business cycle sensitivity was never necessary or sufficient for high flexibility or security. It might be that the effect of the business cycle was picked up better by the conditions openness and labour scarcity.

In QCA, conditions are allowed to interrelate, creating the possibility of many different paths leading to a similar outcome. In this project I found that there are many unique paths leading to high flexibility and security. Nevertheless, there are some patterns: the paths leading to high security in 2001 almost all contain high labour scarcity. In 2004, all paths leading to high security contain low or absent labour scarcity, which is contrary to what I expected, but in line with the analysis of individual conditions. When analysing the paths leading to high flexibility, I found that the paths in 2004 always contain high openness. In 2001, there is only one path leading to high flexibility, but this is an identical path to the one found in 2004, again containing high openness. This is also in line with the analysis of the individual conditions. The home care sector was the only sector containing a balance between flexibility and security, and can therefore be termed a 'flexicurity sector'. However, there is no path leading unambiguously to the flexicurity outcome due to contradictory elements. Finally, I analysed which changes in the paths correspond with the increasing flexibility between 2001 and 2004. This showed a clear result: three out of the six sectors with an increase in flexibility had a change in their path; construction, cleaning, and architecture. The change in every path was identical: the configuration shifted from high to low labour scarcity. Decreasing labour scarcity due to an economic downturn changed the power balance in favour of employers and enabled them to increase their use of flexibility options offered by the F&S Law. This characteristic of the state of the economy, together with the characteristic 'openness', are the core factors relating to flexibility and security. These mechanisms therefore explain the nature and extent of temporary work, much more than what might be expected more, the unions.

Appendix 6.A. Table security and flexibility indicators

Security strategy Sectors	TAW			FT-contracts				
	Wage	Transi-tion	Train-ing	Dura-tion	Number	Interval	TOTAL	fsQCA Score
Horticulture 1998	1	0	0	1	1	0	3	1
Horticulture 2001	1	0	0	0	0	0	1	0.25
Horticulture 2004	1	0	0	0	0	0	1	0.25
LAML 1998	1	0	0	0	0	0	1	0.25
LAML 2001	1	0	0	0	0	0	1	0.25
LAML 2004	1	0	0	0	0	0	1	0.25
Metalectro 1998	1	0	0	0	1	0	2	0.75
Metalectro 2001	1	1	0	0	0	0	2	0.75
Metalectro 2004	1	0	0	0	0	0	1	0.25
Utilities 1998	0	0	0	0	0	0	0	0
Utilities 2001	0	0	0	0	0	0	0	0
Utilities 2004	0	0	0	0	0	0	0	0
Construction 1998	1	0	0	0	1	0	2	0.75
Construction 2001	1	0	0	0	1	0	2	0.75
Construction 2004	1	0	0	0	1	0	2	0.75
Retail: supermarkets 1998	1	0	0	0	1	0	2	0.75
Retail: supermarkets 2001	1	0	0	0	0	0	1	0.25
Retail: supermarkets 2004	1	1	1	0	0	0	3	1
Retail: department stores 1998	0	0	0	1	1	0	2	0.25
Retail: department stores 2001	0	1	0	1	1	0	3	0.75
Retail: department stores 2004	0	1	0	1	1	0	3	0.75
Cleaning 1998	1	0	0	1	1	0	3	1
Cleaning 2001	1	0	0	1	0	0	2	0.75
Cleaning 2004	1	0	0	1	0	0	2	0.75
Architects 1998	0	0	0	0	0	0	0	0
Architects 2001	0	0	1	0	0	0	1	0.25
Architects 2004	0	0	0	0	0	0	0	0
Security1998	1	0	0	1	1	0	3	1
Security 2001	1	0	1	0	0	0	2	0.75
Security 2004	1	1	0	0	0	0	2	0.75
Home care 1998	0	1	0	1	0	0	2	0.75
Home care 2001	1	1	0	1	0	0	3	1
Home care 2004	1	1	0	1	0	0	3	1

Flexibility strategy Sectors	FT-contracts			Use of flexible contracts			
	Duration	Number	Interval	FT-contracts	TAW	TOTAL	fsQCA Score
Horticulture 1998	0	0	0	0	0	0	0
Horticulture 2001	0	0	1	0	1	2	0.75
Horticulture 2004	0	0	1	0	1	2	0.75
LAML 1998	0	0	1	0	0	1	0.25
LAML 2001	0	0	1	0	0	1	0.25
LAML 2004	0	0	1	1	0	2	0.75
Metalectro 1998	0	0	0	0	0	0	0
Metalectro 2001	0	0	0	0	0	0	0
Metalectro 2004	0	0	0	1	1	2	0.75
Utilities 1998	1	1	0	0	0	2	0.75
Utilities 2001	1	1	0	0	0	2	0.75
Utilities 2004	1	1	0	1	1	4	1
Construction 1998	0	0	0	0	0	0	0
Construction 2001	0	0	0	0	0	0	0
Construction 2004	0	0	0	0	1	1	0.25
Retail: supermarkets 1998	0	0	1	1	0	2	0.75
Retail: supermarkets 2001	0	0	0	1	0	1	0.25
Retail: supermarkets 2004	0	0	0	1	0	1	0.25
Retail: department stores 1998	0	0	0	0	0	0	0
Retail: department stores 2001	0	0	0	0	0	0	0
Retail: department stores 2004	0	0	0	0	0	0	0
Cleaning 1998	0	0	0	0	0	0	0
Cleaning 2001	0	0	0	0	0	0	0
Cleaning 2004	0	0	0	1	0	1	0.25
Architects 1998	0	1	0	1	0	2	0.75
Architects 2001	0	1	0	0	0	1	0.25
Architects 2004	0	1	0	1	0	2	0.75
Security1998	0	0	0	0	0	0	0
Security 2001	0	0	0	0	0	0	0
Security 2004	0	0	0	0	0	0	0
Home care 1998	0	1	1	0	1	3	1
Home care 2001	0	1	1	0	0	2	0.75
Home care 2004	0	1	1	1	0	3	1

Appendix 6.B. Descriptive table internal flexibility and internal and external flexibility elements

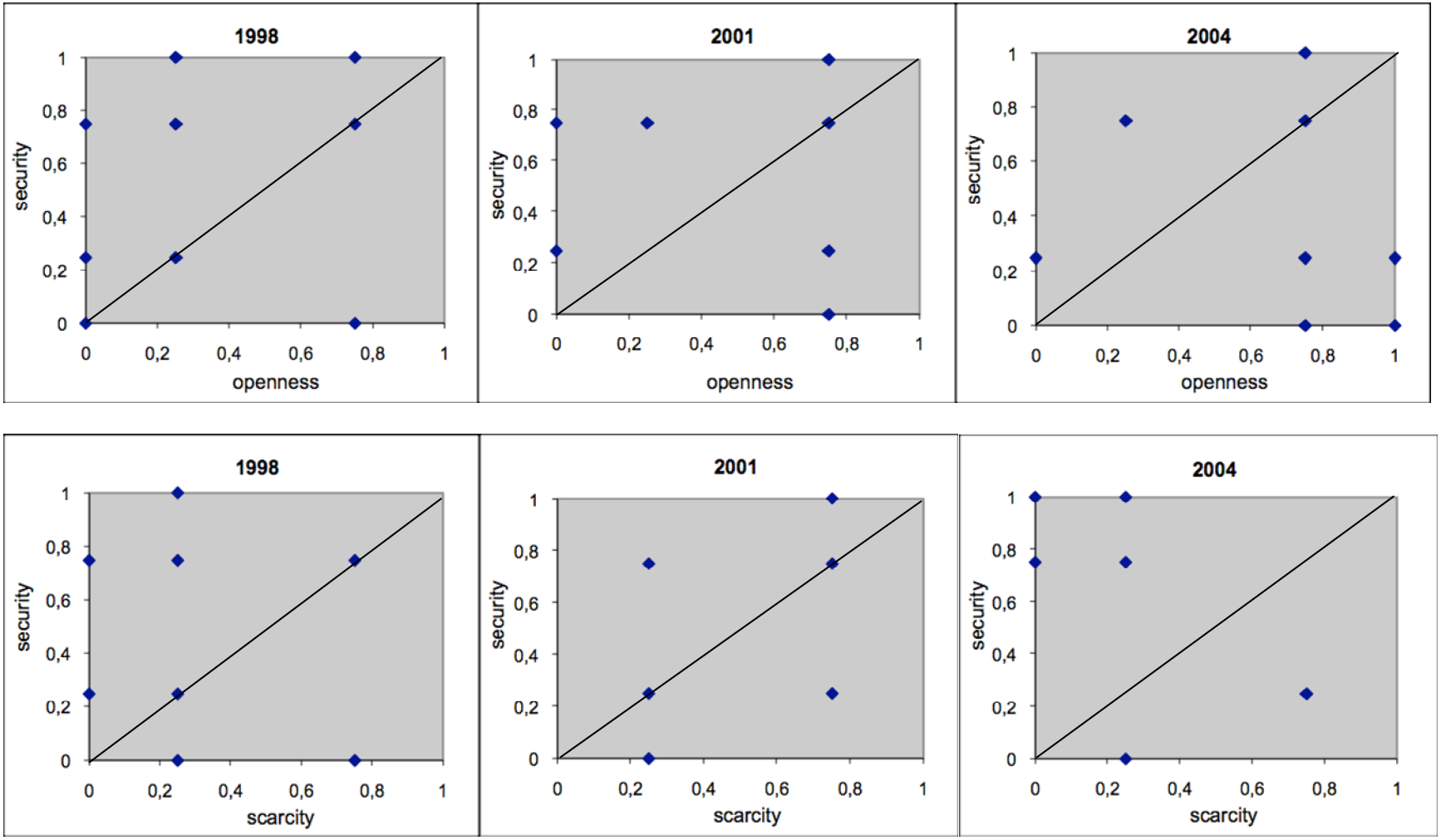
Sector	Internal flexibility
Horticulture	Low internal flexibility; mostly external with seasonal labourers and agency work. Strong increase in seasonal central-and eastern European (Polish) agency workers. To combat the problems with fraudulent agencies social partners introduced a certification scheme. This increases the possibilities to use agency workers and was drawn up in relation to extended internal flexibility in the CLA from 2001 trough annual working time accounts.
LAML	Seasonal peaks in workload traditionally dealt with by temporary unemployment benefits, now dealt with internally by a) contracts with "bridging periods" for winter months; b) shifting of working hours, and c) saving overtime hours in summer for time off in winter. More use of external flexibility due to legal restrictions on offering 'bridging periods' during winter time. Peaks in workloads increase due to increasing size of land parcels. slight increase in self-employment (i.e. external flexibility).
Metalectro	Low internal flexibility. Increasing competition from low-wage countries, strong increase in subcontracting and outsourcing. Decline in open-ended contracts, increase in external flexible workers such as agency workers, posted workers, and FT-contracts. Employers would like to expand the limits on working hours. Some braches have internal flexibility in annual working time accounts (e.g. ASML). In shipbuilding attempts were made to introduce these as well.
Energy	Low need for flexibility due to low sensitivity to the business cycle. Recent liberalisation of the energy market and concomitant changing work processes created huge increase in demand for temporary external flexible labour such as FT-contracts, TAW and outsourcing.
Construction	Low internal flexibility and decreasing: work traditionally organised on the basis of subcontracting and contracts related to duration of projects; external flexibility increasing: share of self-employed workers doubled in recent 5 years. Temporary use of unemployment benefits restricted from 2000 and higher premiums for FT- compared to open-ended contracts. Agency work traditionally low
Super-markets	Very low internal flexibility due to high degree of external flexibility: small on-call contracts (many <12 hours), flexible working hours, and fixed-term contracts. Low TAW due to costs of agency fee, except in distribution centres.
Department stores	Very high internal flexibility by means of annual working time accounts; Attempts of employers to increase flexibility of peripheral workers via an FT-contracts
Cleaning	Very high internal flexibility in working hours and locations; large share of permanent part-time contract. Increasing competition based on tenders and cleaning contracts for one or two years. Employers therefore wish to increase external flexibility by means of fixed-term contracts but in CLA-negotiations lower wages are often given more importance to reduce costs.
Architects	Very high internal flexibility by means of overtime hours, related to the 'creative process'. Trade unions aim to bring down overtime by stimulating temporary postings; employers find this hard to reconcile with often person-specific skills. Some increase in external flexibility after the introduction of the F&S law.
Security	High internal flexibility via part-time work and flexible working hours/overtime. Failed attempts by employers to introduce an annual working time account because unions say peaks are too unpredictable. Slight increase in external flexibility with fixed-term contracts and pay-rolling
Home care	Internal flexibility in working hours and part-time work; slight shift to increasing focus on internal flexibility by substituting use of TAW with internal labour pools. Higher flexibility needed due to government policy aimed at increasing competition resulting in more 'alpha-helps'; fixed-term and smaller contracts

