STICHTING VAN DE ARBEID

Opting for security

Standard long-term occupational disability insurance for the self-employed

March 2020

About this publication

Founded in 1945, the Labour Foundation [*Stichting van de Arbeid*] is a private national consultative body incorporating Dutch employers' federations and trade union confederations. Today its members are the Confederation of Netherlands Industry and Employers (VNO-NCW), the Royal Association MKB-Nederland (MKB-Nederland), the Netherlands Agricultural and Horticultural Association (LTO), the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV), and the Trade Union Federation for Professionals (VCP).

T: +31 (0)70 – 3 499 577
E: info@stvda.nl
http://www.stvda.nl

Abstract

- Compulsory occupational disability insurance for independent professionals/freelances (i.e. self-employed persons with no employees) is to be introduced. Self-employed persons with employees will be exempt from the scheme. The scheme closes a gap in the social security system.

- In view of the diversity of the self-employed population, the proposal offers various options, allowing every self-employed person to decide which insurance coverage is appropriate.

- Every self-employed person will have standard coverage insuring them for a benefit equalling 70% of their last-earned income, capped at approximately € 30,000 gross per year or 143% of the Statutory Minimum Wage (SMW). The maximum monthly benefit will be € 1650 gross or 100% of the SMW. The contribution for this standard insurance coverage will be approximately 8% of the insured's income and will be tax deductible.

- A standard deferred or uninsured risk period will apply of 52 weeks; the insured will have the option of changing this to 26 weeks or 104 weeks. The insurance will cover the insured until they reach the state pension age.

- Self-employed persons can choose to take out supplementary insurance on top of the standard insurance. In consultation with the insurance industry, access to the non-compulsory supplementary insurance will be improved, one option being a complementary Mutual Guarantee Fund enabling every self-employed person to take out affordable private insurance on top of the basic public insurance.

- The insurance will be administered by the UWV, which will assess claims, pay out benefits and provide for reintegration services. The Tax and Customs Administration will be responsible for collecting the contributions.

- The insurance scheme will work with the same disability criterion as the WIA, i.e. ‘work of a generally acceptable nature’, thereby encompassing all work that the insured is still capable of performing. The insurance will cover those who are both partially and fully unfit for work.

- The process of reintegration will begin as soon as the deferred period commences. That way, the self-employed can get back to work as soon as they are able to do so, and the expense associated with benefit payments is avoided. Sufficient financial resources will be set aside for this purpose, to be funded from the contributions. The Labour Foundation also recommends setting up a Health and Safety Centre for the self-employed to facilitate effective reintegration.

- Self-employed persons may take out other appropriate occupational disability insurance from a private insurer, provided that they meet the relevant requirements. An assessment framework has been drawn up for this purpose. Current private occupational disability insurance policies will be honoured if issued before the reference date.

- The situation the agriculture sector is unique. The agriculture sector could be excluded from the compulsory insurance scheme, but whether it is reasonable to do so is a political question that must be hammered out by the Government, the opposition parties and the Foundation.

- As is the case for the current national and employee insurance schemes, those with conscientious objections to the insurance will be exempted.

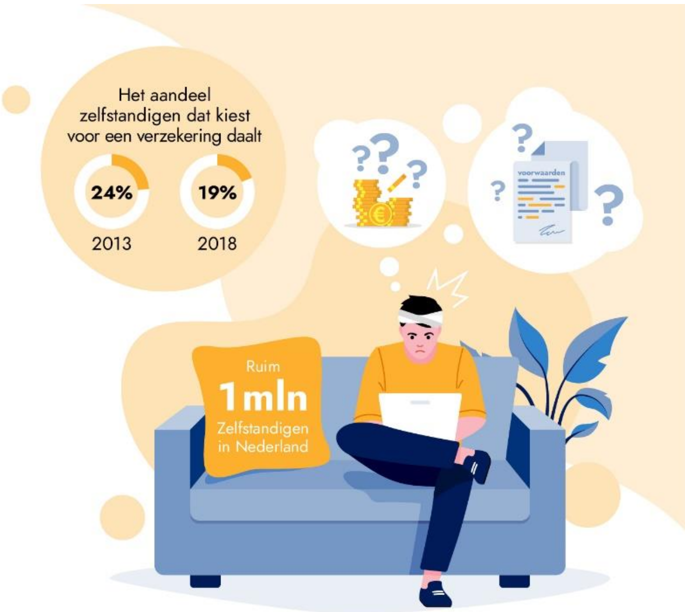
- The Foundation is concerned about the affordability of this insurance. By giving self-employed persons a choice in terms of coverage, they can also choose between different contribution amounts. The Foundation realises that insurance is never free and may be difficult for some self-employed persons to afford. The proposal offers a number of observations and suggestions on this point.

