Social protection of marginal part-time, self-employment and secondary jobs in the Netherlands

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SOCIAL PROTECTION OF MARGINAL PART-TIME, SELF-EMPLOYMENT AND SECONDARY JOBS IN THE NETHERLANDS

Gijsbert Vonk, Annette Jansen

PREFACE

In many European countries, marginal part-time, (solo-) self-employment and secondary jobs has been increasing since the last decades. The question about the provision of social protection and labour legislation for these types of employment is the starting point for a project entitled “Hybrid working arrangements in Europe”, directed by the WSI. Germany, Great Britain, the Netherlands, Poland, Italy, Denmark and Austria comprise the group of countries selected in order to investigate “hybrid work” in the context of different welfare state regimes. The following paper by Gijsbert Vonk and Annette Jansen is one of the seven country studies that describe in detail labour law regulations and the national insurance systems for self-employed, secondary jobs and marginal part-time employment.

Karin Schulze Buschoff (WSI)

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1 General information about social protection in the Netherlands

1.1 General

The Dutch system of labour law revolves around the employment contract, de *arbeidsovereenkomst*, regulated in Book 7 of Title 10 of the Dutch Civil Code (*Burgerlijk Wetboek,* BW). The definition 'employment contract' excludes self-employed workers, who are bound by other contracts regulated elsewhere in the Dutch Civil Code, in particular the contract for services.

Since the 1980s the labour market has become increasingly flexible and the labour relationship more complex to qualify. Following an agreement between the social partners and the government, new legislation on flexicurity entered into force in 1998 (*Wet Flex en Zekerheid*). This led, amongst many other things, to the inclusion of a separate contract form in the Labour Code, the so called agency contract. The act was to grant flexible employees a stronger position but this was only partly achieved, one of the reasons for this being that the newly introduced rules can be set aside on the basis of collective labour agreements. This resulted in new debates and a new agreement in 2013. This agreement culminated in the new Act on Work and Security (*Wet Werk en Zekerheid*), which entered into force on 1 July 2015. The main aim of this act is to establish a new balance between employees with permanent contracts (the so-called 'insiders') and the very diverse group of flexworkers ('outsiders'). Solo self-employed workers are also considered to be among these outsiders.

In June 2015, TNO Innovation for Life and Statistics Netherlands published an overview report on the dynamics of the Dutch labour market (in Dutch), with a focus on flexibilisation of labour. According to the report, in 2014, the proportion of Dutch employees with a flexible work relationship has again increased, to 22% (2004: 15%), putting the Netherlands in the top three EU15 countries with high rates of labour market flexibility, behind Portugal and Spain. The percentage of solo self-employed workers has also increased, causing the percentage of permanent jobs to fall to 62% (73% in 2004).

With regard to *social security,* it is worthwhile mentioning that there is a mixed system of national insurance schemes covering the entire population at a minimum level and employee insurance schemes providing income maintenance for wage earners. National insurance schemes in the Netherlands have been introduced for the risks of old age (AOW 1957), death (AWW 1959, currently Anw), children (AKW 1972), incapacity for work (AAW 1975 abolished in 1998) and special medical expenses (ABWZ 1976, currently Wlz).

No national insurance schemes have been created to cover unemployment and illness; instead there are employee insurance schemes (WW and ZW). Nowadays the risk of incapacity for work also falls within the exclusive

scope of an employee insurance scheme (the WIA Act, the Dutch Work and Income (Employment Capacity) Act.

There is no separate system in the Netherlands for accidents at work and occupational diseases. These risks are considered to be professionally covered by the employer's civil liability that supplements the general system providing protection in cases of incapacity for work under the WIA Act.

A system of social assistance creates a general safety net under the system.

After the system was completed in the 1970s a reform process was started that is still on-going today. In the nineteen nineties the Dutch had a serious flirtation with the privatisation of their social security system. Traces of this can still be seen in the private administration of the insurance scheme for curative care (Zvw) and the employer's obligation to continue to pay wages during the first two years of incapacity for work. This obligation to continue to pay wages replaces the employees' entitlements under the ZW (the Dutch Sickness Benefits Act), which now simply acts as a safety net. In this two-year period, in addition to the requirement to continue to pay wages the employer is also required to make arrangements for the reintegration of employees who are ill. Private insurance companies and reintegration agencies can assist employers in carrying out this task.

A subject that dominates the contemporary policy agenda is the position of self-employed workers. As mentioned, solo self-employment in the Netherlands has rapidly gained popularity. This development challenges the rift that exists in labour law and social security between the insiders who enjoy full social protection (wage earners) and those who are considered to be outsiders in the labour market (other categories of workers). According to many this rift is too wide. Just before submitting this report, the latest coalition government in the Netherlands (Rutte III) has announced further measures to protect lower paid independent workers. See chapter 4.

The main administrative organisations for the social insurance schemes are the UWV (Employee Insurance Agency) and the SVB (Social Insurance Bank). These are public bodies. Because they are somewhat distanced from the responsible minister, they are also referred as independent administrative bodies. The UWV and SVB have a technocratic management appointed by the Minister for Social Affairs and Employment. They are central organisations with regional offices. The ZVW (Dutch Healthcare Insurance Act) schemes are implemented by private healthcare insurance companies, with a coordinating task, for a public body: the Dutch Healthcare Authority. The Tax and Customs Administration plays its part in the social security system by collecting taxes and paying income-related allowances. And finally, municipalities have an increasing task in the area of social assistance, reintegration and care.

1.2 The definitions of an ‘employee’ and ‘self-employment’ from the perspective of labour law and social security law

1.2.1 Employment relationships under public or private law

In first instance the distinction between employees and self-employment plays a specific role in the employee insurance schemes set up for the risks of illness (ZW), incapacity for work (Wet WIA) and unemployment (WW). Employees are insured under the employee insurance schemes. An employee is a natural person who has concluded an employment contract under private or public law and has not yet reached standard retirement age.[1]

An employment relationship under public law is based on an *appointment* by a public body. These employees are called *civil servants*.

An employment relationship under private law is a relationship based on an employment contract as defined in the Dutch Civil Code. The employment contract is defined in the Dutch Civil Code as a contract in which the employee undertakes to work for the employer for a specific period of time in return for a wage (Article 7:610 Dutch Civil Code). Whether or not the employment relationship has the following features is decisive when establishing whether an employment contract has been concluded:

1. the employee’s obligation to perform the work in person;
2. the employer’s obligation to pay a wage; and
3. the relationship of subordination existing between the employer and the employee.

Traditionally it is pointed out that the Dutch social security court (CRvB) uses a different bases for establishing whether or not there is an employment relationship than does the civil court. Whereas the civil court attaches more importance to the parties’ intentions when determining their employment relationship, the CRvB focuses on the factual relationship existing between the parties. In doing so the CRvB aims to stop parties from acquiring a benefit or being granted a waiver of contributions on the basis of the contractual relationship. However, the significance of this different in approach between the two courts should not be overemphasised. Recent years have seen a trend towards more convergence.

Most of the disputes heard by the CRvB regarding the existence of a private employment relationship ultimately relate to the question of whether or not there is a factual relationship of subordination. Disputes about this issue often arise during short term, incidental employment relationships. Whether or not the facts in the case in question imply the existence of what is called a *significant* relationship of subordination is relevant. It should be established that the employee is required to follow the employer’s instructions.

[1] Article 3(1) ZW, Article 3(1) WW, Article 3(1) WAO and Article 8 (1) Wet WIA

Generally speaking, in cases where the work forms a significant part of the business operations, even if it is of an incidental nature, it can be established that there is a relationship of subordination.

1.2.2 Broadening the definition of 'employee'

The definition of 'employee' for the purpose of the employee insurance schemes is not limited to employees who are employed on the basis of a private or public employment contract. The definition includes persons working in other employment relationships. These employment relationships are treated in the same way as employment relationships in which employee insurance is compulsory.
The term *'fictitious employment relationship*' or '*employment relationship by legal definition*' is then used. These are workers who have been brought under the protection of the employee insurance schemes because, in view of their social and economic position, they are treated the same as employees as defined in the Dutch Civil Code. It is a motley crew. Article 4 of the Dutch Sickness Benefits Act / Unemployment Act (ZW/WW), for example, stipulates that an employee is the person who performs work for which he or she has been contracted, unless he or she can be qualified as a self-employed entrepreneur in the fiscal sense. In specific circumstances intermediaries are also treated as employees. Article 5 ZW/WW extends the concept of employee further to musicians, professional sportsmen and women and homeworkers, at least inasmuch as they are not already classified as employees under private law.

These groups that are also brought within the scope of the employee insurance schemes are referred to in Dutch as 'rariteiten', or rarities. Additional conditions are attached to an individual 'rarity' decision. One of the aims of this arrangement is to exclude people whose participation in the labour process has an ancillary nature, from the scope of the employee insurance schemes. Because of this the scope of the labour relationship is subject to certain minimums in terms of the number of working hours or duration of the work and earnings (at least 40% of the statutory minimum wage). The status of these people who are treated as employees differs in this respect from that of employees under private or public law, who, strangely enough, are insured regardless of the scope of their employment.

1.2.3 Limiting the definition of employee

The definition of employee is subject to several limitations. For instance, persons working fewer than four days a week in a private person's household, fall outside the scope of the employee insurance schemes (Article 6 (1c) ZW/WW): the cleaner, the gardener and the home carer. A home carer is usually found through a home care agency, but might occasionally be employed by the care recipient. In this case the home carer is not insured under the employee insurance schemes if he or she provides care for fewer than four days a week. The legislator's intention here is to save the private

employer from the administrative red tape that is inherent to the employer status (keeping payroll records, deducting and paying social insurance contributions etc.).