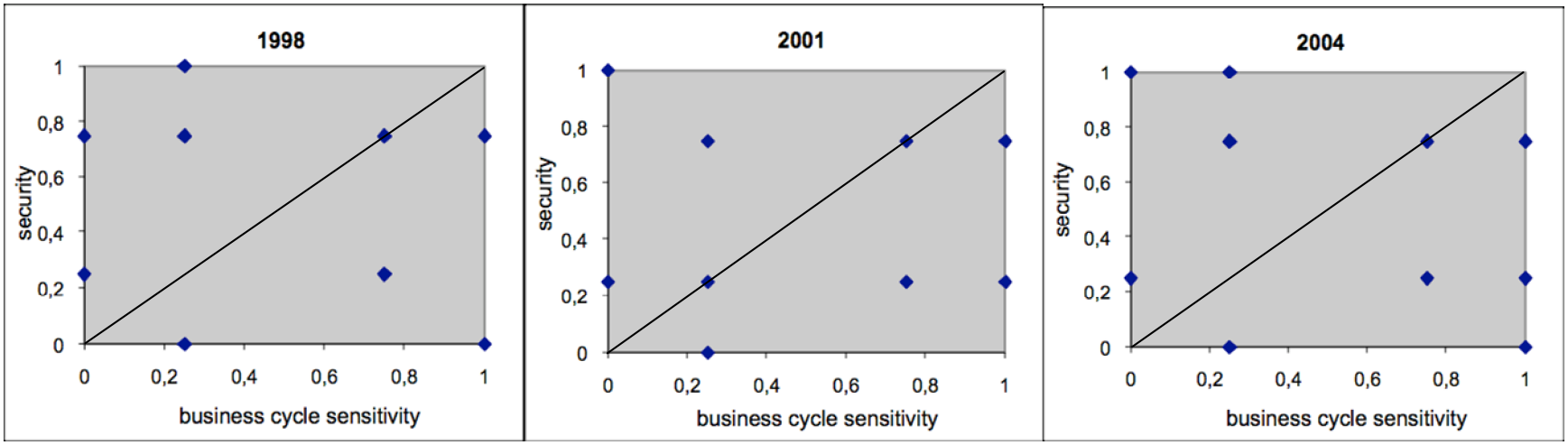
Sectors	**Internal flexibility**						**External flexibility other than FT and TAW**							
	working time account	Flexible hours	Over-time	'bridging periods'	Part-time	labour pools	Out-sourcing	Posted workers	Subcon-tracting	On-call contracts	Seasonal workers	Self-employed	Pay-rolling	Alpha helps
Horticulture '98											X			
Horticulture '01	X										X	x		
Horticulture '04	X										X	x		
LAML '98	X			X										
LAML '01	X			X										
LAML '04	X			X								X		
Metalectro '98	X						X	X	X					
Metalectro '01	X						X	X	X					
Metalectro '04	X						X	X	X					
Energy '98		X												
Energy '01								X						
Energy '04								X						
Construction '98				X					X			x		
Construction '01									X			X		
Construction '04									X			X		
Supermarkets '98										X				
Supermarkets '01										X				
Supermarkets '04										X				
Depart.stores '98	X				X									
Depart.stores '01	X				X									
Depart.stores '04	X				x									
Cleaning '98		X			X									
Cleaning '01		X			X									
Cleaning '04		X			X									
Architects '98			X											
Architects '01			X											
Architects '04			X											
Security '98			X		X								x	
Security '01			X		X									
Security '04			X		X									
Home care '98		X			X									
Home care '01		X			X	X								x
Home care '04		X			X	X								x

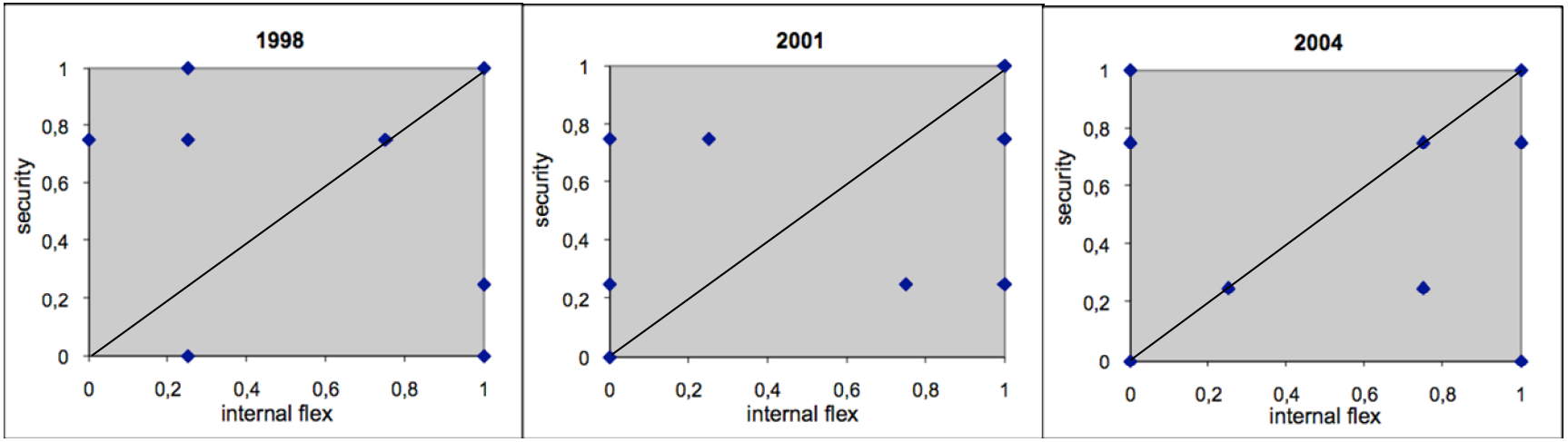
Appendix 6.C. Conditions and outcomes

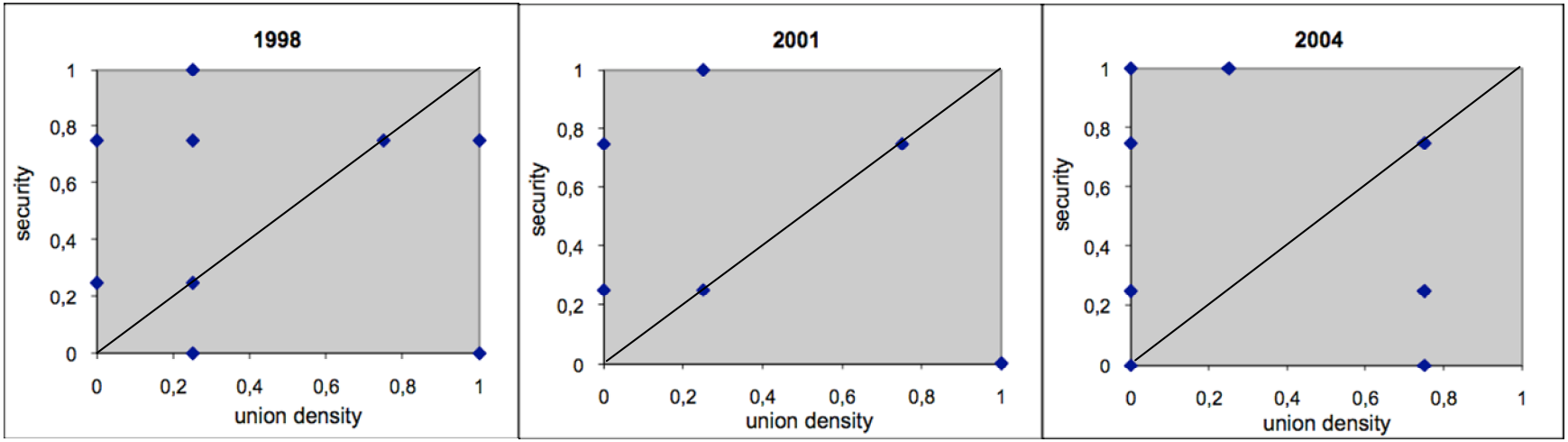
Sectors	Conditions					Outcomes	
	Busin. cycle sensitivity	Openness	Labour scarcity	Unions' strength	Internal Flexibility	Security strategy	Flexibility strategy
Horticulture 1998	0,25	0,75	0,25	0,25	0,25	1	0
Horticulture 2001	0,75	0,75	0,75	0,25	0,75	0,25	0,75
Horticulture 2004	0,75	0,75	0,75	0	0,75	0,25	0,75
LAML 1998	0	0	0,25	0,25	1	0,25	0,25
LAML 2001	0	0	0,75	0,25	1	0,25	0,25
LAML 2004	0	0	0,75	0	0,75	0,25	0,75
Metalectro 1998	0,75	0,75	0,75	0,75	0,25	0,75	0
Metalectro 2001	0,75	0,75	0,75	0,75	0,25	0,75	0
Metalectro 2004	1	1	0,75	0,75	0,25	0,25	0,75
Energy 1998	0,25	0	0,25	1	0,25	0	0,75
Energy 2001	0,25	0,75	0,25	1	0	0	0,75
Energy 2004	0,25	1	0,25	0,75	0	0	1
Construction 1998	1	0	0,25	1	0,25	0,75	0
Construction 2001	1	0	0,75	0,75	0	0,75	0
Construction 2004	1	0,25	0,25	0,75	0	0,75	0,25
supermarkets 1998	0,25	0,75	0	0	0	0,75	0,75
supermarkets 2001	0,25	0,75	0,25	0	0	0,25	0,25
supermarkets 2004	0,25	0,75	0	0	0	1	0,25
department stores 1998	0,75	0,25	0	0	1	0,25	0
department stores 2001	0,75	0,25	0,25	0	1	0,75	0
department stores 2004	0,75	0,25	0	0	0,75	0,75	0
Cleaning 1998	0,25	0,75	0,25	0,25	1	1	0
Cleaning 2001	0,25	0,75	0,75	0	1	0,75	0
Cleaning 2004	0,25	0,75	0,25	0	0,75	0,75	0,25
Architects 1998	1	0,75	0,75	0,25	1	0	0,75
Architects 2001	1	0,75	0,75	0	1	0,25	0,25
Architects 2004	1	0,75	0,25	0	1	0	0,75
Security 1998	0,25	0,25	0,25	0,25	1	1	0
Security 2001	0,25	0,25	0,75	0	1	0,75	0
Security 2004	0,25	0,25	0,25	0	1	0,75	0
Home care 1998	0	0,25	0,25	0,25	0,75	0,75	1
Home care 2001	0	0,75	0,75	0,25	1	1	0,75
Home care 2004	0	0,75	0,25	0,25	1	1	1

