REWIR

WORKING PAPER

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Benchmark case studies on France, the Netherlands and the UK, their return to work policies, legal frameworks, and strategies, lessons for other countries and EU-level policy making

Negotiating Return to Work in the Age of Demographic Change through Industrial Relations (REWIR)
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Introduction:

The European Pillar of Social Rights asserts that "*people with disabilities (chronic conditions) have the rights to … services that enable them to participate in the labour market …, and a work environment adapted to their needs".* However, it remains unclear to what extent such services and policies have been or are to be implemented. Therefore, the aim of the general study (REWIR) is to explore the role that industrial relations play in work retention and integration of EU citizens affected by chronic conditions. To address this aim data has been collected in three levels:

1. EU Member States (27);
2. Six EU Member States (national, company and worker levels);
3. Benchmark case studies covering 3 additional EU Member States.

The current report presents the outcome of the benchmark case studies which aims to expand the general study's sample by adding large countries (i.e. the Netherlands, France and UK). These countries have a significant impact on the EU-level policy agenda, diverse industrial relations systems and developed institutionalised return to work (RTW) frameworks, and different approaches towards return to work policies. (EU-OSHA, 2018 [1]).

Data has been collected via desk research where the countries' websites were searched and relevant reports have been identified.

The findings are reported under the following headings:

1. Sickness absence eligibility;
2. Policy framework;
3. Stakeholders;
4. The role of the employer;
5. Collective bargaining.

While a wide range of sources were used for addressing the aim of this project, the results should be seen in the light of some limitations caused by the methodology used:

- As was mentioned before, this is a benchmark study in which the key resources were national inventories of policies and legal frameworks as could be found on relevant national websites. National reports supposed to present facts and information, however, these documents are NOT evidence based reports;

- Furthermore, the report is based on information gathered from national reports translated to English. There might be a case in which some information or implications of the information lost or deviated whilst the documents were translated to a different language.

Sickness absence eligibility

	Netherlands	UK	France
Eligibility	• All workers	• Have done some work to the employer (see later) • Earn a minimum of a fixed sum per week • Inform the employer within the first 7 days	• At least 1-year service • Provide medical certificate within 48 hours • Covered by the social security • Different rules for the duration (6 months or 12 months)
Duration	• Up to 104 weeks	• Up 28 weeks • Might be different subjected to collective bargaining agreement	• Up to 6 months / 12 months • Might be different subjected to collective bargaining agreement
Source of Payment	• Employer	• Employer	• Social security / employer
Level of Benefits	• Minimum of 70% of wages	• Fixed sum per week • Might be different subjected to collective bargaining agreement	• 50% • 67% • 100% wages See below
Timing of RTW Considerations	• As early as possible (within the first 8 weeks at the latest)	• At the end of the sickness absence with limited room for early intervention	• At the end of the sickness absence with limited room for early intervention

The Netherlands:

Sickness – as a result of a physical or mental condition, as defined in Article 7:629 of the Dutch Civil Code (BW) [2], the employee is unable to perform or fully perform the work agreed to during the term of employment.

Sickness absence – Under Dutch Labour Law, employers are obliged to continue payment for at least 70% of the employees' wages during 104 weeks of sickness.

Who is eligible – all workers.

Duration of sickness absence – 104 weeks. After that period of illness the employer is allowed to terminate the employment contract with the permission of the UWV (Employees Insurance Agency). [3]

Under the Dutch law, there is a prohibition against termination of employment during an employee's sickness. This is a very strict rule to protect the employee. Employers are obliged to continue payments for at least 70% of the employees' wages. This 70% of the employees' wages is capped to a maximum daily wage.

However, many employers diverge from this rule and agree to pay more (100%) the first year and 70% the second year. If this 70% turns out to be less than the statutory minimum wage, the employee is entitled to the statutory minimum wage. Sometimes a Collective Labour Agreement provides for a higher percentage as well.
The employer is only entitled to deviate from this general rule by observing two "waiting days". These are the first two days of sickness during which no salary is due, yet it is only possible to apply waiting days if parties agree upon such a ruling in writing in a collective and/or individual employment agreement. The salary during sickness or disability to work is subjected to deduction of any benefits to be received by the employee and can be maximized to the maximum daily pay (*maximum dagloon*).