1.2.4 Self-employed workers and the employee insurances schemes

The problem of proof

From the above it is clear that the employee insurance schemes are not intended for self-employed workers. And neither, therefore, do they have to pay any contributions. The circumstances under which the work is performed ultimately determine whether or not a person should be treated as a self-employed worker. To reduce the uncertainty surrounding this issue the contract concluded by a self-employed worker with the customer can be assessed in advance by the Dutch Tax and Customs Administration. This authority establishes beforehand whether or not the contract can be considered (ficticious) employment. The criteria on which the Dutch Tax and Customs Administration bases its assessment are set out in the 'Handreiking beoordelingskader arbeidsrelaties (guidelines for assessing employment relationships)' (www.belastingdienst.nl) If there is no evidence of (ficticious) employment the parties involved will not be required to pay any contributions for a period of five years. However, the Tax and Customs Administration continues to check whether the work is performed in accordance with the contract assessed by it. If it emerges later that a self-employed worker has in fact performed the work as an employee, the commissioner of work will have to pay the contributions to the Tax and Customs Administration. This is the system established by the Act Deregulating the Assessment of Employment Relationships (DBA) that entered into force on 1 May 2016. However, the new system turned out to be hard to implement in practice. For this reason the government decided to suspend the enforcement of the act until 1 January 2018. In the meantime whether or not the system can be revised is being looked into.

Voluntary insurance

People falling outside the scope of the employee insurance schemes can opt to take out voluntary insurance. In this way, for instance, domestic staff can still be insured. This also allows people temporarily not working or who start working on a self-employed basis to remain insured. This is subject to the requirement that these people register to continue their insurance on a voluntary basis within thirteen weeks of their compulsory insurance ending.

1.2.5 The risk of sickness

System

Sickness is understood to mean 'short term' absence. 'Short term' means a period of absence of, in principle, 104 weeks. The loss of income of employees who are unable to work due to illness can be compensated in several ways. In the Netherlands this is compensated by requiring employers to continue to pay wages for a specific period of time. This requirement is

an employment right and is arranged for the market sector in Article 7:629 of the Dutch Civil Code. The second method is that of social security. In that case an employee who falls ill has a statutory right to a benefit paid out by an administrative body, which is financed collectively from contributions. These two methods co-exist and complement (and supplement) each other.

1.2.5.1 Protection under labour law during illness

Conditions
Article 7:629 of the Dutch Civil Code simply provides that during periods of incapacity to work due to illness employees retain their right to the continued payment of (part of) their wage for a period of two years. This provision forms the very core of the obligation to continue to pay wages during illness. The right to continued payment of wages during periods of illness requires first and foremost the existence of an employment contract as defined in Article 7:610 of the Dutch Civil Code. The Dutch Sickness Benefits Act (ZW) is a safety net for employees who do not (any longer) have an employment contract. Secondly it is essential that the employee is unable to perform the contracted work due to illness. The law does not provide any further definition of the term 'illness'. This has to be interpreted with reference to the definition previously developed within the scope of the ZW.[2]

Amount
Article 7:629 (1) of the Dutch Civil Code limits the amount that the employer has to pay in relation to each day of illness to 70% of the maximum daily wage. In turn, this wage is based on the maximum salary threshold for national insurance (the gross wage from which the maximum employee insurance contribution may be deducted). On 1 July 2017 this was € 203.85 a day.

In practice the employer often has to continue to pay 90% or 100% of the *full* wage. This more generous requirement is based on the applicable collective or individual employment contract. The additional obligations should not total more than 170% of the wage in the first two years. This generally means that in the second year of sickness the employee's benefit decreases from 90 or 100% of the wage to about 70%. The idea is that this decrease will motivate the employee
to resume work as soon as possible.

Duration
Employers are obliged to continue to pay wages for up to 104 weeks, for domestic staff this is up to six weeks (Article 7:629 (1, 2) of the Dutch Civil Code). The first day on which the employee stops working because of illness is day one for the calculation. Periods of illness that last fewer than four weeks are added together (Article 7:629 (10) of the Dutch Civil Code). If the interruption between two periods of illness lasts longer than four weeks the term of 104 weeks is broken. If the employee falls ill again after

[2] Parliamentary papers II 1995/96, 24 439, No. 3, p. 57–59

having resumed work for longer than four weeks, a new period of 104 weeks starts, provided the conditions set out in Article 7:629 (1) of the Dutch Civil Code are met.

The 104 week period stipulated in Article 7:629 of the Dutch Civil Code is in line with the regular *waiting period* for the Dutch Work and Income (Capacity for Work) Act or 'WIA' (Article 23 WIA). A person only qualifies for a benefit under this act when the right to continued payment of wages ends (Article 43b WIA). As a rule this will be the case when the employee has been incapacitated for work as referred to in Article 7:629 of the Dutch Civil Code for two consecutive years. Sometimes there might be an extended obligation to continue to pay wages if the employer has made insufficient effort to find suitable work for the ill employee. The waiting period can then be extended by up to one additional year (52 weeks).

1.2.5.2 The Sickness Benefits Act as a safety net

Conditions
Sickness benefits are, in principle, not paid under the Sickness Benefits Act to ill employees who are entitled to the continued payment of their wages under Article 7:629 of the Dutch Civil Code (Article 29 (1) ZW). It is, however, paid to people working in fictitious employment. Sickness benefit is also paid to insured people who have no employer. This might, for example, be employees who are ill when their temporary contract expires. But employees with a permanent employment contract that is terminated by way of cancellation, dissolution or with the agreement of both parties also fall within this category. In other words if they are ill when they leave employment they will be eligible for sickness benefit.

Amount
Sickness benefit is usually 70% of the employee's daily wage. This daily wage is linked to the maximum salary threshold for national insurance.

Duration
Sickness benefit is paid for a period of 104 weeks. For insured people who are ill when they leave employment, the rule applies that the continued payment of wages and sickness benefit together may never be paid for a period in excess of 104 weeks. The first day of the incapacity for work is day one for the calculations.

Contributions and financing
The Dutch Sickness Benefits Act is implemented by the Employed Person's Insurance Administration Agency (UWV) and financed from contribution payments. Small employers pay a sector contribution. Medium enterprises pay a contribution that is partly determined by the sector and partly determined individually. Large employers pay a differentiated, individual contribution. The amount of the individual contribution depends of the number of insured people without an employer who received a sickness benefit two years ago via the employer in question. This is intended to reduce the in-

creasing number of flexible workers applying for a benefit under the WIA. The higher contributions payable by medium and large enterprises when flexible workers receive sickness benefit are intended to give an extra incentive to employers to prevent flexible workers from stopping work due to illness.

Employers can opt to pay the sickness benefit themselves. In that case they are considered to bear the risk of employee incapacity themselves (Article 63a-63d ZW). Employers who bear the risk of employee incapacity themselves pay sickness benefit to employees who have fallen ill on behalf of the UWV. They are also responsible for checks and providing support during illness.

1.2.6 The risk of parenthood

Antenatal and postnatal benefit and a childbirth benefit
The right to antenatal benefit and a childbirth benefit is regulated in the Dutch Work and Care Act (*WAZO*) (Article 3:8 WAZO). This benefit is paid for a period of six weeks prior to the estimated due date until the actual birth date of the child and afterwards for ten week, starting on the day after the birth. If the women does not use the full six weeks before the birth of her child, this is compensated after the birth. The antenatal and postnatal benefit and childbirth benefit amounts to 100% of the daily wage. Whether or not the woman is incapacitated for work does not affect this benefit.

Illness during pregnancy
During incapacity for work while on antenatal and childbirth leave the antenatal and postnatal benefit and childbirth benefit continue to be paid as usual (Article 29a (3) ZW). Women who become incapacitated for work in connection with pregnancy or childbirth who are not yet on antenatal or childbirth leave are entitled to a sickness benefit equal to 100% of their daily wage (Article 29a ZW). This is, however, subject to the requirement that they accept suitable work if the incapacity for work starts after the antenatal and childbirth leave has expired (Article 29a (6) ZW).

Pregnancy and self-employment
Woman who are self-employed are entitled to a childbirth benefit equal to at least the minimum wage for at least sixteen weeks (Article 3:18 and Article 3:21-3:27 Work and Care Act (WAZO)). As an alternative to the childbirth benefit the woman can opt for a benefit that is used to hire a replacement during her antenatal and childbirth leave. The replacement should be appointed by a professional agency. The benefit is paid to the agency (Article 3:21 WAZO).

Parental leave
Except for three days' leave for the new father, there is no right to *paid* parental leave in the Netherlands. However, under the Work and Care Act there is a right to unpaid leave until the child's eighth birthday. This right is equal to 26 times the number of hours worked per week. In practice some

employers continue to pay wages (in part) on grounds of arrangements made in collective labour agreements. The latest coalition government Rutte III has announced the introduction paid paternity leave for a period six weeks. At the time of writing there is no legislative proposal yet.

Children
In the Netherlands parents are paid child allowance under the Dutch General Child Allowance Act (AKW). This is not an employee insurance scheme but a national insurance scheme. In other words, all Dutch residents are, in principle, entitled to this. Child allowance is a contribution by the community to the long-term cost of bringing up and caring for children. Parents have first responsibility and so child allowance covers about 30% of the cost of bringing up an average child. Child allowance is financed from taxation so you would expect this to be a social facility. However, legally it bears more resemblance to a national insurance scheme.

Other important schemes are the child-base budget and the childcare allowance. These are income-related schemes, the more you earn, the lower the benefit. Just as the child allowance under the AKW, these schemes too are based on Dutch residency.

All the child schemes described above are financed from general taxation. So no contributions are payable.