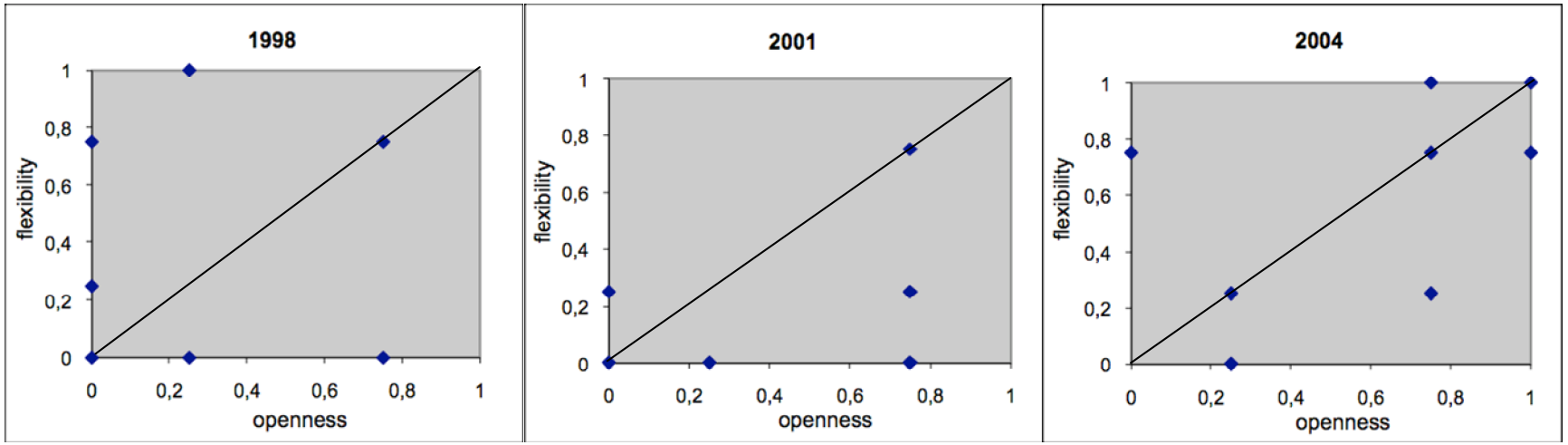
Appendix 6.D. Scatterplots

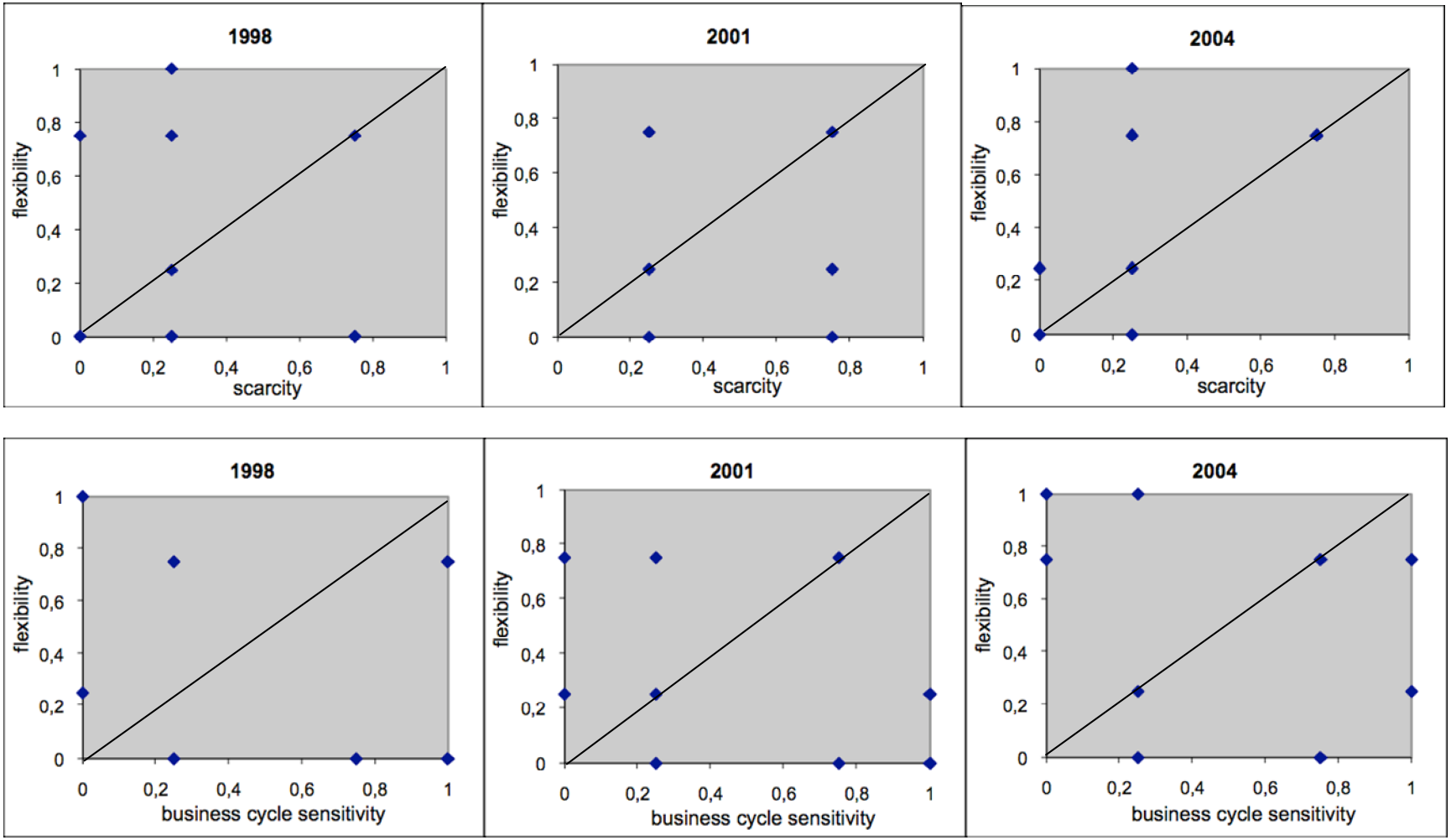


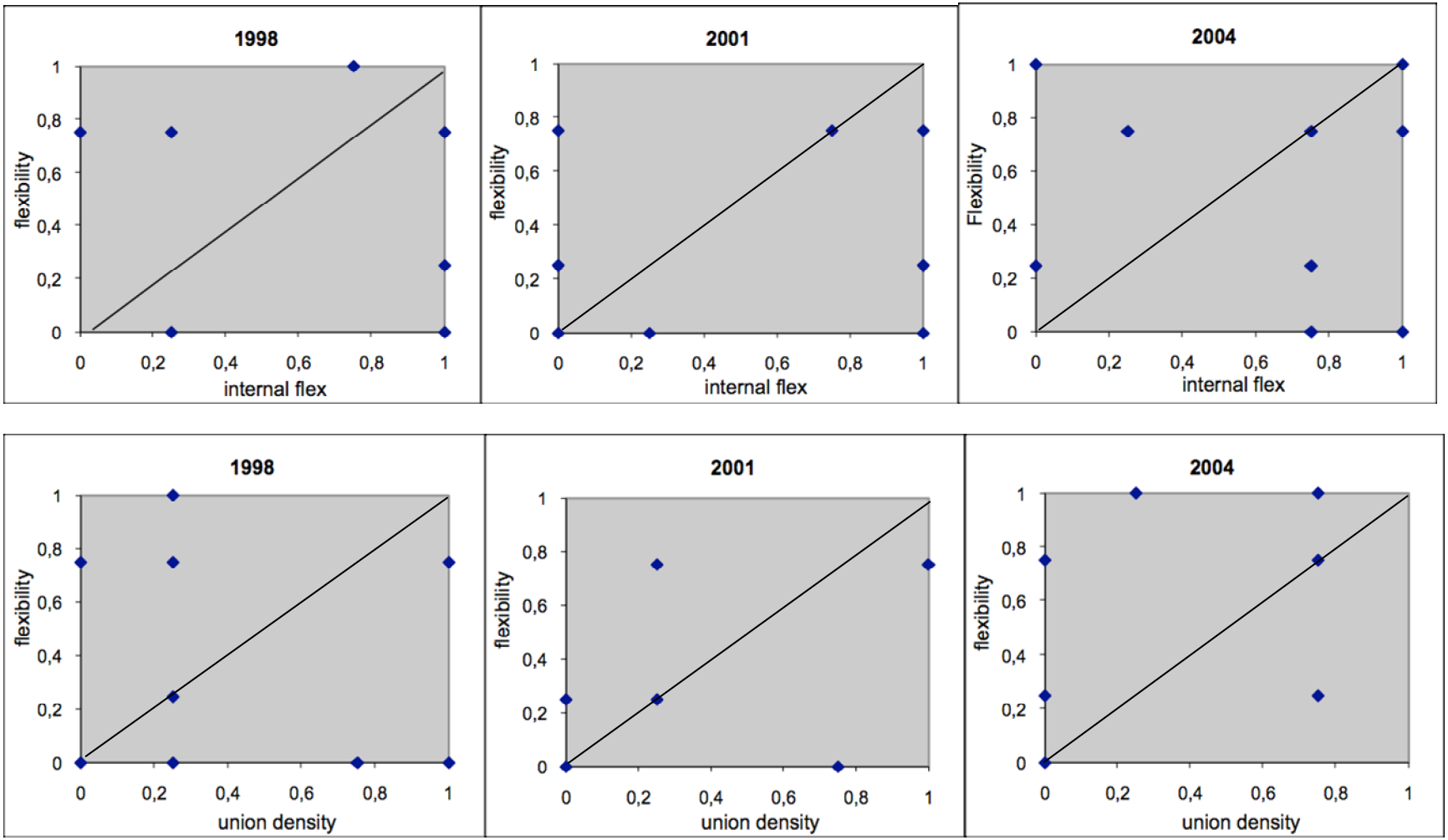

1998
2001
2004
security
business cycle sensitivity
0
0,2
0,4
0,6
0,8
1


1998
2001
2004
security
internal flex
0
0,2
0,4
0,6
0,8
1


1998
2001
2004
security
union density
0
0,2
0,4
0,6
0,8
1


1998
2001
2004
flexibility
openness
0
0,2
0,4
0,6
0,8
1


1998
2001
2004
flexibility
scarcity
business cycle sensitivity
0
0,2
0,4
0,6
0,8
1


1998
flexibility
internal flex
2001
flexibility
internal flex
2004
Flexibility
internal flex
1998
flexibility
union density
2001
flexibility
union density
2004
flexibility
union density