- This proposal addresses only one of a broader range of labour market issues.. It does not presume to resolve issues relating to the vulnerability, tax position and market power of some groups of self-employed persons

Waarom een arbeidsongeschikt-heidsverzekering voor zelfstandigen?

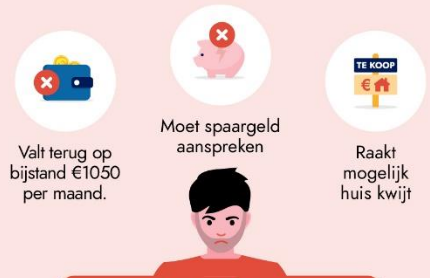
De **gevolgen** van **langdurige uitval** door ziekte of een ongeval zijn groot.

Zelfstandigen houden vaak **buffers** aan voor tegenvallers, maar een **flinke terugval** in inkomen valt niet zo maar jarenlang op te vangen voor iedereen.



Zonder verzekering

Wat gebeurt er nu als een zelfstandige langdurig niet meer kan werken na ziekte of een ongeval?



- Valt terug op bijstand €1050 per maand.
- Moet spaargeld aanspreken
- Raakt mogelijk huis kwijt

Mark, 32 jaar.
Heeft een koophuis en woont alleen

Met verzekering

Wat verandert er met ons voorstel als een zelfstandige langdurig niet meer kan werken na ziekte of een ongeval?

- Hulp bij terugkeer in het werk
- Uitkering tot start AOW
- Behoud meer spaargeld

Lisa, 32 jaar.
Heeft een koophuis en woont alleen

Wat stelt de **Stichting van de Arbeid** voor?

Toegankelijk

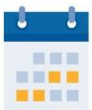
De standaardverzekering geldt voor zelfstandigen zonder personeel en je doet er automatisch aan mee.

Daardoor worden risico's gespreid.

Er vindt geen selectie plaats op leeftijd, beroepsrisico's of kans op ziekte.

Betaalbaar

De premie hangt af van je eigen keuzes. Vanaf € 20.000 bruto inkomen tot max. dekking is het indicatief tussen € 120 en € 220 bruto. Netto gaat het dan om ca. € 85 tot max. € 150 per maand.



Eigen risico:
Standaard is de wachttijd voordat de uitkering start 12 maanden. Je kunt ook kiezen voor 6 of 24 maanden. Zo houd je grip op de premiehoogte.

Max. dekking + uitkeringshoogte:
De verzekering dekt tot maximaal € 30.000 bruto per jaar. De uitkerings-hoogte is max. € 1.650 bruto per maand.

Ruimte voor Keuzes

Je kunt zelf je eigen risico bepalen.

Het is mogelijk om een andere of aanvullende verzekering af te sluiten. Zo lang deze maar voldoet aan de standaard. Ook behoud van je huidige verzekering is een optie.

De Stichting van de Arbeid overhandigt het voorstel aan het kabinet. Uit oogpunt van zorgvuldige uitwerking en invoering duurt het naar verwachting nog enkele jaren, voordat de verzekering er is.

Contents

1. Proposal framework

1.1 Proposal for the Minister of Social Affairs and Employment

'Compulsory occupational disability insurance for self-employed persons is to be introduced. The purpose of this compulsory insurance is to protect workers other than employees (who are covered under the existing employee insurance schemes) against the consequences of occupational disability and to guarantee that everyone can insure themselves. The insurance scheme fits in with the Government's broader aim of working towards a situation where the form in which labour is offered is determined not by institutions and costs, but by the nature of the work that must be done. Compulsory insurance also reduces the extent to which the costs and risks are passed on to society.

The Government calls on the social partners to consult with representatives of organisations of the self-employed on drawing up a feasible proposal that will have a neutral effect on the EMU balance and will be affordable and accessible to all, and to do so in early 2020 so that the Government can present its proposal in the summer of 2020.The Government is particularly concerned about striking the right balance between countering bogus self-employment and allowing true self-employed persons to simply do their work and run their businesses. The Government therefore asks whether it would be reasonable and feasible to permit exceptions from such compulsory insurance, for example in the case of more appropriate arrangements, as is customary in the agriculture sector'.

In the Pension Agreement[1] of June 2019, the Government, the social partners and two opposition parties agreed on a set of measures, including *Occupational disability insurance for the self-employed* (see box above).