1.2.7 The risk of accidents at work

In the Netherlands incapacity for work due to an accident at work is no longer regulated separately. In 1967 the Dutch Accidents Act was integrated into what was then called the Occupational Disability Insurance Act (WAO) and is now the WIA. Since then how someone became incapacitated for work is no longer important. Today the general scheme is regulated in the WIA with alongside this the possibility to recover the work-related loss from the employer under Article 7:658 of the Dutch Civil Code. The employer's liability for paid employees is arranged in paragraph 1 and 2. Solo self-employed workers are referred to paragraph 4. Assessments relating to this group should take into account all the facts of the case so the result cannot be anticipated beforehand.[3]

1.2.8 The risk of disability

System
After a period of incapacity for work lasting 104 weeks the Work and Income (Capacity for Work) Act or 'WIA' comes into play. This is an employee insurance scheme. As in the Sickness Benefits Act self-employed workers are in principle excluded. The act has two schemes: the Return to Work

[3] Allspan case

Scheme for the Partially Disabled (WGA) and the Income Protection Scheme for the Full and Permanently Disabled (IVA).

The WGA is intended for people who are still able to perform work despite their impairments. They are activated in different ways to do so. The IVA is intended for people who are virtually unable to perform any work at all. For them income protection is a priority. Just like the Sickness Benefits Act (ZW), the WIA treats the risk of incapacity for work as a social risk (risque social). The cause of the incapacity for work is irrelevant.

Until recently young people with disabilities fell within the scope of the Work and Employment Support for Disabled Young Persons Act (Wajong). This is a social facility available to all Dutch residents. Unlike the WIA, this act makes no clear distinction between young people with disabilities who are permanently and fully unable to work and young people with disabilities who are still able to perform some work. Since 1 January 2015 this latter group falls within the scope of the Participation Act (see Chapter 10). The Wajong is still valid for young persons with disabilities who are permanently and fully unable to work and for young persons with disabilities who can perform work and who received a Wajong benefit on 1 January 2015.

Conditions

To qualify for an incapacity for work benefit an individual must be unable to work. This is the case when two conditions are met:

1. There must be a loss of earning capacity. This is established if an individual's impairments mean that he or she is unable to earn an income that is equivalent to the income a similar healthy individual earns performing generally accepted work. The yardstick for 'similar and healthy' is the incapacitated employee.
2. The loss of earning capacity has to be a direct consequence of illness and it must be possible to establish this illness objectively. In other words there has to be a causal connection between the loss of earning capacity and the medical impairment.

The incapacity for work should be at least 35% of the individual's capacity (in the Wajong this is 25%).

Amount and duration

An IVA benefit is paid to insured people who are fully and permanently incapacitated for work (Article 4 WIA). The IVA benefit is 75% of the monthly wage and is paid until the beneficiary reaches retirement age or earlier in the event of death.

The WGA benefit is payable to individuals who are partially incapacitated for work. Partial incapacity starts when an individual's incapacity percentage is at least 35% (Article 5 WIA). In addition to these individuals who are still able to earn an income from work, people who are fully but not permanently incapacitated for work also fall in this category. They also qualify for a WGA benefit. In practice these people form the largest group of WGA beneficiaries.

The WGA benefit has several varieties (Article 54 (3, 4) WIA). The *wage-related WGA benefit* is usually first. This wage-related WGA benefit is paid for at least three months and sometimes longer. When an individual has worked for four years, one month of benefit is accrued for each year of employment (Article 59 WIA). Since 1 January 2016 the maximum is 24 months.

On the expiry of the wage-related benefit period an individual might be eligible for a *wage supplementation*. This wage supplementation can be payable until the beneficiary reaches retirement age as long as the income requirement continues to be met, in other words that the individual earns a certain amount of income from work. If, for instance due to dismissal, this is no longer the case, the wage supplementation is converted into a *continuation benefit*. This continuation benefit equals a specific percentage of the statutory minimum wage.

Contributions and financing
The Wajong is financed from general taxation. The WIA expenditures are paid from contributions. Employers can opt to bear the excess of the WGA risk themselves (Article 83 (2) WIA). They can insure the financial risk of doing so at a private insurance company. Sometimes the employer bearing the excess will pay the benefits themselves. Another option is that the Employee Insurance Administration Agency (UWV) might pay the benefit and subsequently recover this from the employer bearing the excess. 83 (3) WIA). Employers bearing the excess are also responsible for the reintegration of the employee.

1.2.9 The risk of unemployment

System
First of all Dutch workers are protected under labour law against unemployment through the transition allowance. This allowance was introduced on the implementation of the Dutch Work and Security Act (WWZ) in 2015 and is not also intended to facilitate the transition to new work. A transition allowance is payable to employees whose employment contract lasted longer than 24 months and provided it was the employer who decided to terminate or not renew the contract. When the contract ended on the initiative of the employee there should be evidence of a serious culpable act or omission on the part of the employer. In that case, moreover, the district court can grant the employee fair compensation, although only when there is evidence of exceptional behaviour.

In addition to the transition allowance there is another system of unemployment benefits governed by the Dutch Unemployment Act (the WW).

Conditions
Just like the Sickness Benefit Act (ZW) and the Work and Income (Capacity for Work) Act (WIA), the WW is an employee insurance scheme. In other words, to qualify for unemployment benefit an individual has to be an em-

ployee. The WW distinguishes between the creation of a right to benefit and enforcing this. There are three conditions for the creation of this right: the employee must be insured, must be unemployed and must meet the eligibility requirement.

The definition of unemployment is a technical one. The employee must have lost working hours and be available for work. That the employee must not be at fault for the unemployment is not part of the statutory definition but is reflected in the form of an obligation on the part of the employee. Failure to fulfil this obligation can in the worst case result in an application for benefit being refused.

The eligibility requirement requires that the unemployed employee has performed work for at least 26 weeks as an employee in a period of 36 weeks directly preceding the first day of unemployment. 17 WW). How many hours a week were worked is irrelevant. Neither do the weeks have to be consecutive and the employee can also have performed the work in other employment relationships as long as these lie within the eligibility period (Article 17a (2) WW).

Amount and duration

In the first two months the unemployment benefit is 75% and from the third month 70% of the difference between the monthly wage and the wage earned from work. If no income is earned the benefit is first 75% and after two months 70% of the monthly wage.

This unemployment benefit is paid for at least three months. This minimum duration can, however, be extended if the employment history requirement is met. To do so the employee should prove that in the five years immediately prior to the year in which the unemployment started, he or she was paid a wage for at least 52 days during at least four years, or, from 1 January 2013, has performed paid work during at least 208 hours. Note: the year in which the employee became unemployed is not counted, even when work was performed in almost every month of this year.

If the employee meets the employment history requirement, the minimum payment duration of three months is extended by one month. The basic principle here is that the payment duration in months is the same as the employment history in years. So a person who has worked for eight years is entitled to a benefit for eight months. Until 1 January 2016 this was subject to a maximum of 38 months. From that date the maximum is being gradually reduced to 24 months. The payment duration per quarter is reduced each time by one month. This transitional period will run until 1 July 2019.

Starters' scheme for self-employed workers

Unemployed people, who aim to start their own company in self-employment, can take advantage of the Starters' Scheme (Article 77a WW). Under this scheme they can obtain permission from the UWV to start an independent company or profession without this automatically resulting

in a loss of benefit rights. In other words they can perform their work in self-employment while retaining their benefit (Article 78 WW). The benefit is, however, reduced by a fixed amount of 29% of the full benefit amount (Article 47b WW).

Contributions
The WW is financed from a sector contribution and an unemployment contribution. The sector contribution covers the first six months' benefit and varies according to the risk of unemployment in the relevant sector. The unemployment contribution is used to finance the other expenditures. This contribution is the same for industry as a whole (2016: 2.07%), the non-contributory threshold has been abolished. Both contributions are paid by the employer. The wage on which the unemployment contributions have to be paid is capped at € 203.85 a day (1 July 2016). Public-sector employers pay no unemployment contributions. They bear the cost of benefits themselves and thus bear the excess for the risk of unemployment.

1.2.10 The risk of old age

System
The General Old Age Pensions Act (AOW) provides all Dutch residents with a basic pension. The retirement age is no longer 65 but is being gradually increased to 67 years. However, stopping work is not a condition for receiving AOW. The AOW system is straightforward. Each resident (or non-resident working in the Netherlands) is automatically insured and accrues pension entitlements each year during the fifty years preceding the standard retirement age (accrued insurance). This is based on a linear accrual system. For every year of insurance 2% of the full AOW pension is built up. People insured for the full fifty years before retirement receive a full AOW pension.

The amount of the AOW pension is in line with the social minimum. This is based on the customary rates of the net minimum wage (50% for married people and 70% for single people). This will be looked at in more detail in section 6.5.

Conditions
There are several grounds for insurance pursuant to the AOW (and the other national insurance schemes and the General Child Allowance Act). First of all people resident in the Netherlands are insured. People residing in the Netherlands are insured. Secondly people living abroad and working as an employee or in self-employment in the Netherlands are insured. The minimum insurance duration is one year.

Anyone who has not built up rights to a full pension because they lived or worked abroad for some years has 2% for each non-insured year deducted from his or her pension. To avoid this deduction it is possible to opt to take out voluntary insurance. For example, employees who have been posted

abroad for some years by their employers can take advantage of the voluntary AOW insurance scheme.

Amount and duration
The AOW system provides for two benefits: (1) the old age pension and (2) the supplement.

A married person whose partner is younger than the retirement age is entitled to a supplement of 50% of the (net) minimum wage in addition to his or her AOW pension of 50% (Article 9 (7) AOW). From 2015 no new entitlements to a partner supplement can be created.
The AOW pension is not income-related, the supplement, however, is. The income test relates exclusively to the pensioner's partner's income (Article 10 and 11 AOW). Any income earned by the pensioner is not taken into account. The income test allows for some exemptions.

Contributions and financing
The AOW's financing is based on the pay-as-you-go system. The cost of paying the pensions is covered by the income from contributions paid by people in work in the relevant year. Contributions are calculated on the contribution base. If no contributions are paid because someone earns no income, this does not affect the pension. AOW contributions are levied by the Dutch Tax and Customs Administration. This is done in combination with the levy of the wage and income tax. The AOW also has a contribution from general taxation. This is in connection with Article 11 (1) of the Dutch Social Insurance (Funding) Act, which establishes that the AOW contribution will not exceed 18.25%. This ceiling means that contribution shortfalls will increasingly have to be supplemented by a government contribution from general taxation.