The Occupational Disability Act (2005) [4] shifted the focus from an assessment of workers' disabilities to an assessment of their remaining capabilities. This focus gives more positive outlook to the procedure of early intervention, which is recognised as a key factor and strongly supported by various international organisations [12,13].

United Kingdom:

Sickness – an employee who are too ill to work.

Sickness absence – employee who is unable to do his/her job is entitled for Statutory Sick Pay (SSP).

To qualify for Statutory Sick Pay (SSP) the employee must:

- be classed as an employee and have done some work for the employer, agency workers are entitled to SSP;
- have been ill for at least 4 days in a row (including non-working days);
- must provide a medical certificate (GP, hospital doctors, Psychologist, etc.);
- earn an average of at least £118 per week;
- notify the employer before the deadline - or within 7 days if there is no deadline;

An employee who have been off work sick for 4 or more days in a row (including non-working days) is entitled to 118 pounds per week. It is paid by the employer for up to 28 weeks.

The SSP is the minimum compensation; however, many contracts of employment contain terms specifying permitted absences. These are usually found set out in the statement of employment's particulars or in a policy or handbook, or if a union is recognised, in a collective agreement. Where a union is recognised, sick pay has usually been negotiated with the trade union and the contractual entitlement will be set out in a collective agreement. For employees who have a contractual right to sick pay, their employer must pay it, as long as the employee follows all the rules in the contract of employment. The payment for a sick employee will depend on what is in the contract of employment. Sometimes contracts include a clear written term providing for full pay for a specified period, followed by reduced pay for a further period, subject to conditions on reporting the sickness absence. For all these reasons, most large employers, especially where unions are recognised, prefer to negotiate clear rules that state when sick pay is and is not going to be paid.

If the contract does not contain any written terms about sick pay, the courts could, in some circumstances, imply a term giving a contractual right to sick pay. Otherwise, the employer is required to pay sick pay under the statutory scheme SSP, as mentioned above. In any event, employees must be told what the sick pay arrangements are as part of the written statement of employment particulars. [5]

France:

In the French welfare system, sickness and disability are covered by the following schemes (the French welfare state combines an insurance based social security system – financed by social contributions - and a universalistic assistance system – financed by taxes) [6]

Sickness leave benefits provide the workers in the private sector a daily allowance which amounts to 50% of the reference wage (daily wage of the 3 months preceding sickness leave), with a maximum cap. This allowance is increased at the level of 66% of the reference wage if the worker has three children or more. This allowance is conditional of contribution to the social insurance system, i.e. having worked at least 800 hours in the last 12 months (with some equivalence for short term or part time workers). Besides, workers having more than 12 months seniority in the firm are entitled to a complementary allowance that amounts since 2006 to 90% of the gross wage in the first 30 days, and 66% in the next 30 days (with some extensions depending on the seniority, the maximum coverage being 90 days).

In the French system, the workers are not covered during the first three days of sickness leave (with the exception of work accidents for which the insurance starts on the first day of leave). This system is thus quite restrictive, although it is often complemented by collective agreements that maintain full wage during the first three days and/or during a given period of sickness leave.

In the public sector, sickness leave is more generous. Ordinary sickness leave provides civil servants with their full wage during three months, and 50% during the next nine months**.** Long term sickness leave is provided in the case of serious illnesses and gives the right to one year full wage and two years half wage.

The French social security system offers some financial support to those who temporarily cannot work due to an accident or illness. An employee who is unable to work must notify the employer as soon as possible. The employee must then obtain a “work stoppage” medical certificate from a doctor and send this to the employer, usually within two days of the start of the sickness absence. The employee must also send the certificate to the relevant sickness insurance fund (CPAM) within two days.

Under French law, the employment contract of an employee who is on sick leave is suspended. By reporting the illness to the employer and the relevant social security organisations, the employee is entitled to receive social security absence allowances while absent from work.

Depending on the provisions of the applicable collective bargaining agreement, employees may be entitled to receive their full salary for a limited period. In such cases it falls on the employer to pay the difference between usual salary and the allowances provided by the French social security organisations.