Appendix 6.E. Configurations leading to high flexibility or security

Note: shaded cells indicate relevant outcomes

Configuration	Outcomes		Sector	Year	Contradictory
O*s*b*i*u	Sec: 1	Flex: 0	Horticulture	1998	
	Sec: 0.25	Flex: 0.25	Supermarkets	2001	
	Sec: 0.25	Flex: 0.25	Supermarkets	2004	
o*s*b*I*u	Sec: 0.25	Flex: 0.25	LAML	1998	In 1998
	Sec: 0.25	Flex: 0.25	LAML	2001	and 2004 for
	Sec: 0.25	Flex: 0.75	LAML	2004	both flexibility
	Sec: 1	Flex: 0	Security	1998	and security
	Sec: 0.75	Flex: 0	Security	2004	
	Sec: 0.75	Flex: 1	Home care	1998	
o*s*b*i*U	Sec: 0	Flex: 0.75	Energy	1998	
O*s*b*I*u	Sec: 1	Flex: 0	Cleaning	1998	
	Sec: 0.75	Flex: 0.25	Cleaning	2004	In 2004 for
	Sec: 1	Flex: 1	Home care	2004	flexibility
O*s*b*i*U	Sec: 0	Flex: 0.75	Energy	2001	
	Sec: 0	Flex: 1	Energy	2004	
o*S*b*I*u	Sec: 0.75	Flex: 0	Security	2001	
o*s*B*I*u	Sec: 0.75	Flex: 0	Department stores	1998	
	Sec: 1	Flex: 0	Department stores	2001	
	Sec: 1	Flex: 0	Department stores	2004	
o*s*B*i*U	Sec: 0.75	Flex: 0	Construction	1998	In 1998 for
	Sec: 0.75	Flex: 0.25	Construction	2004	flexibility
	Sec: 0.75	Flex: 0.75	Supermarkets	1998	
O*S*b*I*u	Sec: 0.75	Flex: 0	Cleaning	2001	For flexibility
	Sec: 1	Flex: 0.75	Home care	2001	
O*s*B*I*u	Sec: 0.25	Flex: 0.75	Horticulture	2004	
	Sec: 0	Flex: 0.75	Architects	2004	
o*S*B*i*U	Sec: 0.75	Flex: 0	Construction	2001	
O*S*B*I*u	Sec: 0	Flex: 0.75	Architects	1998	
	Sec: 0.25	Flex: 0.25	Architects	2001	In 2001 for
	Sec: 0.25	Flex: 0.75	Horticulture	2001	flexibility
O*S*B*i*U	Sec: 0.75	Flex: 0	Metalectro	1998	
	Sec: 0.75	Flex: 0	Metalectro	2001	
	Sec: 0.25	Flex: 0.75	Metalectro	2004	

Chapter 7 – Conclusions: the Dutch approach to flexicurity in temporary work

7.1. Introduction

The Netherlands has a tradition of a relatively widespread use of temporary agency work (TAW) and a fair degree of fixed-term (FT-) employment. Due to external pressures to increase competitiveness in mainly the 1990s, the share of the two types of temporary labour in the Dutch labour market grew rapidly. This development should be seen in light of failed attempts at decreasing the level of dismissal protection in the Netherlands; discussions surfaced in the late 1960s and continue until the present day. The increase in temporary work triggered a pressure for new institutions. Because agreement on fundamental reform of the system of dismissal protection could not be realised, reform focussed on creating a stronger legal framework for temporary employment while increasing the possibilities for its use. A key 'institutional entrepreneur' in the drawing up of this regulation was the Minister of Social Affairs and Employment, *Ad Melkert*, who drafted a memorandum titled 'Flexibility and Security' in 1995. In light of the Dutch corporatist tradition, Minister Melkert presented the memorandum to the social partners asking their advice. The social partners responded with a unanimous advice in 1996, which was almost entirely taken over in the 1999 Flexibility and Security (F&S) law. Because this institutional change was to a large extent backed by the social partners, it can be regarded as a reform (Hall and Thelen 2009).

While the concept of *flexicurity* has only become widespread across Europe after the F&S law was introduced, a Dutch academic already coined the term to describe the development of the flexicurity policy in 1998 (Wilthagen 1998). In the policy debate on flexicurity, the link between the European level and the Netherlands has always remained strong, and the European Commission recently designated the Netherlands as an 'example of flexicurity' pointing specifically to the regulations on TAW and FT-contracts (European Commission 2007b).

After the F&S law was introduced, the Ministry of Social Affairs and Employment commissioned an evaluation study into its effects (Van den Toren, Evers et al. 2002). A main conclusion of this study was that the increased possibilities to use temporary employment had not (yet) been used because of the scarcity of labour caused

by the economic boom at the time. These results triggered this project in which a long-term perspective is applied to the analysis of the 'Dutch approach to flexicurity'. A perspective covering approximately ten years from the early-to mid 1990s until 2004-2006 enables an analysis of the institutional changes brought about by the F&S law as well as a full economic cycle (1999-2005). Not only does the Dutch case allow an analysis of developments before and after the F&S law, which thereby functions as a 'quasi-experiment', but it is also an intriguing case to analyse the role of collective bargaining in flexicurity outcomes. The role of the social partners within collective bargaining is strong, as the Netherlands has a corporatist industrial relations system, but their role was reaffirmed in the F&S law through the legal technique of 3/4-mandatory law. This means that social partners can deviate from the law in their collective agreements, and as most employment contracts in the Netherlands are covered by a collective labour agreement negotiated at sector-level, this is the most appropriate level for an analysis of flexicurity outcomes.

Because the introduction of the F&S law was partly a codification of developments already taking place, it can best be understood as an endogenous, incremental institutional change. To understand this change theoretically, I determined the applicability of five types of institutional change taken from scholars of institutional theory. Institutional change can be more or less 'path-dependent' according to the strength of informal institutions, i.e. norms and customs. The influence of these informal norms is established in the study of changes within sectors. As actors always trigger institutional change, the study furthermore included an analysis of the core actors, the 'institutional entrepreneurs'. Also, changes always occur within a certain power structure that can be more or less shaped by economic developments. A set of propositions was developed on the basis of this theoretical framework. As these are linked to the research questions, the answers to the propositions will be included in the sections answering the research questions. This chapter contains the main findings of this project, structured according to the 'blueprint' of research questions and propositions developed in chapter three.

The next section deals with the development of temporary work and how it became normalised and institutionalised over the course of the 1990s and early 2000s (research questions one and two). I hereby contrast the Netherlands to Denmark, Germany and the United Kingdom to delineate if there is indeed such a thing as a 'Dutch approach'. In section three I present the answers to research question three and present

the findings concerning security in temporary employment, which is the definition of flexicurity used in this project. Section four shows how social partners across sectors have implemented the F&S law and whether this has increased the similarities or rather the differences between sectors (research questions four and five). Relating these outcomes back to the theories on institutional change in section five shows that the multi-level structure of the Dutch model is not incorporated in the existing body of theory. Section six contains the answer to the overarching research question: What is the Dutch approach regarding the extent, nature and organization of flexicurity in temporary work? Section seven concludes this chapter and this book with policy implications and suggestions for further research.

7.2. Normalisation and institutionalisation of temporary work

To understand the specific nature of the process of normalisation and institutionalisation, I compared the Netherlands with Denmark, Germany and the United Kingdom (UK). Denmark is an example of a Nordic type of regulation where temporary employment is largely incorporated in mainstream labour law and the fleshing out of the regulation on labour issues in general is mainly left to the social partners. The regime in the UK grants little protection to regular and temporary workers alike. For example, agency workers are often regarded as self-employed and thereby fall outside the scope of labour law. The German regime is based on detailed regulation of temporary employment whereby restrictions and rules on equal treatment are laid down in national law. The Netherlands and Germany are often grouped together as both being part of a dualistic employment regime (European Commission 2008b), but the Netherlands has recently been depicted as a unique model (Storrie 2002), or is grouped together with the more inclusive Scandinavian countries (EIRO 2007, p. 3). With the F&S law, the aim was indeed to decrease the gap between insiders and outsiders and was therefore an attempt to move towards a more inclusive regime.

Normalisation occurs when a practice becomes more and more widespread and norms develop that designate a practice as normal and legitimate. Institutionalisation is the process whereby a practice becomes regulated in formal rules, such as law and collective labour agreements (CLAs). The instance where informal norms become formalised in law is the point where normalisation and institutionalisation intersect. TAW has increased rapidly in all countries during the 1990s. At the same time, restrictions on TAW in terms of e.g. license schemes or certain sectors where TAW could not be used were lifted. In all countries, product market regulations on TAW were completely

liberalised, with the exception of Germany, where a license requirement still exists. In some countries this increase in external numerical flexibility was accompanied by some increase in security for agency workers: regulations clarifying the employment status of agency workers have been introduced in Denmark and the Netherlands and the UK introduced new rules on equal treatment.

The development in FT-contracts shows a mixed pattern: it increased in Germany and the Netherlands and decreased in Denmark and the UK. The decrease in the latter two countries took place at the same time that stricter regulations were implemented in light of the EU-Directive on FT-contracts. Also, in Denmark and the UK the labour market is in general more flexible due to lower dismissal protection. Because this already entails a higher degree of external numerical flexibility, the pressure to use FT-contracts is lower for employers. In countries where rules regarding dismissal are still (perceived to be) strict, the use of temporary work is higher; in the Netherlands it is twice as high as in Denmark and the UK. There is, however, a difference between Germany and the Netherlands although the level of dismissal protection does not vary that much according to the OECD (2004); there is a higher share of TAW and FT-contracts in the Netherlands. This can be explained from the new rules of the F&S law that enable a more extensive use of FT-contracts, and the fact that the Netherlands has a longer history of TAW and it is more accepted, i.e. the level of normalisation of TAW is higher (see section 2.2).

It seems that developments in use indeed follow the developments in regulation, although the relationship between the two is difficult to disentangle and both can take place simultaneously. It is however clear that there was no increase in the share of temporary employment after the introduction of restrictions. In Denmark FT-employment decreased after more regulation, and TAW increased after deregulation in a situation where TAW is not (yet) extensively regulated in CLAs. In the German case an increase in FT-contracts and agency work followed or corresponded with deregulation. The analysis of the UK showed that a slight decrease in FT-employment corresponded with a tightening of regulations on FT-work by the Labour government in late 1990s and the recent restrictions introduced in light of the EC Directive. The share of TAW in the UK on the other hand increased rapidly. In the Netherlands there was a (further) increase in the use of FT-contracts after deregulation in the late 1990s, and we can observe a decrease in TAW after regulation introduced in that period. However, because

the restrictions on operating in the agency work market by means of a licensing system were abolished, there was a huge increase in illegal agency work businesses.

7.2.1 Normal for whom?

The concept of normalisation implies a state where things previously being contested somehow become accepted. However, there is a thin and shifting line between normalisation and contestation. It was the growing pressure for flexibility by increasing global competition that triggered the growth of temporary employment. Because of these pressures, employers pushed for regulations facilitating the use of temporary work, which were in many cases deregulations of the TAW sector. Whereas employers in most countries, a little less in Denmark, pushed for deregulation, unions have mostly opposed temporary work, mainly TAW, because of its precarious nature. Nevertheless, unions have taken a more accepting position, sometimes under pressure of growing unemployment, and tried to bring temporary work within the scope of labour law and collective labour agreements. The level of consensus on the normality of temporary work is the lowest in Germany, while in the UK social dialogue is weak and there is in general little role for collective bargaining.

In Denmark and the Netherlands cooperation and consensus between the social partners is highest, although the power base of the unions is very different: a membership base of 80% in Denmark compared to 25% in the Netherlands. While the Danish unions have a strong role in sectors, also due to the importance of the CLA, the Dutch unions are mostly or only strong in consultative bodies at national level. The share of temporary work between the Netherlands and Denmark also varies: the very large use of TAW and FT-contracts in the Netherlands is due to the higher protection of the open-ended contract. The high use of TAW needs further explanation and this is found in the large role of the social partners, mainly those in the TAW sector, that have always lobbied for normalisation and institutionalisation of the sector (see next section 2.2).