Second pillar pensions
AOW is the only source of income for only a minority of pensioners. More than 90% of AOW beneficiaries have a supplementary pension based on a company pension fund or a branch or professional pension fund. Participation in such a supplementary pension scheme is sometimes mandatory. Examples of this are the ABP schemes for public-sector employees and special education and the branch pension fund scheme for the Dutch metal industry. General practitioners, midwives and civil-law notaries have a (mandatory) professional pension scheme.

Alongside the AOW and the collective, supplementary pension schemes there are also private pension arrangements concluded at insurance companies. An example of this is the annuity contract. The AOW, the collective and the individual old age arrangements display a measure of cohesion. For this reason the system of old age arrangements is also referred to as the three-pillar or three-layer system. This is an example of public and private social security arrangements supplementing each other.

The supplementary pension has its origin in an agreement between the employer and the employee. This is usually a collective labour agreement.

The legal framework applying to this agreement is detailed in the Dutch Pension Act. This Pension Act defines pensions as 'the old age pension, incapacity for work pension or surviving dependent's pension agreed between the employer and the employee' (Article 1 Pension Act). A characteristic of the definition of pension is that this is a benefit paid, in principle, for an indefinite period of time; this is indeed the case for these three risks.

1.2.11 Surviving dependents' pensions

System
Surviving dependents are protected by the General Surviving Dependent's Act (Anw). This scheme entered into effect on 1 July 1996 to replace the General Act on Widows and Orphans (AWW). It is a risk insurance. This is apparent from the fact that the right to benefit is created if the insured person was insured at the time of death, without the benefit amount varying according to the number of years the person had been insured.

Conditions
The Anw is a national insurance scheme. The scope of insured persons is therefore the same as that for the AOW and other national insurance schemes. Everyone residing in the Netherlands is in principle insured. Those people living abroad but working in the Netherlands either as an employee or in self-employment are also insured.

The right to benefit is conferred on specific surviving relatives of the deceased person: the insured person's surviving partner and the insured person's surviving children. The deceased person must have been insured at the time of death. The Anw does not require the deceased to have been insured for a specific period prior to his or her death.

Amount and duration
The Anw provides for two benefits: the surviving dependent's benefit and the orphan's benefit. A surviving dependent is the spouse of the person who was insured at the time of death under the Anw (Article 1 Anw). The spouse is in the first place the marital partner. Also treated as a spouse is the registered partner and the unmarried adult who ran a joint household with an (adult) deceased person.

Under Article 14 Anw a surviving dependent has the right to a surviving dependent's benefit if he or she is:

1. an unmarried child younger than 18 years; or
2. has a degree of incapacity for work of at least 45%; or
3. was born before 1 January 1950.

The surviving dependent's benefit is 70% of the minimum wage, specifically, € 1,173 a month (2017). The benefit payable to the surviving dependent who runs a joint household with a person in need of care is 50% of the minimum wage. The legislator considers the surviving dependent's benefit to

be a supplement to the surviving dependent's other income. So the benefit acts as a minimum income arrangement for people with insufficient income. The effect of the income tests means that when € 2,503 (2017) a month is earned, the surviving dependent's benefit is reduced to nil. Eighty per cent of the people with a surviving dependent's benefit is female. Male surviving dependents more often have their own income, which is also often higher than that of female surviving dependents.

An orphan is entitled to an orphan's benefit subject to certain conditions being met (Article 26 Anw). An orphan is a full orphan: a child younger than 16 years who no longer has any parents following the death of his or her insured father and/or mother.

Contributions and financing

The cost of the Anw is largely covered by contributions. The contribution is 0.6%, payable on maximum € 33,716 (2017). Contributions are paid by the insured people. The payable contributions are levied by the Dutch Tax and Customs Administration.

Second pillar pensions

The Anw is a mandatory basic income in the event of death. In many cases this is supplemented through schemes based on the employment relationship. Moreover, death insurance is often taken out at a private insurance company. This layered system of public and private arrangements is also applied to the risks of old age and incapacity for work.

2 Information on the inclusion of the following working groups in the social security systems

2.1 (Solo) Self-employment

2.1.1 General

Solo self-employed workers are sometimes hard to define in relation to labour law. There is no conclusive legal definition. The absence of an employment contract tends to be decisive, as a result of which the self-employed worker has to rely on the contract for services (Article 7:400 of the Dutch Civil Code) or the contract for work (Article 7:850 of the Dutch Civil Code).

The solo self-employed worker performs work personally for another at his or her own risk, in the majority of cases based on a contract for services. Work might be performed in the grey area between an employment contract and a contract for services. This is the case, for example, with bogus self-employment. Jurisprudence in relation to this is on a very case-by-case basis. The case law on, for instance, the legal status of post distributors, triggered by the FNV trade union has a high profile. The largest postal company, postbedrijfNL traditionally used employees working for a wage but suddenly introduced a new business model in which the post deliverers were required to conclude contracts for service as solo self-employed workers with the company. Many courts ruled this to be a bogus construction but on appeal the Arnhem-Leeuwarden court of law (ECLI:NL:GHARL:2016:6621) and the Amsterdam court of law (ECLI:NL:GHAMS:2016:2686) confirmed that the solo self-employed workers did indeed deliver post for PostNL as solo self-employed workers. According to the courts the parties' intention as well as the actual performance of the work indicated that the parties' wanted to conclude a contract for services.

Solo self-employed workers are in principle excluded from the employee insurance schemes, unless there is a bogus employment relationship (see Chapter 1). It is, however, possible voluntary continue their insurance: when an employee switches to self-employment, he or she has the option to voluntarily continue their insurance. To do so they must submit a request within thirteen weeks after the end of the mandatory insurance to the UWV.

Whether a person works in solo employment is established in the Netherlands by the Customs and Tax Administration, at least inasmuch as this regards tax legislation and social security. This assessment is based on a combination of several aspects that are considered in conjunction with one another. These aspects are derived from the tax and social security legislation (which partly refer back to typical definitions used in labour law).

- Is, for example profit made or is there a profit objective in the case of a starter.
- Does the solo self-employed worker do the work him or herself, how does this compare to the employees working at the same company.
- The number of hours spent working for the company is important, for the diverse deductibles this is set at a minimum of 1225 hours a year.
- A check is also made to see whether the solo self-employed worker has invested capital in their company and whether any entrepreneurial risks are attached to this, for example if customers fail to pay.
- The number of customers is important, the solo self-employed worker's risk is spread when there are more customers.
- Does the solo self-employed worker bear liability for the work and does he or she actively present him or herself as a self-employed person to the public?

The Tax and Customs Administration's assessment system is a contentious issue. As explained in Chapter 1 above, the contract that a self-employed worker concludes with the customer can be assessed in advance by the Dutch Tax and Customs Administration. This authority establishes beforehand whether or not the contract can be considered (fictitious) employment. If there is no evidence of (fictitious) employment the commissioner of work can, in principle, safely assume for a period of five years that he will not be required to pay any contributions. As mentioned, this system was introduced alongside the Employment Relationships (Deregulation) Act (DBA). However soon after its implementation on 1 May 2016 it became clear that in practice it was hard to enforce. For this reason the government decided to suspend the enforcement of the act until 1 January 2018. In the meantime whether or not the system can be revised is being looked into.

Solo self-employed workers are currently the focus of much political attention in the Netherlands because in recent years this group has increased significantly without self-employed workers always having a say in the matter. The former system of registration of self-employed workers that was in force until 1 May 2016, the 'VAR' (Declaration of Independent Contractor Status) imposed the risk of a wrongful registration on the employee. This made it attractive to employers to use (bogus) self-employed workers rather than employees working for a wage. Solo self-employed workers have no protection against dismissal, do mostly not build up any pension in the second pillar and are not automatically insured against illness and incapacity for work. However, a uniform solution for this lack of social protection has not come into being. According to many this is not desirable given the group's diversity. For further developments see Chapter 4.

2.1.2 Solo self-employment and the risk of sickness

Solo self-employed workers are not entitled to continued payment during illness, nor can they apply for a sickness benefit. For a safety net in the event of sickness solo self-employed workers today have to rely on individual incapacity for work insurance (AOV) or join a 'Broodfonds' (literally:

bread fund). Four out of every five solo self-employed workers have not taken out AOV, usually because they find this too expensive. The solo self-employed workers who are insured pay contributions of around 7 or 8% of their annual income.[4] Research conducted by the Social and Economic Council (SER) in the Netherlands shows that to receive a benefit of EUR 32,000 a year, contributions of about 15% have to be paid.

Due to the high cost of incapacity for work insurance, in recent years 'broodfonds' have been set up.[5] A group of self-employed workers deposit a specific amount each month on their own bank account. How much this is depends on the benefit they will need in the event of illness. When a member leaves the fund he or she keeps the money they have saved. An individual can only join such a fund after being introduced by a participant. These funds work well because they are based on the principle of like-knows-like, as a result absence due to illness is low and the trust placed is not easily misused. To keep it this way the maximum size of a fund is 50 participants. The 'broodfonds' is reminiscent of the guilds and feudal institutions and thus dates back many years as well as being a new phenomenon. Despite the growing popularity it remains a marginal phenomenon.[6]

Self-employed workers seeking to take out private incapacity for work insurance (AOV) have to go through a technical and medical acceptance procedure.[7] In the first case the insurance company assesses what conditions it will attach to the insurance and whether it indeed wishes to offer insurance. The insurer offers AOV insurance based on the principle that the insurer is free to decide whether to accept the self-employed person or not.

> "An insurer is in principle free to decide whether or not it wants to conclude an insurance contract (…) or whether it wants to do so subject to restrictive conditions. It can base this decision on its own assessment of the value of the risk. Its decision as to whether or not it will enter into an insurance contract (...) and whether or not restrictive condition will apply is part of its business strategy, which strategy cannot, except in exceptional cases, be assessed by the Council."[8]

On acceptance the insurer is bound by the ban on discrimination set out in Article 1 of the Dutch Constitution, which does not mean that no distinctions and classification into different risk groups are allowed. The Equal Treatment Act also plays a part when assessing whether insurance is refused based on a banned discrimination such as sex, race or religion.