In addition, some collective bargaining agreements will prohibit an employer from terminating an employee’s employment during sick leave. In cases where collective bargaining agreements do not contain such provisions, an employee can be dismissed during sick leave for reasons not related to his or her state of health, or where prolonged or repeated

absences disorganise the functioning of the company, making permanent replacement of the employee necessary.

Employees in the private sector usually join an insurance scheme called the *Assurance maladie* (sickness insurance). It is organized by the employee's *Caisse primaire d'assurance maladie* (CPAM), their healthcare and social security provider.

Funding for the *Assurance maladie* comes partly from government subsidies, but mostly from regular contributions from both employers and employees. These are automatically deducted from their salary or wages, just like all other *cotisations sociales* (social security contributions). An employee contributes just 0.75% of their gross earnings, while their employer pays 13.14%.

Article L.1226-1 of the Labour Code provides that the employee's remuneration must be maintained (taking into account the social security payments) for a certain length of time (up to 90 days), depending on the employee's seniority and provided that the employee:

- Has at least one year's service with the employer.
- Provides a medical certificate within 48 hours of the absence.
- Is covered by social security.
- Benefits from medical care either in France or in a Member State.

In addition, collective bargaining agreements often specify that the employer must supplement social security payments for a certain period of time, up to the level of all or part of an employee's salary if that employee has attained a specific length of service. This is a personal obligation for the employer and it cannot recover these payments from the social security system. However, most companies are insured to cover these obligations.

To be entitled to paid sick leave for up to six months, the employee needs:

- to have worked for at least 150 hours in the last 90 days before falling ill;
- or to have paid social security contributions based on gross earnings equivalent to 1.015 times the minimum hourly wage (9.76 EUR in 2017) in the last six months before the illness;

To be entitled to paid sick leave for up to 12 months, the employee needs:

- to work at least 600 hours in the last 12 months before falling ill;
- or, paid social security contributions based on gross earnings equivalent to 2.030 times the minimum hourly wage (9.76 EUR in 2017) in this period.

As mentioned above, the duration of the paid sick leave depends on how long the employee worked for or how much he/she earned in the three to twelve months before falling ill.

The sickness leave ranges from six to twelve months. It is normally capped at 360 days within three years; however, in the case of severe and prolonged illness, employee can be granted paid sick leave for up to three years. [6].

Policy framework

	Netherlands	UK	France
Nature	• Comprehensive • Integrated • Holistic	• Well developed • Comprehensive and integrated	• Well developed • Comprehensive and integrated
Inclusiveness	• All workers	• Eligible workers (see previous chapter)	• Eligible workers (see previous chapter)
Focus	• Prevention • Maintain work ability • Early intervention	• Minimising the duration of sickness absence	• Minimising the duration of sickness absence
Coordination of different teams	• Very effective	• Limited	• Limited
Results	• RTW is planned at an early stage (Max 8 weeks from the onset of the illness)	• Limited room for early intervention	• RTW considerations are generally dealt with only at the end of the sickness absence,

The Netherlands:

Comprehensive framework for prevention and rehabilitation (rehab), targeting all workers and valuing early intervention and individualised approaches; All workers are entitled to rehab (medical and/or vocational), whatever is the cause of their health problem and without any requirement to be recognised as disabled; Rehab activity generally supported by a comprehensive policy framework aiming to maintain work ability and/or to prevent exclusion from the labour market; The policy framework promotes a holistic approach to rehab based on the concept of sustainable employability;

The Occupational Disability Act (2005) [4] shifted the focus from an assessment of workers' disabilities to an assessment of their remaining capabilities. This focus gives more positive outlook to the procedure and raises the need for an early intervention. Early intervention

aims to bring employees back to work even before they have made a full medical recovery. Therefore, return to work (RTW) is planned at an early stage, within a maximum of 8 weeks from the beginning of the sickness absence. [7,8]. This shift takes place towards the case management field, where the individual is supported through the RTW process and where the person's abilities and aspirations are in the focus. This job matching assessment is done by examining the individual working capacity against a hypothetical job on the job market and takes no account whether or not the job exists.