The process of normalisation is often presented as a linear process, but this study shows that when normalisation has taken place, there can also be a way back; there can be a cyclical movement from normalisation back to a situation where a practice is contested. This became visible from the in-depth analysis of the Netherlands. In the mid-1990s the social partners agreed on a new institutional framework combining flexibility and security in temporary work consisting of WAADI and the F&S law. At the time, they agreed on the balance laid down in the law and the possibility for social partners to deviate in CLAs. A decade later, however, the unions reneged on this position and stated

that the law should be changed to set the maximum duration of FT-contracts from three to two years (STAR 2007). The maximum deviation in a CLA should then be three years. The underlying goal to change the regime is to close the gap between insiders and outsiders, where FT-workers still constitute too much a group of outsiders. Employers in contrast argue that the possibilities to deviate are used in a reasonable manner and firms require the negotiated extra flexibility. Whereas the social partners had reached consensus in 1996 and contributed to normalisation of temporary employment, in 2007 they take in opposing positions and the field has (again) become contested.

7.2.2 Institutional entrepreneurs

Normalisation and institutionalisation of flexible work does not occur automatically: it requires action by so-called 'institutional entrepreneurs'. The in-depth study of the Netherlands showed how the strong role of the largest employers' organisations (ABU), and later also the unions, resulted in the extensive use of and regulation on TAW. Mainly employers played an important role in lobbying for TAW, while the design and implementation of regulation of the TAW sector is strongly shaped by both parties. The ABU has effectively made use of various strategies to bring about normalisation and institutionalisation (Koene 2005). Koene has shown how the ABU actively lobbied for the recognition of temporary agency work in the 1970s and 1980s. The ABU operated on the margins of the Dutch economy for two decades before it gained legitimacy. This legitimacy was mainly related to growing unemployment and the failure of the public employment services to adequately allocate labour power in the labour market. In this development, the ABU saw its window of opportunity and openly promoted agency work.

The ABU was one of the architects of the current regulatory regime surrounding agency work as part of the F&S Law. The ABU can be considered an institutional entrepreneur when they actively lobbied for the legitimacy of the industry all the way to being involved in the drawing up of a formal framework on agency work (Koene 2005; Koene 2006). The two main entrepreneurs behind the F&S law were, however, the Minister of Social Affairs and Employment, *Ad Melkert*, who drew up the memorandum, thereby drawing on the work of his predecessor in 1993, and the labour foundation STAR that agreed almost unanimously on the features of the new flexicurity policy framework.

When the license scheme for the TAW sector was lifted through WAADI in 1998, the ABU again jumped in the regulatory vacuum that had existed for almost ten

years and introduced its own licensing scheme for the sector. The ABU hereby is the central actor in determining what should be the focus in regulation of the sector; the main issue they set out is to combat fraudulent agencies. As the ABU together with the main unions have become established players in the field, new institutional entrepreneurs have appeared on the stage contesting the boundaries of what is regulated in the CLAs covering the sector. A central new player is an association abbreviated as VIA, representing agencies that employ mostly Eastern-European agency workers. The VIA negotiated several CLAs with small trade unions especially for foreign agency workers. The established employers' and employees' representatives argued that the aim of the VIA is to undercut employment conditions and successfully prevented recognition of the VIA-CLA. The VIA, on the other hand, argues that while all their members are certified by ABU, they are consistently refused a place at the bargaining table. More research into this issue is needed to determine what exactly is going on but for the moment it is clear that as the ABU developed from an entrepreneur into a defender of the status quo, new institutional entrepreneurs contesting the boundaries of the field are entering the stage.

7.3. Flexicurity in temporary work

The debate on the combination of flexibility and security has led to an academic as well as a policy debate. Almost a decade after the first academic paper on the topic was published by a Dutch scholar, the European Commission promoted flexicurity as a key policy strategy for labour market reform across Europe. In 2007, the Commission published a report containing common principles of flexicurity, components of flexicurity, and pathways to flexicurity. These principles, components and pathways are all formulated in rather broad terms and this project is an attempt to make a specific element of flexicurity more tangible. In the Netherlands, the flexicurity regime of the F&S law links up with the component and principle of 'flexible and reliable employment contracts', and the pathway of 'tackling labour market segmentation' (European Commission 2007b). Although this is a limited definition of flexicurity as a policy strategy, as a comprehensive strategy should entail a combination of various components and pathways, it is a valid academic attempt to make the concept tangible and measurable. In this project flexicurity is based on the 'flexicurity-matrix', and entails a combination of external numerical flexibility and job, employment, and/or income security.

Both at national and sector-level the presence of flexicurity was scrutinised. In Germany, Denmark and the Netherlands, deregulation of the market for temporary work has mainly been accompanied by income security. As a result, there is still a certain

balance between flexibility and security in these countries; in the UK, however, there is a one-sided focus on flexibility. Yet, as the security provisions in Denmark, Germany and the Netherlands are subject to further decentralised negotiation within CLAs, the balance between flexibility and security within CLAs might show a different picture. In the comparative country-study I presented some evidence of instances in which CLAs tilt the flexicurity balance towards flexibility rather than security. This analysis shows that it is not enough to observe national-level regulations and thereby conclude that a country is an example of flexicurity. The next step that needs to be taken in the flexicurity policy debate is to move to the level of the CLA, where the actual negotiations on flexibility and security take place. In this project this analysis has been carried out for the Netherlands.

It has been argued that the CLA "is one of the most powerful institutions of the Dutch economy" (Delsen 2002, p. 12). The CLA indeed plays a key role in the implementation of national legislation. Many provisions of the F&S law are 3/4-mandatory to stimulate solutions tailored to the specific needs of parties negotiating a CLA. In chapter five I showed the deviations from the law in the majority of CLAs covering all sectors and in the CLAs for the agency work sector. In both cases, there has been an increase in flexibility over time. Of the deviations from national-level provisions on FT-work, most entail more permissive rules than what is stated by law. In the CLAs for the TAW sector flexibility has increased after 2004 by a substantial extension of the period before which agency workers move to FT- or open-ended employment. The law states that this period of 'agency work clause' should be 26 weeks, while the CLAs have extended this to 78 and 130 weeks, depending on the CLA. The share of agency workers with such contracts is around 15% and 5% respectively. These developments might be explained by the economic downturn in 2002-2004 that changed the power balance between social partners in favour of employers.

7.3.1 New securities, new constellation of risks

After the introduction of the F&S law, the share of TAW in the Dutch labour market went down. This is partly related to the economic boom of the time when temporary contracts are commonly replaced by open-ended contracts. Another factor was however the new distribution of risks that the F&S law brought about. Agencies had to take on the responsibilities related to the role of employer and take on more risks, such as the risk to continue paying a wage when there is no more work for the agency worker. Whereas before 1999, these risks were carried more by the agency workers themselves, they were now partly shifted to the agencies. To somehow insure themselves against this

risk, agencies first of all tripled or quintupled the legal agency work phase. In addition, agencies increased the fees for the user firms, and asked for guarantees of work when they employed the agency worker on the basis of FT or open-ended contracts. In some cases, user firms were also advised to replace an agency worker that was entitled to an FT-contract with one that was in phase A.

Because the rules on FT-contracts were relaxed with the F&S law, the share of FT-contracts increased, although in line with the developments before 1999 and the F&S law did not entail a clear break. In some cases, such as for example in the sector home care, the increasing prices for agency workers were circumvented by hiring more workers on FT-contracts. The new rules for FT-work entailed a shift in risks from employers to FT-employees. Comparing TAW with FT-work, it is clear that TAW still entails lower risks for user firms: when an agency worker falls sick or there is no more work, the employer can send the agency worker back to the agency. An FT-employee still has to be kept on for the duration of his or her contract.

Chapter five showed that the share of temporary work in the Netherlands and the new distribution of risks should be seen in light of broader institutional changes, which entailed the shifting of risks of sickness and disability from the state to employers. A set of new rules implemented throughout the late 1990s and early 2000s entails that employers are obliged to continue paying wages when an employee gets sick for an increased period of time and are obliged to invest in the reintegration of sick workers. Because of these institutional changes, temporary work in general becomes a more attractive alternative. As the state shifts more risks towards employers, it increases the pressure for employers who in turn shift the risks to temporary workers.

7.3.2 Developments within sectors: drift and reversed-conversion

The trend across the Netherlands of more flexibility in CLAs was corroborated in an in-depth study of eleven sectors. Because most employment relationships in the Netherlands are covered by sector-level CLAs, this is the most appropriate level of analysis. I carried out a repeated cross-sectional analysis including a period just before the F&S law was introduced (1998), a period of economic boom (2001) and a period of economic downturn (2004). Flexibility and security at sector-level were measured by CLA-provisions on FT-contracts and TAW, and the share of both types of employment in the sector. The research shows that there was a rise in flexibility in the majority of sectors between 2001 and 2004. Based on this, the Dutch unions have argued that the implementation of the F&S law is moving away from what was intended at the time it

was developed. This can be understood as an instance of *drift* although not for all parties; employers feel the deviations from the law are reasonable and in line with the needed flexibility.

During this period of increasing flexibility between 2001 and 2004, the differences between sectors declined, indicating convergence. Because of regular reports by the Dutch Ministry of Social Affairs and Employment on the deviations from the F&S law social partners in one sector or firm became knowledgeable of what is negotiated elsewhere. This constitutes an instance of benchmarking possibly leading to learning processes and convergence. The developments across sectors have become more similar and more oriented towards flexibility in a period in which the Dutch economy went through a downturn. It might be that because of the decentralisation of issues to negotiations within CLAs, economic pressures are more directly reflected in CLA-provisions (also see below).

To understand these developments over time and remaining differences between sectors it is important to understand the external pressures posed by globalisation and the (resulting) power balance between social partners. External pressures and changes in the power balance are best captured by four sector characteristics: sensitivity to the business cycle, openness to competition, the scarcity of labour and the membership base of the trade unions. Based on qualitative studies of eleven sectors, an additional characteristic came to the fore: internal flexibility. The impact of internal flexibility for the use of and CLA-provisions on temporary work can vary. Both can be used as substitutes or rather as complementary parts on an entire flexibility strategy in a firm. A comparison of the sectors showed that the two types of flexibility are indeed used in various constellations across sectors and also that this changes over time.

In some sectors, new rules on a certain type of flexibility decreased its attractiveness compared to other types. Examples are found in construction and an agricultural sector. Because the law banned the use of temporary unemployment financed by the state, firms had to find new ways to accommodate the pressure to remain flexible. In the agricultural sector this was realised by internal types of flexibility such as saving overtime hours to use them in the low season. In construction the solution was to use more self-employed (Polish) construction workers who carry the risks of unemployment themselves. In these sectors, new arrangements were used to perpetuate the existing practice of temporary unemployment. New practices were used to meet old ends. Understanding these practices as institutional change, the type ‘conversion’ developed by

Streeck and Thelen (2005) comes closest. However, conversion entails a redirection of an existing institution towards a new end. Because I here find the opposite development, namely the use of new institutions to further existing ends, the practice is best understood as *reversed-conversion*.