During the medical acceptance procedure the medical adviser's assessment plays a major role. This defines the risk. The insurer then establishes whether the self-employed worker seeking insurance is eligible for AOV and if so, under what conditions. The medical adviser must be in a position to act objectively and independently of the insurer, on the basis of Article

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[4] Pension Advice 2017/85

[5] Hilhort, Sociale veerkracht als vangnet, s&d 5/6 | 2011, p.151.

[6] In 2016 9000 solo self-employed workers were affiliated to about 200 'broodfondsen'. Between 2010 and 2015 the 'broodfondsen' paid out in total almost 3.1 million euros to 452 solo self-employed workers who had fallen ill. This is EUR 6,800 per person. The average duration of the incapacity for work was almost six months. http://singelpd.nl/nieuws/zzp/groeiend-aantal-solo self-employed workers-maakt-gebruik-broodfondsen

[7] Wervelman, *De particuliere arbeidsongeschiktheidsverzekering* (R&P nr. VR5) 2016/2.2.3.1.

[8] KiFiD's position; compare e.g. RvT 2004/19 and RvT 2001/37 (Med.).

7:435 of the Dutch Civil Code the adviser should duly observe the professional medical standard. The medical adviser can base the advice on the completed health certificate. However, the adviser can also opt to request medical information from third parties or to conduct a medical examination. The difference here compared to the collective AOV under which employees are insured through their employer and where such an examination before acceptance is not allowed, is significant.[9] Generally speaking the self-employed worker seeking insurance has no choice and will have to accept the examination if required to do so. There is, however, a certain degree of protection given that the necessity of the examination has to be justified in a clearly defined examination objective.[10] The amount and duration of the benefit obviously depends on what is agreed between the parties.

2.1.3 Solo self-employment and the risk of parenthood

Just like all other Dutch citizens solo self-employed workers also receive child allowance, child-related allowance and childcare allowance when they meet the set requirements. These child-related benefits are based on residency and are paid from general taxation.

Antenatal and postnatal leave for solo self-employed women
Women who are self-employed are entitled to a childbirth benefit equal to at least the minimum wage for at least sixteen weeks (Article 3:18 and Article 3:21-3:27 Work and Care Act (WAZO)). As an alternative to the childbirth benefit the woman can opt for a benefit that is used to hire a replacement during her antenatal and childbirth leave. The replacement should be appointed by a professional agency. The benefit is paid to the agency (Article 3:21 WAZO). The WAZO contains no arrangements for self-employed men.

2.1.4 Solo self-employment and the risk of accidents at work

As explained above, the consequences of accidents at work are not insured separately in the Netherlands. All incapacity for work falls within the the scope of the WIA meaning that solo self-employed workers are excluded. When an employee suffers damage that goes beyond any compensation offered by a WIA benefit, the employee can recover this damage from his or her employer by invoking Article 7:658 (1, 2) of the Dutch Civil Code. This article is a *lex specialis* in relation to Article 6:162 of the Dutch Civil Code, which sets out arrangements for general liability in the event of damage. Article 7:658 sets out arrangements regarding the employer's liability for damage suffered by the employee due to an accident at work. This article can even be invoked when damage is suffered during bogus self-employment. In such cases it must first be established that there is indeed a bogus construction.

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[9] Art. 4 (5) Medical Examinations Act (WMK).
[10] Art. 2 WMK

The text of the act implies that people who are truly self-employed should also be able to invoke the fourth paragraph. But this becomes less obvious when the explanatory note is read. In this the legislator says that this fourth paragraph is in the first place intended for agency work, hiring and contracts for work. Solo self-employed workers usually work under a contract for services. Protection through this article is only possible in an indirect way. The legislator formulated this paragraph based on the principle that to be eligible for the protection offered by the act a self-employed person should have the same relationship with the employer as an employee. The risk here is that the reasoning is based too much on the idea of employment with the result that self-employed workers are drawn under the protection of labour law. In the Davelaar/Allspan case the Supreme Court[11] provided assessment criteria: solo self-employed workers should to be able to rely on the employer for their care and safety. Whether or not this is true depends on all the circumstances of the case. At the time of writing there is still too little case law to be able to detect a trend.

2.1.5 Solo self-employment and the risk of disability

On the coming into being of the various national insurance schemes, the legislator decided to exclude self-employed workers from insurance against long term incapacity for work. However in the 1970s the realisation dawned that general national insurance was after all needed because many self-employed workers had not insured themselves. This culminated in the General Act on Incapacity for Work (AAW). The arrangements partly resembled those under the AOW and partly those under the WAO, but became the victim of their own success. The arrangements were exceptionally generous. Anyone who was incapacitated for work longer than 52 weeks was entitled to benefit. This gave municipalities the perfect opportunity to get rid of people on social assistance who were hard to redeploy. So in 1998 the act was replaced by two schemes, one for self-employed workers: the Self-employed Persons Act on Incapacity for Work. (WAZ)[12] This act was to be short-lived, for various reasons all the parties involved wanted to be rid of it. Its enforcement was costly for the government because former AAW benefits still had to be paid. The employee associations were unenthusiastic because contributions were paid solely by employees, employers remained out of the picture.

Since the abolition of the WAZ solo self-employed workers once again have to fend for themselves. In principle they do not qualify for a WIA benefit when they are incapacitated for work. However, an employee who decides to become self-employed does have the option of taking out voluntary insurance. Approximately two out of every three self-employed workers have not taken out private insurance against incapacity for work.[13]

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[11] ECLI:NL:HR:2012:BV0616, (Davelaar/Allspan Barneveld B.V.)
[12] Insurance against the financial consequences of long-term incapacity for work and a benefit scheme in connection with birth for self-employed workers, co-working spouses and other non-employees earning an income from work.
[13] Klosse 2017, p. 219.

2.1.6 Solo self-employment and the risk of unemployment

Self-employed workers are not insured for unemployment benefit. Neither can employees making the switch to self-employment opt to continue insurance against unemployment.

Unemployed people who aim to start their own company in self-employment, can take advantage of the Starters' Scheme (Article 77a WW). Under this scheme they can obtain permission from the UWV to start an independent company or profession without this automatically resulting in a loss of benefit rights. In other words they can perform their work in self-employment while retaining their benefit (Article 78 WW). The benefit is, however, reduced by a fixed amount of 29% of the full benefit amount (Article 47b WW).
When the unemployed person does not opt to take advantage of the starters' scheme, when he or she starts work as a self-employed person they take the fictional earnings calculation into account (Article 1b (5) WW in conjunction with 47 WW). This calculation is based on the average number of paid hours that the starter has worked in the preceding 26 weeks. This number of hours is

2.1.7 Solo self-employment and the risk of old age

Every Dutch resident is entitled to an AOW benefit on reaching the standard retirement age, solo self-employed workers included. But it must be remembered that the AOW pension is a flat rate minimum benefit. For supplementary pension entitlements people have to rely on the second and third pillar.

Second pillar
Solo self-employed workers are usually excluded from pension systems in the second pillar. Mandatory professional pension schemes for solo self-employed workers only exist for medical professions and civil-law notaries. Both employees and self-employed workers participate in these professional pension funds. In total this is approximately 50,000 participants. There are also branch pension funds open to solo self-employed workers for plasterers and painters.[14]

Employees who continue work in self-employment have the option to continue to save for their pension voluntarily for up to ten years. However the contributions for this are high; the self-employed person has to pay both the employee and employer contribution. It is probably because of this that interest in this option is so low. For solo self-employed workers who do not earn business profits this option is only for the duration of three years.

[14] Goudswaard en Caminada 2017, p. 235.

In recent years several initiatives have arisen for pension funds for solo self-employed workers. But to date there is little interest in these.

Third pillar
One quarter of all solo self-employed workers has made no arrangements for their old age in the third pillar. Better pension arrangements tend to be made as the business becomes more profitable. In most cases people save or invest, investing in their own home is also popular.

Self-employed workers do have several tax benefits in relation to their old age.[15] First of all there is the annuity contribution deduction, a fiscally attractive way to save or invest for an old age benefit. In addition, advantage can be taken of the Fiscal Old Age Reserve (FOR). In 2017 up to 9.8% of the profit subject to a maximum of € 8,946 can be deducted from the profit. This is a deferred tax debt, the Tax and Customs Administration will still have to be paid later. And there is also the 'suspension annuity' (on suspension of business profit on suspension can be converted into an annuity), this is the last chance for a person suspending their business to build up a tax-based income. Since 2016 there is a (tax) concession that ensures self-employed workers are not required to have recourse to their pension savings when they apply for social assistance. As a result of this measure it can be expected that self-employed workers will start to save more because their pension is safe when they are in danger of having to rely on social assistance.

Surviving dependents' pensions (widow's or widower's or orphan's pension), on which conditions
Just like the AOW the ANW (surviving dependent's pension) is a national insurance scheme and thus also open to solo self-employed workers.

2.1.8 Any important reforms within the last few years?

Due to the explosive growth in the group of solo self-employed workers discussions have arisen regarding whether or not more protection and rights should be available to these workers. The answer to this question is apparently not easy. This is mainly because the group is so differentiated. It is precisely freedom and opportunities that truly self-employed workers seek and benefit from. The concerns relate primarily to bogus self-employed workers who are more or less forced to become self-employed because they would otherwise be made redundant.

In recent years the legislator has made great efforts to curb bogus self-employment by improving enforcement options. The currently stranded initiative for the Tax and Customs Administration to introduce a new assessment system (Employment Relationships (Deregulation) Act) described earlier is one example of such efforts.

[15] Goudswaard en Caminada 2017, p.