Case Management is a service whose purpose is to be a link between treatment services and the client. This aims to coordinate these services and to make assessments of the client's capabilities. Therefore, at the start of the RTW process, the employee is allocated a coordinator or case manager who is then in charge of helping him/her to navigate the different services needed for successful RTW and ensuring that the services proposed to the worker might be able to address their needs. The coordinator starts by making an assessment of the worker's work capacity, taking into account his/her social and professional history and environment in addition to their functional abilities. Following this assessment the case manager is responsible for developing an action plan containing all the measures and steps to be taken for the successful reintegration of the employee, along with a clear timeline and milestones.

United Kingdom:

The UK has well-developed frameworks for rehabilitation and RTW (i.e. the Health, Work and Well-being Strategy); However, coordination across the different steps of the RTW process, from medical and vocational rehabilitation to reintegration at the workplace, remains limited. There is no unique agencies coordinating the overall rehabilitation/RTW process. The National Health Service (NHS) is paying attention to the issue of RTW. NHS activities (i.e. Healthy Working UK initiative) targeting the role of GPs and other healthcare professionals; however, it mainly focused on the medical aspects of the process. [14]. On the other hand, the Health and Safety Executive (HSE) addresses the issue from an occupational safety and health (OSH) perspective.

The Statement of Fitness for Work, or 'fit note', was introduced in 2010 to encourage fuller discussions about work and health. Fit notes are used to support payment of SSP by employers or as medical validation to make a claim to health-related benefits. The information they provide can be used by employers or work coaches within Jobcentre Plus to support a return to work. [15]. The fit note has the potential to be a key tool to identify a person's needs and help them to manage their condition and stay in or return to work whilst working with an employer or work coach. This could have shortened periods of sickness absence and ultimately reduce the need for repeat fit notes, reducing pressures on GPs and

potentially reducing costs over the longer term. It can also act as a prompt for the GP to consider a referral to Fit for Work if appropriate.

However, although many GPs agreed that the fit note has improved the quality of their return to work discussions with patients, and that helping patients to stay in or return to work was an important part of their role, the fit note is not fully achieving what it set out to do. Although the fit note includes the option for the doctor to use a 'may be fit for work subject to the following advice', this option is rarely used. GPs report some difficulties in refusing to issue a fit note. The value of the initial discussion between a healthcare professional, individual and employers about the work an individual can do has then largely been lost, with the fit note process seen as an administrative burden rather than an opportunity to provide work and health-focused support. Decisions on whether a person is able, or not able, to work may be made without the recognition that many people can work with an appropriate support. This means that opportunities to influence someone's understanding around what work is possible for them to do can be lost, from the first GP consultation onwards. This increases the risk that the individual falls out of work altogether or moves further away from securing employment.

Occupational health and vocational rehabilitation, consisting of physiotherapy and occupational therapy, and related professions and services, can play a pivotal role in supporting people to get into work, and preventing them from falling out of work due to health reasons or disabilities. Offering the right support at the right time can make a real difference to people's ability to manage their condition and continue to play their part in society. However, occupational health and related services are currently variable and fragmented. Provision can be inconsistent, not easily accessible for all, and not well tailored to the different needs of individuals. Some employers, particularly larger organisations, do provide some occupational health support, but this is not universal. For people who cannot access occupational health services through an employer, provision is patchy. Elements of occupational health provision such as physiotherapy are provided by the NHS, but services are rarely commissioned specifically for work-related health. There is a great deal of variation in the types of services available, where they are offered, and how many people can access them. There is also a shortage of health professionals with occupational health expertise.

Therefore, RTW considerations are generally dealt with only at the end of the sickness absence, with limited room for early intervention. [5]

France:

While there is a well-developed framework for rehabilitation and RTW, there is limited coordination between the different steps of the process. The right to work for everyone – and thus for disabled persons – is written into the French constitution. Therefore, the employment and placement of disabled persons forms an element of governmental policy. [6]

All employees can receive vocational or rehabilitation training, regardless of whether their work disability occurred from birth or later on in their lives. Training costs are covered by the national health insurance services ("*Assurance Maladie*") while undergoing training participants receive a monthly allowance through public funding. This wage equals the previously earned by the person before he/she became unfit. Complex regulations determine the various measures that aim to support the guidance, training and professional integration of disabled persons from when they are recognised as disabled.