To compare the impact of the five sector-characteristics across eleven sectors and over time, I combined the qualitative case study with a method that bridges the division between qualitative and quantitative analysis: Qualitative Comparative Analysis (QCA). This analysis showed that the most important factors shaping flexibility and security are the level of openness and the degree of labour market scarcity in the sector. In line with the expectations, higher openness leads to more flexibility while higher scarcity leads to higher security, although the pattern is not always consistent over time. As expected also, internal flexibility sometimes leads to more focus on flexibility while at another point in time it entails higher security. In explaining the shift towards more flexibility between 2001 and 2004, I found that the sectors in which this took place went through a state of scarcity of labour to abundance. When labour was scarce, employers tried to retain workers, while a shift to abundance increased the power of employers translating into increased flexibility. A remarkable result was that trade union membership plays a relatively small role in realising security, possibly because security as I defined it is security for temporary workers, which are not the main constituency of trade unions.

As the economy went through a downturn, the CLA was indeed adjusted and provided itself a useful tool to change the sectoral institutions in line with sector-specific needs. As change took place through coordination between social partners, the CLA is still a useful tool for coordination; the Netherlands remains a coordinated system of industrial relations. However, the sector-level analysis also showed a decreasing role for the trade unions in negotiating security for temporary workers. Although institutions remain in place, the power of the unions seems more dependent on the economic conditions such as labour scarcity.

7.4. Small-scale institutional change, large scale consequences?

The F&S law was partly drawn up in response to external pressures related to globalisation resulting in increased use of temporary work by employers. As this behaviour was already translated in CLAs, the implementation of the F&S law can best be regarded as an incremental institutional change. Peter Hall, Wolfgang Streeck and Kathleen Thelen are scholars who have developed various types of institutional change

that is small and incremental, but can have large-scale, discontinuous results (Streeck and Thelen 2005; Hall and Thelen 2009). By stressing discontinuity, they depart from an academic tradition stressing the continuity of institutions due to inertia and path-dependency (North 1989; Pierson 2000). In this project, I determined the degree of path-dependency by assessing the effect of informal institutions in institutional change. North (1989, 1990) has argued that informal institutions, i.e. norms and customs, can never change discontinuously and because formal institutions are embedded in them, cause path-dependent change. I proposed that the changes after the F&S law would be smaller in sectors with strong norms and customs on temporary work. Because this effect was only visible in one sector, the results were not strong enough to confirm this proposition. It could be that sectors with strong informal norms on external flexibility are also accommodating to increases in new types of flexible employment, i.e. temporary work. Another possibility could be that the pressure to increase flexibility is strong to the degree that it changes behaviour regardless of informal institutions in sectors.

The drawing up and implementation of the F&S law was clearly backed by central coalitions of employers and trade unions; the STAR presented an advice on flexibility and security on 1996 that was almost entirely translated into the F&S law. The type of institutional change that best describes it is therefore *reform*. In addition, another type is also adequate to describe this change, namely *layering*; or the introduction of new institutions on top of existing ones. The central institution of the framework on flexible labour is dismissal protection. Around the Dutch legislation on dismissal protection, which employers feel is quite strict (Scheele, Theeuwes et al. 2007), employers find ways to deal with their need for flexibility. Extended possibilities to use FT-contracts were in fact introduced through the F&S law to give employers more flexibility in light of the perceived rigidity of the system of dismissal protection.

The F&S law deliberately accorded an important role for the social partners to develop CLA-provisions that could deviate from the F&S law. This way social partners could amend the rules in line with their sector-specific needs. This possibility was taken up by many social partners, in most cases to extend provisions on FT-contracts further than the law stipulates (Smits and Van den Ameele 2007). In this sense, the lower-level institution the CLA is layered unto the national-level provisions. However, this description does not hold entirely, as the sector-level institution is actually a translation of institutions from national to sector-level. Streeck and Thelen's notion of layering proves difficult to apply to the Dutch practice of 3/ 4-mandatory law and the situation

whereby institutions change and interact at various levels. Rather, in the Netherlands there is a process of *multi-level layering* whereby the F&S law was layered around the existing rules on dismissal and CLAs are in turn layered unto the F&S law.

The Dutch corporatist institutions remain in place and social partners in the Netherlands still use the CLA as a platform for cooperation and negotiation on flexibility and security. Although the day-to-day economic realities within firms might play an increasingly important role as a result of decentralisation, it cannot be concluded that the CLA in the Netherlands is going through a process of *displacement*. The content of the CLAs by contrast are however undergoing a process of change, although this change is not perceived as such by all the actors involved. Whereas employers feel that the deviations from the law regarding FT-contracts are responsible and in line with the intentions of the legislator, unions see a practice best classified as *drift*. Here again the multi-level nature of institutional change comes to the fore: at the national-level there is reform and layering while at a lower level there might be drift and *reversed*-conversion. These results show the lack of a multi-level dimension in the existing typologies of institutional change. What is also currently missing in the literature on typologies is a reversed type of conversion where existing practices are not so much used towards new ends, but rather new practices are used to perpetuate existing practices. By means of these two additions, this project has contributed to the theory on incremental en endogenous institutional change.

Large scale-consequences in the Netherlands?

One of the premises on which Streeck and Thelen's typology is based is that change can be small and incremental, but still have large, discontinuous consequences. Can we observe large-scale consequences in the Netherlands? The Netherlands still has a corporatist system of industrial relations with elaborate structures of coordination between employers and trade unions. These structures remain the vehicle whereby labour market reforms are developed and implemented. This is very clear regarding the F&S law, which was drawn up by and based on consensus between the social partners. Also, the 3/4-mandatory nature of many provisions of the F&S law furthers the role of the social partners.

This, however, only applies to the way in which institutional change takes place. Another issue is the question of the nature of institutional changes in terms of content: which issues are negotiated and implemented in practice? The sector-level analysis shows that when it comes to implementation, flexibility is stressed rather than security. The

reason for this is likely to be the impact of economic developments and the resulting shift in the power balance between unions and employers. I observe that when the social partners are less embedded in national-level institutions, the demands of the market are more easily transposed in sector-level institutions. Because the national-level institutions are deliberately designed to be less constraining, the power balance between social partners at a lower level comes more to the fore, and this power balance is to a large extent shaped by economic conditions. Although the structures of coordination remain fully in place, decentralisation creates a situation whereby the market becomes a coordinator (Delsen 2002, p. 17). As the fleshing out of national-level policy is decentralised to lower levels, market forces play a stronger role in the negotiation process. The impact of the market, however, relates to the power balance between social partners, more specifically the position of the unions. In the Netherlands, the unions are institutionalised at national-level but weak at sector-level. In Denmark, there is a very high union density rate and unions play a strong role in sector-level negotiations.

Decentralised bargaining does not include macro-economic issues and instead the more immediate day-to-day pressures experienced by firms increasingly come to the fore (Ibsen and Mailand 2009). Due to processes associated with 'globalisation', the developments in the (international) market and (international) economy become a much more important factor confronting social partners. When the state retreats to leave the social partners to reach an agreement under these circumstances, the impact of market forces, can play a larger role in policy implementation. Although the time span in this study is relatively short (10-15 years), these trends might point to future discontinuous change.

7.5. The Dutch approach to flexicurity

Because of the stalemate in reforming the Dutch system of dismissal protection the Dutch government reformed the institutional framework on temporary work in 1999. Increasing normalisation of temporary work, mainly for employers, preceded this institutional change. As a result of these changes, the Dutch employment regime intended to become less dualistic and attempted to move to the Scandinavian model. In the Netherlands the 'flexicurity pathway' of reducing labour market segmentation was followed, at least on paper. In line with Dutch corporatist traditions, the social partners played an important role in the design of the flexicurity policy. The implementation of the F&S law also entailed a Dutch methodology; the F&S law leaves room for social

partners to deviate from the law through collective bargaining via the mechanism of 3/4-mandatory law.

An important reason to implement the 1996 advice practically unchanged was the fact that social partners had been able to conclude a set of reforms that both parties agreed with. However, where social partners in the mid-1990s reached consensus and presented a unanimous advice on flexibility and security, some cracks in the consensus are emerging. In light of the translation of national-level law into sector-level outcomes, the peak trade union federations argue that CLA-provisions are drifting away from the intentions of the F&S law. Whereas in 1996 they agreed that deviations from the law should be allowed, they argued in 2007 that the maximum duration of FT-contracts should be brought down from three to two years and deviations above three years the law should be prohibited. The consensus of 1996 no longer exists and a gap is showing between employers' associations on the one hand and trade unions on the other.

Substantively, the introduction of the flexicurity regime marks a move away from for example Germany, which focuses on internal flexibility. Form a procedural perspective it seems there is no break with the corporatist tradition: social partners were involved in the design of the F&S law and play a key role in its implementation. In practice, however, it is not clear that the system has become more inclusive; the flexibility offered by the law is used and extended up to the point where the Dutch trade unions have stated that the practices have drifted away from the intentions of the law. The core system of employment protection has remained unchanged and the F&S law has been layered around it. As employers look for ways to increase flexibility, they therefore maximise the flexibility of the group that is already flexible, the temporary workers. This has recently been highlighted in a proposal by Donner, the Dutch Minister of Social Affairs and Employment, to temporarily extend the maximum number of FT-contracts in the law from three to four. As the system of dismissal stays intact, this is where the extra flexibility will come from.

The level of transitions from temporary to open-ended employment in the Netherlands is similar to that in Germany and lower than that in Denmark and the UK. Also, the unions have a weaker bargaining position within sectors in the Netherlands. I therefore conclude that the F&S law has not entailed a move to the Danish model; in many ways the Netherlands is still very similar to Germany and, drawing on the recent position of the unions regarding the flexicurity reform, might be moving closer than they were a decade ago. In addition, decentralisation in the Netherlands has led to a

heightened importance of market forces in sector-level negotiations, pointing to a possible slight move in the direction of the UK. The level of transitions is, however, lower in the Netherlands and the use of temporary employment more than double. The Dutch approach, therefore, entails a hybrid model still containing dualistic elements, an increased importance of market forces, and attempts to move towards the Scandinavian model.

This project has shown that there is less flexicurity when one moves from the level of national law to the level of collective bargaining. The assertion that the Netherlands are an 'example of flexicurity' should therefore be treated with caution. I have however chosen a limited definition of flexicurity, focussing on security in temporary work, and the outcomes therefore do not hold for flexicurity in the Dutch labour market in general. However, the attempt to normalise temporary work was one of the pillars of the Dutch flexicurity policy in 1999. The outcomes show that this goal has nevertheless not been (fully) reached. Though social partners agreed at the national level, they are often not able to create a similar balance between flexibility and security through collective bargaining. This is likely related to the power deficiency of the Dutch trade unions, an aspect on which the Netherlands differs substantially from that other 'example of flexicurity', Denmark. The attempt to make a shift towards the Danish approach has not been very successful. Risks have not been redistributed to a large extent between regular, permanent workers, and temporary workers. The recent crisis has also shown that the burdens of economic adjustment are still largely borne by this 'buffer' of external flexibility. In short, in its approach to flexicurity, the Netherlands is still quite Dutch.

7.6. Implications and further research

Various findings in this study point to a changing role of the Dutch trade unions. For various reasons, flexibility has become an increasingly common outcome of decentralised negotiations between social partners. The Dutch unions have evaluated these outcomes as drifting too far away from what the legislator intended with the F&S law and have called for stricter rules at the central level (STAR 2007). A stricter framework would allegedly bring insiders and outsiders closer together. However, the 'perverse effects' of these restrictions have also been discussed in this project: employers increasingly replace the temporary worker after the maximum permitted number of contracts rather than offering an open-ended contract (Knegt, Hesselink et al. 2007). Rather then setting boundaries, the trade unions might invest more in increasing security for temporary

workers by increasing equality in pay and remuneration and access to high-quality, general training. Together with the flexibility they offer, this will increase the attractiveness of temporary workers and increase employment instead of job security.