Another example is the Act Combating Bogus Self-employment that entered into force on 1 January 2016. Bogus self-employment is defined as the situation in which a person officially performs work as a self-employed person while the facts and circumstances indicate the existence of an employment contract. The factual situation is different from the situation as it is presented (on paper) with the aim of improperly competing on working conditions. The government attach importance to actively combating bogus constructions not only because of the adverse consequences for government finance but mainly in order to prevent improper competition and people being pushed aside in the labour market.[16]
The bill for combating bogus constructions proposed an alternative, more extensive system to the hirers' liability set out in Article 7:616a-616f of the Dutch Civil Code and has replaced Article 7:692 of the Dutch Civil Code.

The act comprises changes to, for example, the Minimum Wages and Minimum Holiday Allowance Act and the Act on Economic Offences and is divided into the following sections:[17]

– Chain liability. When there are multiple customers or contractors the entire chain is jointly and severally liable for payment of the applicable minimum wage and minimum allowance in conformity with the law and the collective labour agreement to the employee.
– Establishing identity. If requested employers have to establish the identity of the employee within 48 hours and communicate this to the Inspectorate of the Ministry of Social Affairs and Employment (Inspectie SZW).
– Additional requirements relating to the wage slip. Wage slips should be itemised and expense allowances may not be set-off against the minimum wage. And the minimum wage should not be paid in cash.
– Improved disclosure of inspection details and communication regarding the failure to comply with the applicable collective labour agreement. This improves compliance with the collective labour agreement and enforcement.

For the latest political plans to narrow the social protection gap between the self-employed and wage earners see Chapter 4.

2.2 Marginal employment

2.2.1 General

Marginal employment is not so dependent on the number of hours worked a week, although in practice this is often less than the number worked un-

[16] Parliamentary papers II 2014/15, 32108, 2.
[17] Vergouwen, Commentaar op Burgerlijk Wetboek Boek 7 art. 692 (Arbeidsrecht thematisch) C.3: Act Combating Bogus Constructions.

der a regular employment contract. Labour law defines the following *flexible employment relationships*. [18]

Homework relationship
Under this construction work is performed at home for a company or companies in return for payment. In the absence of a hierarchical relationship there is a contract for work or contract for services. The home worker is free to structure the work and performs this at his or her own risk. For entrepreneurs this construction is attractive because of the flexible deployability and the absence of regulations imposed by employment contract law.

Freelance relationship
This usually regards incidental work performed under a contract for services. Here too the advantage for the customer is the possibility of flexible deployment and savings in labour costs.

Call or on demand contracts
The substance of such a contract is clear from the title. When the number of hours to be worked within specific limits is guaranteed this is called a min-max contract. In the absence of this guarantee it is referred to as a zero hour contract. The legal qualification of the relationship between the two parties can be defined in two ways.

It might be a *pre-contract.* This contract only regulates the conditions for in the event that both parties decide to enter into an employment contract. Until that time there is no employment contract. This pre-contract ends automatically with virtually no job protection.

Another form is the *(on-going) employment contract with deferred obligation to perform*. This is a contract for an indefinite period of time under which the employee only performs work when called upon to do so. This is the 'zero hour contract' and is has the same job protection as regular employment contracts.

Agency contract
De agency contract is regulated in Article 7:690 of the Dutch Civil Code. There are three parties to this contract, the employment agency, the temporary employee and the hirer. The relationship between hirer and temporary employment agency qualifies as a contract for services and is governed by regulations under the Posting of Workers by Intermediaries Act (Waadi). No contractual relationship is created between the hirer and the agency worker. However, the hirer is liable for the agency worker under Article 7:658 of the Dutch Civil Code and is treated as the agency worker's employer for the purposes of the Working Conditions Act and the Working Hours Act. After having worked for two consecutive years the agency worker counts for the application of the Works Councils Act.

[18] Bakels 2015, par. 3.1.3.

Payroll contract
This is a construction under which the employer contracts out typical employer obligations to a specialised company. In November 2016 the Supreme Court made a major ruling regarding the legal qualification of a payroll contract. According to the Supreme Court payrollers should be treated as agency workers. For the existence of an agency contract it is sufficient that the employer makes the employee commercially available to third parties. In other words the Supreme Court sees no legal difference between the payroll contract and the agency contract.[19]

2.2.2 Marginal employment and inclusion in social insurance

With regard to the above categories it is important that in connection with their employment relationship with the employment agency or payroll company agency workers and payroll workers are insured for the employee insurance schemes. When there is an 'agency clause' an exceptional situation arises in the event of illness. Under such a clause the agency contract ends immediately if the agency worker falls ill. After the contract has been terminated, from the third day of illness there is no longer any entitlement to continued payment of wages on grounds of the Sickness Benefits Act. In the absence of an agency clause the employment agency has to continue to pay wages under the agency contract. An agency clause may be inserted during the first 26 weeks of the agency relationship. On grounds of the collective labour agreement this period can be extended to up to 78 worked weeks.

For other forms of flexible employment relationships reference should be made to the 'Rarities Decision'.[20] As explained in Part 1 of this report, this decision regulates the conditions under which the scope of the employee insurance schemes is extended to include special groups. Examples of these groups are: small contractors for work, intermediaries and their agencies (commercial agents, representatives etc.), share-fishermen, interns, conscripts, executives of cooperative societies, homeworkers and their agencies, musicians and artists, professional sportsmen and women and the remaining group of 'people performing professional services'. Inasmuch as flexible workers qualify themselves as one of these groups and meet the set requirements, they are included in the insurance.

The most colourful group of people to whom the scope of the employee insurance schemes is extended is that of people performing professional services. Whether or not a specific profession is part of this group has been decided in numerous court cases.[21] To qualify for compulsory insurance several conditions have to be met. For instance the scope of the work relationship is subject to certain minimums in terms of the number of working hours or duration of the work and earnings (at least 40% of the statutory

[19] ECLI:NL:HR:2016:2356
[20] Decision on designating cases in which work relationships are treated as employment
[21] Hogewind-Wolters, Commentaar op Ziektewet art. 5.

minimum wage). These conditions are listed in Article 5 ZW, Article 5 WW and Article 3 Rarities Decision.

Article 8 of the Rarities Decision contains the following grounds for exclusion:

- the person works as an independent entrepreneur;
- the person works from within a one-man business of which he or she is director/shareholder for the customer;
- the person provides personal services for a private individual (e.g. nursing, care, childcare, household work etc.);
- the person performs work of a spiritual nature (religious nature) or;
- the employment relationship is dominantly governed by the family relationship (e.g. the relationship between spouses or between parents and children or unmarried cohabiting people).

Whether the person is insured against sickness, unemployment and incapacity for work depends on the circumstances of the case. If the person falls under one of the exclusions listed in Article 8 of the Rarities Decision, he or she has no rights because their status is equivalent to that of a 'truly' self-employed person.

Article 5a Rarities Decision entered into force in 2009. This article regards sex-workers and is intended to reinforce the position of this group. In 2011 the 'Designation as employer and exemption from insurance obligation for employee insurance schemes' made exemption from the payment of contributions possible.[22] The operator agrees a package of conditions for this with the Tax and Customs Administration. Several other conditions also have to be met. For instance the sex-worker must be able to refuse work and to determine their own work times, be free in choice of clothes provided the chosen clothes are customary in the sector, be allowed to refuse to drink alcohol and be free to choose their own medical attendant. If one or more of the conditions are not met in the relationship with the sex-worker, the exemption does not apply.[23]

The national insurance schemes based on residency obviously also apply to people performing marginal work. These are child-related schemes, the old age pension payable under the AOW and the surviving dependents scheme under the Anw.

Supplementary pension schemes are reserved for employees or those treated as an employee. In general it can be said that the pension agreements apply a stricter definition of 'employment' than is the case for the public employee insurance schemes. The excluded cases are, just like the solo self-employed workers pushed to the side-line. If they want to build up supplementary income for their old age, they have to arrange this themselves on the private pensions market.

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[22] Damsteegt, Flexibele arbeidsrelaties C.101.4.9.
[23] CRvB 26 April 2013, ECLI:NL:CRVB:2013:CA0316

2.2.3 Any important reforms within the last few years?

In the legislative field there is the implementation of the Act on Work and Security (WWZ) in July 2015. This act aims, among other things, to make the systems of flexible labour law, dismissal law and labour law more activating and to reduce the growing divide between people with a permanent and a flexible contract. The increased need for flexibility of employers has, since the implementation of the Act on Flexibility and Security in 1999, mainly resulted in a growing number of people working long term on the basis of a flexible contract. Some of these people in the 'flexible shell' run the risk of becoming removed from the labour market. For instance because they have less perspective of a long term employment relationship and less is invested in their education and thus perspectives for the future. Because people in the flexible shell are more often unemployed than people with a permanent job, the cost of flexible employment is partly passed on to society.[24] The chain regulation in Article 7:668a of the Dutch Civil Code is, amongst other arrangements, intended to prevent employers from being able to keep workers endlessly in a flexible employment relationship. The chain regulation limits the maximum number of temporary contracts that can be entered into consecutively and the maximum duration of these. On 1 July 2015 the maximum contract duration imposed by the chain regulation was changed to 24 months. The maximum number of consecutive contracts that can be entered into is still three.

The coalition agreement of the current Rutte III government of October 2017 has announced a series of new measures aimed to reduce the rift in the labour market between employees with a permanent employment relationship and other workers. As part of the proposals the period during which the chain regulation applies in which temporary contracts can be offered will be increased again to three years. This is to make sure that employers are less quick to discard temporary employees. It is hard to explain this policy fickleness to foreigners but Dutch people take it for granted. Furthermore, the coalition agreement also announces the intention to restrict the payrolling options. For more about this see Chapter 4.