The Technical Committee for Guidance and Professional Placement (COTOREP, *Commissions Techniques d'Orientation et de Reclassement Professionnel*, now included in Departmental Commissions for the rights of disabled) – mainly adopts a decision-making role to allow disabled adults to benefit from plans of action, structures and established financial aid.

The COTOREP is in charge of both administrative recognition of disabilities (they evaluate and certify disability to work), and of vocational and social rehabilitation. They provide orientation towards training, employment (employment in the private sector, in the public sector, or sheltered employment), but also welfare programmes (AAH, and other social schemes). Disabled people benefit from the general right to training, but can also access specific programmes (rehabilitation programmes), or benefit from adapted conditions. [9].

AGEFIPH ("*Association de gestion du fonds pour l'insertion professionnelle des personnes handicapées*", or Fund for the professional inclusion of disabled people) is an organisation dedicated to furthering professional inclusion in the private sector. It receives its funding from private companies that do not meet the 6% disability employment target and pay a compensation fee instead.

The French policy is characterised by a strong involvement of an occupational physician, who has a legally defined role in the RTW process deciding whether the employee is fit or unfit to take up his/her former task, and a strict obligation of the employer towards workplace adaptation. The RTW process is essentially managed by the employer and the occupational physician, unless the employee needs to be re-employed outside his/her company, in which case the national employment agency (COTOREP) may take over the employment procedure.

Many large French companies now have a Disability Officer whose mission is to oversee these matters. Prejudices from recruiters and fellow employees tend to decrease, but the low skill level of disabled workers remains the main obstacle to full professional inclusion. Financial support for incentivising employers to reintegrate employees on sickness absence is fairly limited. The AGEFIPH provides funding for ergonomic studies performed by an external specialist prior to RTW of the employee, with adaptation of the workstation to compensate for their disability, adaptation of the workplace and equipment, personal skill assessments and vocational training, as required.

In the cases where employees are in a long term sickness absence, the RTW process starts towards the end of their entitlement for a sick pay.[1].

Stakeholders – National level

	Netherlands	UK	France
Trade Union confederations	FNV CNV	Trade Union Congress (TUC)	CGT, CFDT, FO, CFTC, CFE-CGC
Employers Confederations	VNO NCW	Confederation of British Industry	CGPME, MEDEF
Others	General Health Care system; re-integration bureaus; Employee Insurance Agency	General Health Care; 'Fit for Work'; Work Foundation; Health charities (i.e. Macmillan; British Heart Foundation, etc.)	General Health Care; Health Insurance; SAMETH; Cap Emploi; Agefiph
Coordination Mechanism	High level Clear definitions of responsibilities	No unique bodies; Aspects of Health and OSH addressed separately	Some movement towards a comprehensive approach

At the national level, the presence of coordination mechanism between the various stakeholders is one of the main factors influence the effectiveness of the rehabilitation/RTW process. The Table above illustrates the various actors playing a role in the three countries. It is of importance to indicate the coordination mechanism in those countries.

The Netherlands has achieved a high level of stakeholders' collaboration by setting in place definitions of the responsibilities of the different stakeholders involved in the process. Furthermore, the Dutch Society of Occupational Medicine (NVAB) has produced multidisciplinary clinical guidance for the integration of work-related issues in the medical rehabilitation process [10].

However, both the UK and France do not have unique bodies coordinating the overall RTW process.

In the UK the NHS with its activities through the 'Healthy Working UK' initiative [14] is mainly focused on the medical aspects of the RTW process, and the Health and Safety Executive (HSE) addresses the issues from an OSH perspectives. [1]

In France, the third Occupational Health Plan (*Troisième Plan Santé au Travail* - PST3) covering the period 2016 to 2020 was officially presented to the Working Conditions Advisory Board (*Conseil d'Orientation sur les Conditions de Travail* - COCT) in 2015 [11]. The overall objective of the PST3 is to put prevention at the core of safety and health at work and to promote a prevention culture with a special focus on work health promotion. Important instruments for an effective prevention culture are risk assessment, information, and training.

The new strategy is based on a renewal of the social dialogue, including more social partners. It was the first time the Ministry of Labour had entrusted the social partners with the task of developing guidelines for the Occupational Health Plan, while involving all workplace health and safety stakeholders in its preparation. The new strategy highlights the link between safety and health and the quality of working life and aims at simplifying regulations. In case this initiative would be fully implemented, this would lead France towards a comprehensive approach to RTW. [11].