Security for flexible workers as defined in this project turned out to be more related to economic developments, such as an increase in the scarcity of labour, than to the union's position within a sector. It seems unions can only exert power in central-level negotiations but not within sectors or firms. This is related to their low membership levels when compared to e.g. Denmark. Also, it seems that the unions (still) take a defensive stance towards temporary work in order to protect the 'insiders' in the labour market, which is their membership base. To create a more encompassing strategy and also to attract new groups of workers as their members, the unions could engage more in the development of new types of security for temporary workers, and investigate which types of flexibility might benefit workers. Starting from a negotiation standpoint that flexibility is a desired aspect of the employment relationship for both parties; the real interesting discussion can take place what flexibility means for whom and how to develop it in practice.

The empirical analysis in this project started with a four-country comparison that showed that in the Netherlands, Germany and Denmark, flexibility is to a large extent balanced by security. However, in Denmark and Germany a similar regime applies as in the Netherlands: social partners can deviate from national law in CLAs. Therefore, to really assess the flexicurity in these systems, a similar study as I carried out for the Netherlands should be carried out in these countries. In order to truly assess the level of flexicurity in these institutional settings, the CLA-level needs to be taken into account. A study of this nature was beyond the scope of this book but without a doubt a very important step forward in the understanding of flexicurity in practice.

I have aimed to take the concept of flexicurity and apply it to a case that is often seen as an 'example of flexicurity'. I have thereby come across the difficulty of making this relatively new concept measurable. I have defined flexicurity in this project as security for temporary (i.e. flexible) workers. This is line with several elements of flexicurity as outlined in the academic and policy debate, but it does not cover all aspects. We are still only at the beginning of developing ways to measure flexicurity, and especially more encompassing measures still have to be developed. Mainly in chapters four (regime-comparison) and six (sector-comparison), I chose to develop flexibility and security separately instead of moving directly to flexicurity. This stance points to what I

consider an important issue in the debate on how to measure flexicurity. Under what conditions can two elements, i.e. flexibility on the one hand and security on the other, be brought together under the single heading of 'flexicurity'? Can any element of flexibility and any element of security apply, or can some elements not be included? This issue becomes increasingly pressing when more encompassing definitions of flexicurity are used than the one employed in this study. These questions still need to be answered within studies between countries, between CLAs, and between actual labour market outcomes. This way, researchers can also gain insight into the different ways in which flexicurity is understood in different institutional settings. The only way to develop the concept of flexicurity further is to develop good indicators.

Samenvatting (Dutch summary)

Een Nederlandse aanpak van 'flexicurity'? Onderhandelde ontwikkelingen in de vormgeving van tijdelijk werk

Toenemende flexibilisering van arbeidsrelaties gedurende de jaren '80 en '90 van de vorige eeuw leidde tot de roep om hervorming van het Nederlandse arbeidsrecht en tot de Wet Flexibiliteit en Zekerheid in 1999. Deze 'Flexwet' werd inhoudelijk vormgegeven door de vakbonden en werkgeversorganisaties, de 'sociale partners', binnen de Stichting van de Arbeid (StvdA). De StvdA kwam in 1996 met een unaniem standpunt over de vormgeving van de Flexwet, op uitnodiging van de toenmalige minister van Sociale Zaken en Werkgelegenheid, Ad Melkert, die het jaar daarvoor de 'Nota flexibiliteit en zekerheid' uit had gebracht. De Flexwet had tot doel "een nieuwe balans" te creëren tussen flexibiliteit en zekerheid op de arbeidsmarkt. Om dit te bereiken werd een herverdeling cruciaal geacht van de risico's die verbonden zijn aan een arbeidsrelatie. Deze herverdeling had met name betrekking op uitzendwerk en contracten voor bepaalde tijd, die ik in het Engels, zoals vaak gebruikelijk is in internationale literatuur, samen aanduid met de term '*temporary work*'. In deze samenvatting gebruik ik liever 'tijdelijk- en uitzendwerk' omdat tijdelijk werk in het Nederlands veelal alleen wordt gebruikt om contracten voor bepaalde tijd aan te duiden. Andere elementen van de Flexwet naast tijdelijk- en uitzendwerk hebben betrekking op minimum garantieloon voor oproepkrachten, rechtsvermoedens voor kleine contractjes, ontslagprocedures, etc. Met name de rechtspositie van uitzendkrachten, maar ook die van werknemers met bepaalde tijd contracten, werd versterkt terwijl restricties rondom het gebruik van dit type contracten tegelijkertijd werden versoepeld. Deze hervormingen zouden daarmee bijdragen aan de 'normalisering' en 'institutionalisering' van tijdelijk- en uitzendwerk.

In dit project is in kaart gebracht hoe werkgevers en sociale partners omgaan met het nieuwe kader van de Flexwet, en hoe het hun gedrag ten aanzien van tijdelijk- en uitzendwerk beïnvloedt. Er is gekozen om niet de visie van individuele werknemers mee te nemen omdat de nadruk ligt op hoe het beleid binnen bedrijven vorm krijgt. Het was daarom van wezenlijk belang om werkgevers maar ook de CAO-partijen te ondervragen over hun ervaringen en beleid. Sociale partners hebben een cruciale rol bij het invullen van de Flexwet omdat veel bepalingen slechts 'driekwart dwingend' zijn; dit betekent dat

sociale partners in hun CAO afwijkende bepalingen op kunnen nemen. Dit kunnen zowel bepalingen zijn die strikter zijn, als bepalingen die juist minder strikt zijn ten opzichte van de Flexwet.

Om het ontwerp van de Flexwet en de daarop volgende ontwikkelingen te duiden is gebruik gemaakt van theorieën over instituties en institutionele verandering. De term instituties is veelomvattend en heeft zowel betrekking op formele als informele regels die gedrag vormgeven. In dit project zijn formele instituties de wetten en CAO-bepalingen rondom tijdelijk- en uitzendwerk; informele instituties zijn normen en waarden rondom tijdelijk- en uitzendwerk. Omdat de Flexwet deels een codificering was van wat er al in de jaren '90 in CAOs werd afgesproken, zijn theorieën over endogene, incrementele institutionele verandering het meest bruikbaar. De ontwikkeling van de Flexwet is in lijn met de Nederlandse benadering in het arbeidsrecht wat tot doel heeft trends te codificeren en daarmee buitenbeentjes 'binnen boord' te halen. De onderliggende motivatie van de wetgeving is het stimuleren van een breed draagvlak voor beleidsveranderingen, ook wel het 'poldermodel' genoemd. Dit is ook te zien in het belang dat werd gehecht aan inbreng van sociale partners voor de vormgeving van de Flexwet, alsook de rol die hen wordt toebedeeld door middel van driekwart dwingend recht. Enkele theoretici die zich hebben verdiept in theorievorming over endogene, incrementele verandering hebben een typologie ontwikkeld met verschillende soorten van deze vorm van institutionele verandering. Op basis van een analyse van de ontwikkelingen in de formele en informele instituties rondom tijdelijk- en uitzendwerk wordt gekeken welk type het beste de veranderingen in Nederland beschrijft. Hiernaast is er aandacht voor de actoren die een rol hebben gespeeld bij de vormgeving van de wet en de verdere uitwerking ervan in CAOs. Deze actoren kunnen individuen zijn, maar ook organisaties, zoals bijvoorbeeld een vakbond.

Nederland is door de Europese Commissie (EC) aangeduid als een "voorbeeld van flexicurity"'. Met de term 'flexicurity', letterlijk vertaald als 'flexizekerheid' wordt een balans tussen flexibiliteit en zekerheid op de arbeidsmarkt aangeduid. Een belangrijke reden dat de EC Nederland beschouwt als voorbeeld is de Flexwet, en met name de bepalingen rondom uitzendwerk en contracten voor bepaalde tijd. Omdat deze studie een stap verder gaat dat wat er in de Flexwet staat en ook kijkt in hoeverre sociale partners juist afwijken van wat er in de Flexwet is vastgelegd, biedt het inzicht in hoeverre Nederland inderdaad als een 'voorbeeld' kan worden getypeerd. Flexicurity is een term die ongeveer ten tijde van het ontwerpen van de Flexwet opkwam in kringen

van beleidsmakers en wetenschappers in Nederland en Denemarken. Denemarken is overigens een ander 'voorbeeld van flexicurity'; niet door een specifieke beleidsmaatregel maar vanwege een stelsel van samenhangende en elkaar versterkende instituties. Dit zijn de relatief soepele ontslagbescherming, de relatief hoge uitkeringen, en een actief arbeidsmarktbeleid om mensen snel van baan naar baan te helpen. Denemarken wordt dan ook in met name Europese beleidsstukken aangeduid als een 'staat van flexicurity' terwijl Nederland wordt gezien als een land met een duidelijk 'flexicurity-beleid'.

Het begrip flexicurity staat analytisch en theoretisch nog in de kinderschoenen en wordt door wetenschappers op verschillende manieren geïnterpreteerd. In een recent document heeft de EC flexicurity gedefinieerd aan de hand van een zevental 'gemeenschappelijke principes' (*common principles*), vier 'paden' (*pathways*), en vier componenten. Deze elementen maken samen van flexicurity een omvangrijk begrip dat een groot deel van arbeidsmarkt- en sociale zekerheidsbeleid in een land omvat. Voor onderzoekers ligt er een uitdaging om dit begrip hanteerbaar en meetbaar te maken, om uitspraken te kunnen doen over flexicurity in de praktijk. Omdat de EC de elementen rondom uitzendwerk en contracten voor bepaalde tijd aanhaalt om Nederland te duiden als 'voorbeeld' is in dit project gekozen voor die focus. Flexicurity is gedefinieerd als zekerheid voor werknemers een tijdelijke- of uitzendbaan. Dit sluit aan bij de eerste van de vier componenten van flexicurity, namelijk 'flexibele en zekere arbeidsrelaties', en bij het pad 'tegengaan van segmentatie op basis van arbeidsovereenkomst'. De resultaten van de analyse in dit project hebben dan ook alleen betrekking op die vorm van flexicurity; er kunnen geen uitspraken worden gedaan over 'flexicurity in Nederland'.

De analyse is onderverdeeld in drie fases en hanteert een perspectief van 10-15 jaar, afhankelijk van de fase. In de eerste fase was het doel om een goed beeld te krijgen van de specifieke kenmerken van de regulering van zekerheid in tijdelijk- en uitzendwerk in Nederland. Hiertoe is Nederland vergeleken met Denemarken, Duitsland en Groot Brittannië (GB). Per land is in kaart gebracht hoe het aandeel tijdelijk- en uitzendwerk en de regulering ervan zich heeft ontwikkeld sinds ongeveer begin jaren '90. Een vergelijking van het aandeel tijdelijk- en uitzendwerk laat zien dat Nederland koploper is met ruim 20%. Ongeveer 3% hiervan is uitzendwerk. Het aandeel uitzendwerk in Duitsland ligt rond de 1% en tijdelijk werk rond de 15%. Denemarken en GB hebben beiden een aandeel tijdelijk- en uitzendwerk van ongeveer 10%; in GB is bijna de helft hiervan uitzendwerk, terwijl dit aandeel in Denemarken tussen de 0,5 en de 1% ligt. De verklaring voor dit verschil tussen Nederland en Duitsland enerzijds, en Denemarken en

GB anderzijds ligt waarschijnlijk in het feit dat de arbeidsmarkten in Denemarken en GB flexibeler zijn; er is minder ontslagbescherming dan in Nederland en Denemarken. In alle vier de landen is vanaf de jaren ’90 een deregulering te zien van de uitzendbranche; restricties rondom het gebruik van uitzendkrachten zijn in alle landen afgebouwd. In Duitsland, Denemarken, en vooral in Nederland is er geprobeerd deze deregulering te balanceren met meer zekerheid voor uitzendkrachten. De regulering van tijdelijk werk kan niet los gezien worden van de Europese Richtlijn voor tijdelijke contracten. De implementatie van deze richtlijn in de vier landen betekende in Nederland en Duitsland meer mogelijkheden om tijdelijke contracten te gebruiken terwijl de nieuwe regels restrictiever waren voor de Deense en Engelse regimes.