2.3 Second or multiple jobs

Combining multiple jobs is relatively common in the Netherlands. In Europe the Netherlands occupies fifth place in this respect. Multiple jobs are held in different structures, most often by holding several jobs in paid employment. The hybrid variant is a permanent job combined with self-employment. Because the Netherlands has a high percentage of part timers,[25] there is also more opportunity for people to have multiple jobs. Research has found that the phenomenon has increased significantly in recent years, certainly when compared to the rest of Europe.[26]

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[24] Parliamentary papers II 2014/15, 33818, 3.
[25] 48% in the Netherlands compared to an average of 18% in Europe as a whole.
[26] Dorenbosch, Changing face of 'multi-jobbing'

One in every five Dutch people say they have multiple jobs because of these reasons, this is more frequent amongst less educated people. Others combine multiple forms of work because of the variation or as a way of developing themselves.

The general assumption that people combine jobs to make ends meet appears to be only partly true. About one in five multi-jobbers state financial necessity as a reason for having multiple jobs.[27] Other incentives are earning a little extra, variation in work, personal development or work security.[28]

Although there is not yet much known about the advantages and disadvantages of multi-jobbing, up to now the effect seem to be mainly positive.

According to TNO researchers Sanders there are hardly any tax problems. *'It appears as if you have less left over because you can only apply the tax-free allowance to one job. But this allowance is deducted from the wage you earn in your main job, so on balance you have as much left over as you would if you worked the hours in one job. However, people working under a hybrid structure don't build up pension on their earnings in solo self-employment. They have to make their own arrangements for this, just like incapacity for work. But that's just part of being self-employed.'*[29]

In the hybrid variant of multi-jobbing in which the person combines employment for a wage with self-employment some reliance on the employee insurance schemes is possible. For the self-employed part they are excluded from these advantages and neither do they build up a pension. In practice it is hard to meet the hour criteria applied by the Tax and Customs Administration, a working week has, in principle, a limited number of hours. How this works in practice and how people deal with this is not known. At the time of writing no research has as yet been published on this subject. However, research has shown that people with multiple jobs generally work fewer hours a week than people with one job. On the other hand, in the hybrid variant more hours are worked.[30]

From the point of view of labour law there are a number of snags to combining multiple jobs. First of all the legislation and regulations on working hours must be complied with. The applicable collective labour agreement might also contain restrictions or restrictions might be directly imposed by the employment contract. In addition, under Article 7:611 of the Dutch Civil Code the employee is required to act as a good employee. They should take into account the employer's reputation and competitive position and the additional workload that accompanies multi-jobbing should not put their health at risk. No uniform trend can be defined in the case law, but rulings are made on a case-by-case basis.[31]

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[27] http://www.ser.nl/nl/publicaties/ser/2013/november2013/multi-jobben.aspx.
[28] Dorenbosch et al, Multi-jobbing als employability-strategie, TvA > Episode 2 2015.
[29] http://www.ser.nl/nl/publicaties/ser/2013/november2013/multi-jobben.aspx
[30] Dorenbosch et al, Multi-jobbing als employability-strategie, TvA > Episode 2 2015.
[31] De Wolff, Het stapelen van banen arbeidsrechtelijk beschouwd, ArbeidsRecht 2014/42.

Because research into this form of employment relationship is still in its infancy, not much can be said about the implications for social security.
In October 2015 the Dutch Minister of Social Affairs and Employment (SZW) requested the Social and Economic Council (SER) to conduct research into the phenomenon of multi-jobbing and hybrid entrepreneurship.[32] At the time of writing the results have not yet been published.

2.3.1 Other employment structures

Digitisation has given rise to other ways of working and other forms of work. It is no longer necessary to be at a fixed place at a fixed time to do your work. In the Netherlands this is referred to as the New Way of Working.[33] As a result of this the Working Hours (Adjustment) Act has been replaced by the Flexible Working Act. Under this employees may submit a request to their employer to adjust the working times and workplace as well as the working hours. Employers are required to heed this request when the work allows this.

The rise of the sharing economy where goods and services are traded through digital platforms is a more recent phenomenon. Examples include Uber, Werkspot and Thuisbezorgd. These suppliers make it possible to bring together supply and demand in an efficient way. The success of Wikipedia is proof that this can also work well on a voluntary basis.[34]

When digital work is offered on a digital platform, this is crowd work. What would otherwise have been a full time job, is split into micro tasks for micro payment. The performance takes place in lost hours by an anonymous and indefinite crowd.[35] Research shows that 12% of the Dutch people have done crowd work at one time or another.

Due to the increase in this form of employment more attention is being paid to the chances of providing protection under labour law. The European Union and the International Labour Organisation (ILO) are both among those having this on their agenda.[36]

Work on demand is the usual term for that part of the sharing economy in which services are provided. Uber (taxi services) and Airbnb (accommodation in private homes) are successful examples of this. However, the social effects are controversial, as a result of which a need for more regulation can be expected.[37] According to the Scientific Council for Government Policy (WRR) public authorities could impose specific requirements on behalf of the users of platforms with regard to transparency in the area of algorithmic selection principles, data flows, earning models and governance.[38]

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[32] https://www.ser.nl/nl/actueel/nieuws/2010-2019/2015/20150910-combinatiebanen.aspx.
[33] R. Knegt e.a., 'Het Nieuwe Werken' en de arbeidsrechtelijke regelgeving, Amsterdam: HSI March 2011, commissioned by SZW.
[34] Wikipedia is an internet encyclopaedia, which is written by a large number of authors worldwide. It must be possible to check the content and third parties may not be wronged but otherwise the principle of open content applies.
[35] Houwerzijl, Arbeid en arbeidsrecht in de digitale platformsamenleving: een verkenning, TRA 2017/14.
[36] Notice from the Commission, A European agenda for the sharing economy, Brussels 2016: COM (2016) 356, p. 12-15.
[37] Sandee, Wetgever heeft meerdere opties voor deeleconomie, SCA, 2017/13
[38] Van Dijck e.a. 2016, p. 146.

The reason for doing so would be to make sure that the new sharing economy does not become a new way of competing on working conditions. As yet there is little decisive case law in the Netherlands on the employment implications of working in the sharing economy.

2.4.3 Zero hours contract

Addressed in section 2.2.1 *flexible employment relationships*

2.4.4 Bogus self-employment

Addressed in section 2.1.7 *Act Combating bogus self-employment*

3 Labour law

Self-employed workers are, in principle, not protected under labour law. For instance dismissal prohibitions do not apply to self-employed workers and self-employed workers are not entitled to a minimum wage, paid holidays or continued payment of wages during illness. Neither do self-employed workers have any incapacity for work or health insurance and/or supplementary pension entitlements. On the other hand self-employed workers are eligible for various tax facilities for entrepreneurs, like the self-employed person's deduction, the starter's deduction and the profit exemption for small and medium-sized enterprises. In the Netherlands these facilities are partly behind the increase in the number of solo self-employed workers.

While in social reality we also see hybrid forms. People who have the status of self-employment but the same dependencies as employees. These people often still have some sort of social protection. The clearest example of this is fictional employment, in respect of which the personal scope of application of the social insurance schemes is extended to include workers who strictly speaking do not have an employment contract. Also the Minimum Wage Act is a good example of such an extension. We will look at it in more detail below.

3.1 Extension of minimum wage protection

The Minimum Wage and Minimum Holiday Allowance Decision extends the scope of application of the Minimum Wage Act (WML). Although this extension primarily aims to protect homeworkers, the scope of the Decision is generally formulated. The explanatory note to the Decision says there are no grounds to 'treat groups of employees who are factually and socially in the same position differently simply because of the fact that in some cases the usual criteria for the existence of an employment contract are not met (...)'.[39] In other words, other workers who meet the conditions laid down by the Decision can also qualify for the statutory minimum wage. Including self-employed workers. However people working in a profession or who have their own company are explicitly excluded from the personal scope of Article 2 WML. This could explain why so many self-employed workers do not fall within the scope of the Decision, since these people often have their own company or provide professional services.[40]

On 28 March 2017 the bill on 'Amendments to the Act on Minimum Wage and Minimum Holiday Allowance in connection with a declaration that the act applies to further specified contracts for services' (the Amendment) was adopted by the First Chamber of the Dutch parliament.[41] This amendment

[39] *Stb.* 1996, 481.
[40] Houweling 2017, p. 466-467.
[41] *Actions I* 2016/17, 22, item 6.

extends the scope of the second paragraph of Article 2 WML. Consequently the statutory minimum wage will also apply for people who perform work for payment on the basis of a contract for services, unless they perform the work as a self-employed professional or as part of the activities pursued by their own company. In other words, some self-employed workers fall within the scope of application of the WML, provided they meet the conditions. This amendment aims to combat improper use of the contract for services. This is the case if the contract has been drawn up with the obvious purpose of preventing the contractor from qualifying for the statutory minimum wage and the statutory minimum holiday allowance, for example, by not obliging the contractor to perform the work personally while in practice this is the case.[42]

It is important to understand that the extension to include employment relationships other than those based on an employment contract has its limits. Both regarding the fictitious employment relationship and the Minimum Wage Act. More specifically, these extensions do not apply for people performing work as self-employed professionals or as part of the activities pursued by their own company. An assessment of whether this is the case is based on the definition of entrepreneur applied by the Tax and Customs Administration.[43] An entrepreneur is someone who runs a sustainable organisation of capital and work, which focuses on making profits.[44] The SZW inspectorate has to establish whether work is performed as a company or profession. In this assessment all the facts and circumstances that have to be considered in conjunction with each other are important.[45] For example, the degree of independence when performing the work, working for own account or risk and a specific volume of work.[46]

Conclusion: inasmuch as self-employed workers do qualify as entrepreneurs, they are not protected by labour law and excluded from the employee insurance schemes. People who neither meet this definition of entrepreneur nor have an employment contract form a hybrid category that generally falls under the scope of some parts of labour law (for instance the Act on Minimum Wage) and the employee insurance schemes.