The role of the Employer

	Netherlands	UK	France
Range of participation in the RTW process	Full participant	Full participant	Full participant
Sources of support	're-integration bureaus' Internal OHS, HR	Internal OHS if existed, NHS	SAMETH, Cap Emploi, Agefiph
Incentivising the employer to integrate employees on sickness absence	'no-risk insurance' policy (*noriskpolis*)	None	Limited financial support, 'part time for medical reasons'

The Netherlands:

The employer has a broad responsibility in the RTW process including the responsibility to investigate sickness absence. Employers are full participants in the RTW process from the start and are part of the decision making process. [1] The guidance and technical support they need is provided through coordination with the external bodies in charge of vocational rehabilitation. In the Netherlands, private enterprises or '*re-integration bureaus'*, specialised in assisting reintegration, can provide advice and coaching to employers on how to develop and implement a reintegration plan. [16]

Usually, the employer has the support of the internal OSH and Human Resources departments. The procedure normally starts with a meeting between the sick employee and whoever is in charge of the reintegration process (e.g. case manager). The aim of this step is to assess the work capacity of the employee and to identify the appropriate ways to support him/her to promote the return to work. This step should be followed by an individual action plan drawn by the employer where decisions made during the first meeting are recorded. The full individualised plan can also include objectives for the employee in terms of steps to be taken to aid recovery. This plan is not required by any coordinating authority, but it is part of the employer legal obligations.

In case there is a need to adapt the workplace to the needs of the sick employee, employers can benefit, over five-year period, from a 'no-risk insurance' policy (*noriskpolis*) from the Employee Insurance Agency for employees on sickness or disability benefit. Subsidies for

necessary workplace adjustments can be obtained to financially support the necessary adjustments. [17].

United Kingdom:

In the UK the employer has the main responsibility for the RTW process. However, the increasing trend towards the devolution of human resource (HR) work to line managers brought about some difficulties. Although such a strategy may allow for the development of supportive, personal relationships between manager and employee, and quicker decision making tailored to the individual, there are potential difficulties in this changing role of line managers. There is some evidence to show that although line managers were largely responsible for leave policies, their knowledge of statutory measures was often poor, their training inadequate, and their contact with HR specialist personnel limited. [18]. Line managers frequently reported feeling unsupported and isolated, and described tensions between providing support for employees in this context while fulfilling procedural requirements. Lack of training was an issue of concern on a number of levels. Also, existing training was described as predominantly procedural rather than tackling identified knowledge gaps. Confusion over role and function may result in tension, and time demands for this role may frustrate managers' best attempts to engage in aspects of personnel management.

France:

The RTW process is essentially managed by the employer and the occupational health physician. The process is structured around the work ability assessment, undertaken and reinstatement visit with the occupational physician. This visit is compulsory after an absence from work of at least 30 days. The occupational health physician provides direct support to the employer for any necessary adaptations of the workplace, of tasks and of the work schedule.

On recommendation of a doctor, a worker can return to work part-time during a recovery period while still receiving partial sickness benefits. This measure called 'part time for medical reasons', allows workers to temporary work part time to facilitate their RTW, while still receiving their full salary with the sickness insurance body compensating the partial salary by the employer. [1].

Collective Bargaining

As was mentioned above, part of the arrangements for dealing with employees in long sickness absence have been determined by the process of Collective Bargaining/Agreements. Collective Bargaining/agreement is a common concept, however, there are a few differences in the way this process is undertaken in the different countries.

	Netherlands	UK	France
Coverage	81% of employees	29% of employees	98% of employees
Levels	National, Industry and company	National, Industry and company	National, industry and company
Legally binding	All employers members of the employer federation who sign the agreement	Employers are not bound even if they are members of the employers federation that signed the agreement	All the employers who are members of the employers federation that signed the agreement
Subjects of negotiations	Wide range, disability included	Wide range, disability included	Mainly pay and matters of OSH in Social and Economic Committees (created as of January 2018)

The Netherlands:

The vast majority of employees in the Netherlands are covered by collective agreement, mostly at the industry level. However, many large companies negotiate their own deals. Negotiators generally follow the recommendations agreed at national level. Agreements at industry level account for the majority of those covered by collective bargaining. Union negotiators at both industry and company level work within a framework of recommendations coming from the confederations centrally, which are largely observed. These follow the traditional autumn meeting between unions, employers and the government who meet at national level to exchange views about economic prospects.