De volgende fase in het onderzoek was een verdere verdieping van de Nederlandse casus. Als tijdskader is gekozen voor midden jaren ’90 van de vorige eeuw, het jaar waarin de Nota Flexibiliteit en Zekerheid werd uitgebracht, tot 2008. In dit hoofdstuk wordt de rol van de sociale partners bij de ontwikkeling maar ook de latere uitvoering van de bepalingen van de Flexwet in kaart gebracht. In de uitzendbranche speelde naast de sociale partners ook de grootste vertegenwoordiger van uitzendorganisaties, de Algemene Bond van Uitzendondernemingen (ABU) een cruciale rol. Deze drie partijen stelden vóór de invoering van de Flexwet een convenant op waarin zij al afspraken op welke manier de Flexwet in de CAO zou worden vertaald. Het kernelement van dit convenant was het fase-systeem dat naast de wettelijke ‘ketenbepaling’ voor tijdelijke contracten werd ingevoerd.

De ketenbepaling van de Flexwet stelt dat de werkgever na drie tijdelijke contracten of tijdelijke contracten voor maximaal drie jaar een vaste arbeidsovereenkomst aanbiedt. De tussenperiode tussen twee tijdelijke contracten is hierbij maximaal drie maanden. Ter vergelijking: vóór de Flexwet was de periode één jaar en het aantal tijdelijke contracten één. De tussenliggende periode was echter korter, namelijk één maand. Dit leidde vaak tot een zogenaamde ‘draaideurconstructie’ waarbij mensen in plaats van door te stromen naar een vast contract een maand via een uitzendbureau werden ingehuurd. Deze constructie heeft de Flexwet bemoeilijkt door de periode te verlengen en door een bepaling van ‘opvolgend werkgeverschap’ voor uitzendbureaus en andere werkgevers.

Hoewel de Flexwet stelt dat de ketenbepaling voor uitzendkrachten gaat lopen na 26 weken uitzendovereenkomst om onzekerheid voor uitzendkrachten te beperken, legden de sociale partners en ABU in de CAO van 1999 vast dat de ketenbepaling pas

van kracht wordt na 52 weken. Na een jaar krijgt de uitzendkracht een eerste tijdelijk contract. In de CAOs afgesloten na 2003 is deze eerste 'uitzendperiode' verder verlengd van 52 naar 78 weken. In de tweede CAO in de uitzendsector is deze periode zelfs verlengd naar 130 weken. In ruil voor deze uitbreiding van flexibiliteit hebben uitzendkrachten meer rechten gekregen ten aanzien van scholing en pensioen, en krijgen ze gegarandeerd het loon van de inlener na 26 weken. Volgens de tweede CAO in de uitzendbranche geldt gelijk loon vanaf de eerste dag van uitzending.

Een analyse van CAO-bepalingen rondom tijdelijk werk laat zien dat er in bijna de helft van de CAOs van de wet wordt afgeweken, en dat door de tijd heen afwijkingen in de richting van meer flexibiliteit zijn toegenomen. Wanneer echter wordt gekeken naar het aantal arbeidsovereenkomsten dat door de CAOs gedekt wordt, heeft het merendeel van de werknemers nog altijd te maken met bepalingen in lijn met de Flexwet. In deze tweede fase van het onderzoek is tenslotte gekeken naar de meer algemene verschuiving van risico's van de arbeidsrelatie. Hieruit blijkt dat de risico's van ziekte en arbeidsongeschiktheid steeds meer van de overheid naar de werkgevers toe is verschoven. Werkgevers proberen deze risico's vervolgens af te dekken door gebruik te maken van tijdelijke en –uitzendkrachten. Op die manier schuift het risico door naar werknemers. Dit verklaart mede de aantrekkelijkheid van deze vormen van tijdelijk werk en de vrij vergaande uitbreiding van flexibiliteit in de CAOs voor de uitzendbranche.

De laatste fase van het onderzoek bestond uit een vergelijkende analyse van elf sectoren. Het sector-niveau is in Nederland van wezenlijk belang omdat de meeste CAOs, i.e. voor rond de 80% van de werknemers wiens contract gedekt is door een CAO, afgesloten worden voor een gehele sector. In deze fase (hoofdstuk 6) zijn CAOs en het aandeel tijdelijk- en uitzendwerk geanalyseerd in 1998, 2001 en 2004. Het aandeel tijdelijk- en uitzendwerk en de CAO-bepalingen die minder strikte regels bevatten voor tijdelijke contracten geven de mate van flexibiliteit weer. CAO-bepalingen rondom uitzendwerk en striktere regels rondom tijdelijke contracten zijn geselecteerd als indicatie van zekerheid. De jaren 1998, 2001 en 2004 zijn gekozen als analysemomenten om zowel de impact van de Flexwet mee te nemen die in 1999 werd ingevoerd, alsook de invloed van economische hoogconjunctuur (2001) ten opzichten van laagconjunctuur (2004). Een beschrijving van verschillen tussen sectoren en door de tijd heen laat zien dat de combinatie van flexibiliteit en zekerheid weinig voorkomt. Hiernaast is er met name tussen 2001 en 2004 een toename te zien in flexibiliteit.

Deze uitkomsten riepen de vraag op waarom sectoren van elkaar en door de tijd heen verschillen. Op basis van beschikbare literatuur en interviews is vastgesteld welke factoren van belang zijn voor flexicurity in tijdelijk- en uitzendwerk. Een kwalitatief vergelijkende analyse van deze factoren laat zien dat zekerheid vooral samenhangt met krapte op de arbeidsmarkt, terwijl flexibiliteit veelal te zien is in sectoren die veel invloed ondervinden van nationale en internationale concurrentie. De aanwezigheid van sterke vakbonden, gemeten als het ledenaantal in de sector, is minder van belang voor zekerheid als werd verwacht. Combinaties van de verschillende factoren leiden niet eenduidig tot de combinatie van hoge flexibiliteit en zekerheid, ofwel flexicurity.

Wat zeggen deze resultaten over flexicurity en over institutionele verandering? Uit de analyse blijkt dat de Flexwet een bepaalde balans voorstaat, die ten aanzien van tijdelijk- en uitzendwerk in de praktijk eerder uitslaat in de richting van flexibiliteit dan van zekerheid. Bij het gegeven dat Nederland een 'voorbeeld' is van flexicurity kunnen dus vraagtekens worden gezet. Ook op sector-niveau is weinig sprake van een balans tussen flexibiliteit en zekerheid. Deze resultaten betekenen echter niet dat het concept flexicurity overboord kan. Zoals eerder aangegeven is gekozen voor een specifieke afbakening van het concept om het werkbaar en meetbaar te maken. De resultaten gelden dan ook alleen binnen deze afbakening. Meer van dergelijke studies tezamen kunnen wellicht bijdragen aan een meer alomvattende operationalisering van flexicurity waarbij een breed scala aan factoren meegenomen kan worden.

De typologie van institutionele verandering uiteengezet in het theoretisch raamwerk van deze studie blijkt grotendeels toepasbaar te zijn op de Nederlandse casus. Met name de types *layering, drift,* en *conversion,* bij gebrek aan een heldere Nederlandse vertaling van deze termen, zijn toepasbaar op de ontwikkelingen in Nederland. Het concept *layering* beschrijft goed hoe het Nederlandse ontslagstelsel grotendeels intact is gebleven terwijl er nieuwe instituties, met name de Flexwet, als extra 'laag' omheen is gelegd. *Drift* heeft betrekking op het langzaam uiteenlopen van de doelstellingen van instituties en hoe zij in de praktijk geïmplementeerd worden. Dit proces is zichtbaar ten aanzien van de ketenbepaling voor tijdelijke contracten; de vakbonden hebben expliciet gesteld in een verklaring in de StvdA in 2007 dat het gebruik van de ketenbepaling in de praktijk afwijkt van de bedoelingen van de wetgever. *Conversion* heeft betrekking op het aanwenden van instituties voor andere doeleinden dan waarvoor zij oorspronkelijk bedoeld zijn. In sectoren van de Nederlandse economie is dit proces te zien, maar eigenlijk in een soort omgekeerde vorm. In plaats van het aanwenden van bestaande

instituties voor nieuwe doeleinden, worden nieuwe instituties aangewend voor bestaande doeleinden. Zo is te zien dat hoewel de Flexwet een nieuw kader heeft ontwikkeld, de bestaande flexibiliseringstrategieën in stand blijven, al is het onder een nieuwe noemer. Zo zijn oproepkrachten in sommige gevallen vervangen door uitzendkrachten omdat de regulering van oproepkrachten strikter werd. Dit noem ik daarom *reversed conversion*, omgekeerde conversie. Een tweede toevoeging aan de bestaande theorie over endogene, incrementele institutionele verandering is het toepassen van de theorie op meerdere niveaus. De theorie maakt dit momenteel nog niet expliciet maar de Nederlandse casus, met het driekwart dwingend recht, laat zien dat er op nationaal niveau een andere balans uitonderhandeld kan worden dan op sector-niveau.

De typisch 'Nederlandse aanpak van flexicurity' bestaat allereerst uit het toekennen van een belangrijke rol voor de sociale partners. Dit is in lijn met het Nederlandse 'poldermodel' gebaseerd op draagvlak en overleg tussen belanghebbende partijen. Terwijl er op nationaal niveau overeenstemming was over de elementen van de Flexwet, is tien jaar later te zien dat de mening over het juiste gebruik van de wet van vakbonden enerzijds en werkgevers anderzijds uit elkaar zijn gaan lopen. Op nationaal niveau hebben de vakbonden in het Nederlandse model een sterke, geïnstitutionaliseerde rol, terwijl te zien is dat zij in CAOs niet altijd voldoende zekerheid kunnen realiseren. Dit heeft, zo blijkt uit de vergelijking met Denemarken, waarschijnlijk te maken met hun relatief lage organisatiegraad. De uitkomsten van deze ontwikkelingen zijn dat vaste contracten relatief vast zijn gebleven, ondanks versoepeling van de regels in 2006, terwijl tijdelijke- en uitzendkrachten nog steeds het merendeel van de risico's van een arbeidsrelatie dragen. Dit is nog eens heel scherp naar voren gekomen tijdens de economische crisis. De doelstellingen van de wet om een nieuwe balans teweeg te brengen, risico's te herverdelen, en tijdelijk- en uitzendwerk meer te institutionaliseren en normaliseren zijn niet op zodanig gerealiseerd dat Nederland meer vergelijkbaar is geworden met Denemarken. Nederland is dan ook nog typisch Nederlands.

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