3.2 Collective bargaining

Article 1 (2) of the Act on Collective Labour Agreements makes it possible to declare the applicability of a collective labour agreement to a contract for services and contract for work. Under this article parties to the collective labour agreement can include provisions on minimum rates for self-employed workers in the collective labour agreement. Parties to a collective labour agreement might have an interest in declaring the applicability of the

[42] *Parliamentary papers II* 2016/17, 33623, 3, p. 2 (*Explanatory Memorandum*).
[43] *Parliamentary papers II* 2016/17, 33623, 3, p. 2 (*Explanatory Memorandum*).
[44] *Parliamentary papers II* 2016/17, 33623, 6, p. 13 (*Explanatory Memorandum*).
[45] HR 14 February 2014, ECLI:NL:HR:2014:283, *TRA* 2014/48, m.nt. L van den Berg.
[46] *Parliamentary papers II* 2016/17, 33623, 6, p. 13.

collective labour agreement to contracts for services and contracts for work when employees and self-employed workers perform the same activities in a sector or company. This would be to avoid price competition on labour.

Only a few collective labour agreements actually take advantage of the possibility offered by Article 1 (2) of the Act on Collective Labour Agreements. One of these is the collective labour agreement for remplaçanten (replacements) concluded between FNV Kunst Informatie and Media (FNV Kiem) and Nederlandse Toonkunstenaarsbond on the one hand and on the other the Vereniging van Stichtingen Remplaçanten Nederlandse Orkesten. Article 5 of the articles of association of FNV Kiem reads as follows: 'Members of the union may only be natural persons who assent to the rationale and purpose of the union, endorse the contents of these articles of association and: a. perform work either independently or in paid employment (...)' In other words FNV Kiem is authorised by its articles of association to conclude collective labour agreements for self-employed workers. FNV Kiem has also concluded the collective labour agreement for remplaçanten for and at the risk of self-employed remplaçanten (replacements) performing work under a contract for services. Annex 5 to this collective labour agreement sets out that self-employed remplaçanten must be paid a bonus of 16% on their wages. This provision has been included because the parties to the collective labour agreement are seeking to protect employees against unfair wage competition and because self-employed remplaçanten are not protected against the risks connected to the work. There was an expectation that by using minimum wage rates for self-employed workers, employees will be replaced less quickly by these self-employed workers.[47]

The collective labour agreement for architects also contains a provision for self-employed workers. This collective labour agreement has been concluded between the Koninklijke Maatschappij tot Bevordering der Bouwkunst Bond van Nederlandse Architectenbureaus (BNA) and CNV Dienstenbond. The introduction to this collective labour agreement states that the self-employed workers are not directly, but indirectly, party to the collective labour agreement. In other words the collective labour agreement is not concluded each time for and for the account of self-employed workers but only for employees. In Section II a of the collective labour agreement the parties to the agreement have included instructions for the contract for services. They have done so in an effort to create an equal playing field for all workers. Unfair competition takes place between the self-employed workers and employees because they often perform similar work but do not enjoy the same protection under labour law. Article 7 of the collective labour agreement for architects requires architect agencies to pay 'self-employed professionals' minimum rates. However, with the exception of Section II a, including Article 7, the collective labour agreement has been declared generally binding.[48] Because the minimum rate provision has not been declared generally binding, parties to the collective labour agreement

[47] Boonstra, *Arbeidsrecht* 2016/43.
[48] Dutch Government Gazette 2016, 42260.

have decided that the minimum rates are not compulsory for BNA members.[49] The plan to create an equal playing field for all workers with the minimum rate provision was for this reason unsuccessful. Section II a has been exempted from the generally binding declaration because a minimum rate provision for self-employed workers conflicts with competition law.

The extension of the scope of the collective labour agreement for remplancenten to include self-employed workers has also prompted activity in the field of competition law. The collective labour agreement gave reason for the Dutch Competition Authority (NMa) to publish a vision paper in which the Nma announced that the inclusion of minimum rate provisions for self-employed workers in collective labour agreements is contrary to competition law.[50] After all, the majority of self-employed workers are entrepreneurs.[51] Following the publication of the vision paper the collective labour agreement was cancelled by the parties to the agreement. FNV Kiem consequently went to court requesting, among other things, a court ruling that competition law does not preclude a provision in a collective labour agreement requiring the employer to pay specific self-employed workers minimum rates. The main issue disputed in the case FNV Kiem/the Netherlands is whether a collective labour agreement provision requiring customers to pay minimum rates to self-employed workers falls under the collective labour agreement exemption. In its ruling on 4 December 2014 the ECJ established that the service providers like the remplaçanten, might perform the same work as employees, but that they are, in principle, companies as referred to in Article 101 (1) VWEU.[52] From this it follows that collective labour agreement arrangements that impose a compulsory rate on customers are contrary to competition law. Only if the service providers are in fact bogus self-employed workers, in other words, *service providers whose situation is comparable to that of employees*, does a different situation apply. Taking the above into account it can be concluded that it is not possible to apply collective labour agreements to self-employed workers, at least inasmuch as they cannot be defined as bogus self-employed workers as referred to in the FNV Kiem case.

[49] http://www.sfa-architecten.nl/cao/cao/cao-2015-2017.html
[50] NMa 2007.
[51] NMa 2007.
[52] ECJ 4 December 2014, C-413/13, ECLI:EU:C:2014:2411, *TRA* 2015/20, m.nt. E.F. Grosheide (*FNV Kiem/Nederland*).

4 Evaluation

From this study it follows that in the Netherlands there is a distinction between wage earners with an employment contract on the one hand and self-employed workers with fiscal entrepreneur status on the other. The latter group is excluded from the protection of most of the corpus of labour law and of employee insurance schemes for sickness, unemployment and incapacity for work. Neither are they likely to be covered by collective second pillar pensions.

Between these two groups of wage earners and entrepreneurs there are special categories without an employment contract who enjoy limited job and social security protection. These are diverse groups like artists, franchise holders, sales agents, homeworkers, etc.

As mentioned in the introduction, over the last decades the Netherlands has experienced a sharp increase in both solo self-employment and flexible employment. There are many factors which explain this trend. These include: the liberal registration policy of self-employment by the Dutch Tax and Customs Administration prior to 2016, generous fiscal exemptions for the self-employed, and previous labour law reforms which regulated (and in doing so: facilitated) flexible employment relationships.

The growth of solo self-employment is increasingly seen as problematic. In some sectors, like the building industry, garden services, post, cleaning and home care there is evidence of crowding out of traditional wage labour. Sometimes this trend is visible for the general public through incidents. Thus, for example, in 2013 the health care organisation Sensire sacked 1100 of its employees and subsequently offered them the possibility to be hired as self-employed workers in a newly created limited company. After a long struggle, the employees stopped Sensire from doing this and they were taken on board as employees again. But in many cases, the process of replacement of wage earners by solo self-employment continues incrementally in a less visible manner without hitting the headlines. As mentioned in Chapter 1 of this report, the increase in the number of Dutch employees with a flexible work relationship and solo self-employment has coincided with a drop in the number of permanent jobs to 62% (73% in 2004).

Solo self-employment is seen as a problem for workers when the registration of the employment relationship is not correct or bogus (*schijnzelfstandigheid*) or when the self-employed are highly dependent upon a small number of customers (*afhankelijke zelfstandigheid*). The problem of dependent self-employment is most manifest in relation to lower paid work, because the workers lack the negotiating position to keep up a decent income. Bogus self-employment is rejected in full because it does not only impact negatively upon the protection of the lower paid workers but also because it corrupts the foundation of tax and contribution liability.

Stakeholders, advisory bodies and independent academics have put forward various proposals to address the lack of social protection for inde-

pendent and flexible workers. These range from a differentiated system of social security protection for all workers (Klosse 2017), an extension of the fictitious labour relationship in the employee insurance schemes to entrepreneurs (Ambtelijk Rapport 2017) to the introduction of a completely new labour code which regulates various categories of labour in a coherent manner (Houweling 2017).

Until recently, the government response has mostly been limited to two things: 1) offering more legal certainty by introducing binding registration at the Dutch Tax and Customs Administration and 2) combating bogus self-employment by simplifying legislation and strengthening enforcement measures.

In our view, paradoxically and despite all it mishaps and teething problems the binding registration may qualify as an interesting best practice from a comparative point of view. This is because the registration system does not only provide legal certainty, but can also operate as a steering instrument to regulate employment relationships in a pro-active manner according to policy objectives pursued. Thus, for example, when the feeling is that solo self-employment should be tested more vigorously in relation to the traditional criteria of the employment contract, this can be done by changing how authorities judge the labour relationship as part of the registration system. While the previously existing system of the *VAR-verklaring* failed to realise this ambition because it was too liberal and shifted the burden of wrongful registration too much to the worker, the new system of so called model agreements (which seeks to address these wrongs) failed because of implementation problems (infra 2.1.1). But this does not mean to say that the system cannot work. Arguably, the new approach should be given time and space to be tried out. For this reason, we support the resolution adopted in the coalition agreement of the new government of Rutte III issued in October 2017 to seek a new solution in the form of a 'commissioners' statement' to be obtained from the tax authorities, even though concrete details of the new plan have not yet seen the day light.

A second new measure, also included in the coalition agreement of the Rutte III government, is also interesting from an international point of view because of its relatively simple but at the same time radical character. Independent workers who earn less than 125% of the minimum wage defined in the statute or a collective labour agreement (less than between € 15 and € 18 per hour) will be deemed to have an employment contract. The duration of the employment should be longer than three months. The high earning entrepreneurs on the other hand will be given an 'opt out' of tax and contribution liability (when they earn more than € 75 euro per hour) for contracts that last less than one year.

The proposals of the latest government are also supposed to solve the problem of a lack of social security protection for non-wage earners. Low paid solo self-employed workers will simply be treated as having an employment contract. A flipside of the coin is that there is no longer any prospect for the re-emergence of the general universal scheme for incapacity

for work which existed until 1998 (and further in revised form until 2004). This is perhaps the third lesson that can be learned from the Dutch experience: be careful when abolishing broad solidarity institutions, because once abolished they are very hard to re-introduce.

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