Unions, employers and independent experts come together in the social and economic council (SER), which is a statutory body, whose task is to provide advice to the government and the parliament on economic and social issues. The SER consists of union representatives

(FNV, CNV and vcp), employers' representatives and experts, known as crown members. Representatives of government departments also attend as observers.

There are a few rules governing those who are entitled to bargain. The only requirement placed on trade unions is that the union should have a legal personality and that its rules should give it authority to bargain. This lack of restrictions on trade unions' freedom to negotiate is matched by similar freedoms for the employers. Dutch employers and employers' organisation have no legal obligation to negotiate with trade unions. Collective agreements between unions and employers depend entirely on both sides' willingness to negotiate. Normally bargaining is conducted on the union side by the full-time trade union officials, with the involvement of lay union representatives.

Collective agreements are legally binding on the membership of the employers' organisations and the unions that sign them. However, employers who sign an agreement are obliged to offer the same terms to non-union employees, so in practice all employees are covered, whether union members or not. In addition, the parties to a collective agreement can ask the government to make its term generally binding on all employees in a particular industrial sector. For this to happen, the agreement must already cover a "substantial proportion" of those employed in the industry – normally 55% or more.

Collective agreements cover a wide range of pay and conditions issues, including such things as early retirement, educational leave, the organisation of leave over the whole of an employee's working life, the position of women, protecting those with disabilities and the environment. Increasingly agreements provide for a range of benefits, from which individual employees can choose. [19].

United Kingdom:

Less than a third (29%) of all employees in the UK are covered by collective agreement. In the private sector coverage is lower (around a sixth) and the key bargaining level is the company or the workplace. In the public sector, where almost two-thirds of employees are covered, industry level bargaining is more important.

Bargaining is conducted by trade unions and employers. The union side may be made up of full-time officials, workplace representatives or a mix of both. Local union representatives are now much more likely to be involved in collective bargaining. The employers' side can be the individual employer or, if at industry level, the employers' association.

Industry-wide agreements are more common in the public sector. However there are some public sector employers, which bargain at the level of a single organisation. In any case, where industry level agreements exist they are not considered to be legally binding on the parties who sign them. Employers are not bound by an agreement signed by an employers' federation even if they are members of it. There is no legal requirement for the employer to negotiate

with the union except where there has been a legally binding decision that the unions should be “recognised” for bargaining.

At national level the Trade Union Congress (TUC) has not been involved in negotiations about pay since the end of the 1970s, when there were a series of national deals. There is also no tradition of negotiations between the TUC and the national level employers’ body, the CBI, on other issues.

Some negotiations cover all aspects of pay and conditions but others are limited to only a few areas, principally pay, with the employer refusing to negotiate about many terms of employment. A growing number of agreements, particularly for non-manual workers, also give employers considerable flexibility by linking increases for individual employees to a subjective assessment of their performance. Negotiations may also cover other areas, such as the facilities or time off provided to the union. There is no mention of negotiations covering health and safety at the workplace. [20].

France:

Collective bargaining can take place at three levels: at the national level covering all employees; at the industry level which can involve national, regional or local bargaining; and at company or plant level. At each level there are detailed legal rules about who can negotiate and the requirements for an agreement to be valid. Industry level agreements are the most important level for negotiation in terms of numbers covered, although the rates they set are generally well below what is actually paid.

The position of national level bargaining has been enhanced by the legislation, which gave unions and employers a much clearer role in the development of legislation in the areas of industrial relations, employment and training. Under its terms, when the government wishes to make changes in these areas, it must first consult with employers and unions on the basis of a document setting out its analysis of the situation, aims and potential options, and allow them, if possible, to reach an agreement on the issue. The government must also formally consult on the draft legislation. This system does not commit the government to accept any agreement and in cases of “urgency” it can bypass the process entirely, but it clearly strengthens the importance of the negotiations between unions and employers at national level.

Industry level bargaining is the most important level for collective bargaining, in terms of the numbers of employees covered. Apart from negotiating pay agreements, this process covers issues around health and safety of the employees.

At company level there is also a requirement for the employer to negotiate annually on pay, working time and other issues, where there is a trade union delegate – essentially companies with more than 50 employees – and in contrast to the obligation at industry level, this is backed up by penalties in case of non-compliance. However, there is no obligation to reach

an agreement, and sometimes the employer will listen to the unions' demands and then fix pay and conditions unilaterally.

Overall, the obligation to negotiate and the fact that government often extends the terms of industry level agreements to all employers mean that formal collective bargaining coverage is very high in France.

Negotiations are normally conducted by the trade unions on one side and employers' federations or individual employers on the other. However, the rules setting out precisely who has a right to negotiate and the circumstances under which agreements are valid. At national level, agreements can only be signed by "representative" trade unions. There are five large national trade union confederations, which are nationally representative: CGT, CFDT, FO, CFE-CGC and CFTC. National agreements are only valid if they have been signed by a confederation or confederations with at least 30% support nationally, and if they are not opposed by other confederations that together have majority support.

At industry level, the organisations that have negotiating rights on the union side are the industry federations of the nationally representative union confederations together with other unions which have shown that they have at least 8% of the votes cast in works council and similar elections in the specific industry. Once signed the terms of the agreement are binding on all the employers who are members of the employers' federation which has signed the agreement and must be applied to all employees.

At company or plant level, agreements can normally only be signed by a union delegate nominated by a representative trade union present in the workplace. A representative union must, among other things, have the support of 10% of the workforce, as indicated by the votes in the first round of the elections for the works council or employee delegates.

Industry level and company negotiations cover pay, pay structures, equality between men and women, financial participation, working time and a range of other working conditions.

Company level negotiations should also cover a wide range of topics. In companies with a union delegate there is an obligation to negotiate not just on the central issues of pay, hours of work and work organisation, but also occupational equality between men and women, employee savings schemes, maintaining employment for older workers, measures to aid disabled workers and gender equality, as well as long-term staffing plans and career development in larger companies. The 2015 legislation on social dialogue and employment attempted to simplify the process of negotiation by grouping the 12 separate topics where the employer had a duty to negotiate into three blocks. These are pay, working time and the distribution of the value added by the company; gender equality and the quality of working life; and, in companies with at least 300 employees, long-term staffing plans and career development.

Employers and unions are also free to negotiate on other issues such as leave or training. Unions at company level can also be involved in negotiating redundancy agreements (see section on workplace representation). [21].

Summary:

The current report presents the results of a benchmark case study to explore the various issues around the process of RTW in the Netherlands, UK and France. The nature of the national policy framework, the presence of coordination mechanism between the various players and the role of the employer are significant factors affecting the effectiveness of the RTW process.

The study found some variation between these three countries. Whilst in the Netherlands a comprehensive framework for vocational rehabilitation system is in operation with a fully employer-driven RTW approach, this is not the case in the UK and/or France. In both of the latter countries, there is a well-developed framework for RTW, however, the coordination between the different steps and players is limited.

These differences in the nature of the policies has an impact on the timing of the intervention. Whilst early intervention in the Netherlands is a key factor, the RTW considerations in both France and the UK are generally dealt with only at the end of sickness absence, with limited room for early intervention.

There is an evidence showing that there is a link between long-term sickness absence and entry to disability benefit system. [12]. Furthermore, the longer a person stays off work due to health problem, the lower the chance is of returning to work [13]. Therefore, late intervention is less effective at both reducing expenditure for invalidity pension and maintaining the sick employee's psychological wellbeing.

It would be incorrect to consider this evidence without relating it to the countries' national legal systems. As described above, the three countries have established totally different legal frameworks, based on their national history. This might be the reason for the significant differences reported in this report. In order to understand this variation there is a need for a comprehensive examination of the legal systems in each of those countries.

However, there has been one common characteristic in all of the three countries. Collective bargaining and agreements are a significant factor affecting the national policy. It seems that RTW and vocational rehabilitation are not an area that is strongly covered by these negotiations. This raises the need to explore the role of social partners in the process of RTW. It is of great importance to ascertain the views of trade union representatives', employers and employees regarding the role of the various social partners in this process.

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