In a Letter to Parliament dated 12 September 2019, the Minister of Social Affairs and Employment (hereinafter: SZW) asked the Labour Foundation to submit a proposal concerning such obligatory insurance in early 2020. The Minister further asked the Labour Foundation to 'consult with representatives of the organisations of the self-employed' and drew attention to two motions that had been adopted by the House of Representatives concerning this proposal.[2]

1.2 Declining rate of insurance coverage among the self-employed

The Netherlands has long had occupational disability insurance for the self-employed. From 1976 onwards, all working persons were protected under the General Disability Benefits Act (AAW). In 1998, a separate law was enacted for all self-employed persons, known as the Disability Insurance (Self-Employed Persons) Act (WAZ). Access to the WAZ has been blocked since 2004, however, and since then the self-employed have been able to insure themselves voluntarily in three different ways[3]:

1. Voluntary insurance through a private insurer (individual or collective);

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1 Letter to Parliament from Minister of Social Affairs and Employment, *Principeakkoord vernieuwing pensioenstelsel*, 5 June 2019 (reference 2019-000009898).

2 Letter to Labour Foundation from Minister of SZW, *Procedurele aanpak voorstel AOV-zzp*, 12 September 2019.

3 Letter to Parliament from Minister of Social Affairs and Employment, *Gesprekken met verzekeraars over aov voor zelfstandigen*, 26 November 2018.

2. Newly self-employed persons who do not qualify for the above option have a fifteen-month period to take out private 'safety net' insurance;
3. Self-employed persons who have just left an employment relationship or are receiving benefits based on an employee insurance scheme may retain their compulsory insurance under the Sickness Benefits Act (ZW) and the Work and Income (Capacity for Work) Act (WIA) voluntarily with the Employee Insurance Agency (hereinafter: the UWV). They may do so within thirteen weeks of the employee insurance being terminated.

Although the probability of long-term occupational disability is small, the financial implications for self-employed persons who lose their income are enormous. For example, to make ends meet for seven years on an income that would qualify them for social assistance benefits, self-employed persons would need to have €100,000 worth of assets. Self-employed persons often cannot claim social assistance benefits because their assets and/or their partner's income is taken into account. Households must therefore absorb any reduction in one of the partner's income on their own and 'use up' their assets or home equity first. This is why it is important to have affordable and accessible insurance covering this risk.

The number of self-employed persons in the Netherlands has grown since 2004, while the coverage rate among this group has declined sharply. As early as 2010, the Social and Economic Council (hereinafter: the SER) issued a number of recommendations aimed at increasing that rate: provide better information, make voluntary retention of the WIA more accessible, offer private safety net insurance and make changes to the public safety net.[4] Although some of these recommendations have been adopted, the coverage rate among self-employed persons has continued to fall.[5]

It is difficult to find unequivocal figures for this, because there is no one definition for what constitutes a self-employed person. Approximately one in five self-employed persons is currently insured against the risk of occupational disability, a smaller percentage than in the past.[6] Another two out of five self-employed persons report having an alternative arrangement, such as savings, business or home equity, or a partner's income; the remaining two out of five have made no provision for occupational disability.[7] Recent research shows that many self-employed persons underestimate the actual cost of occupational disability and that it is precisely the groups who need insurance most who often do not have it and therefore have to rely on social assistance in the event of long-term occupational disability, if they are even eligible.[8]

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4 SER Advisory Report 10/04, *Zzp'ers in beeld,* October 2010, pp. 113-5.

5 Private insurers have extended the registration deadline for private safety net insurance, but the Government has not extended the registration deadline for voluntary retention of the WIA and has not adopted the recommendation to remove the asset test under the IOAZ (Income Provision for Older Partially Incapacitated Former Self-Employed Persons Act). Letter to Parliament from the Minister of SZW, *Arbeidsmarktbeleid*, Parliamentary Document 29 544, No. 512, 3 April 2014.

6 The Netherlands Bureau for Economic Policy Analysis (CPB) calculated in 2013 that the insurance rate among the self-employed was 24%. It was highest among director-major shareholders (163,000 persons aged between 20 and 59) at 36%, entrepreneurs subject to income tax (852,000 persons) came second at 25%, and of all freelancers (92,000 persons), only 1% was insured. Berkhout, E., and R. Euwals, 2016, *Zelfstandigen en hun alternatieven voor sociale zekerheid*, *CPB Achtergronddocument*. In 2018, the Government stated that 19% of self-employed persons had occupational disability insurance. Letter to Parliament from the Minister of SZW, *Gesprekken met verzekeraars over aov voor zelfstandigen*, 26 November 2018.

7 *Zelfstandigen Enquête Arbeid 2015, 2017 en 2019*, TNO and CBS.

8 21% of self-employed have enough assets (including home equity) to cover 70% of their income until they reach the state pension age; 38% have enough to cover 70% of the gross statutory minimum wage until they reach the state pension age. The insurance rate is lower among the self-employed on a smaller income and

The coverage rate is expected to decline further in the coming years because startup entrepreneurs today are less likely to take out insurance than their predecessors.[9] Self-employed persons do not take out private insurance mainly because the premiums are expensive, they have alternative resources, or they have been refused for medical reasons or their age.[10] It is because of the above factors that the signatories to the Pension Agreement undertook to provide for an affordable and accessible occupational disability insurance for all self-employed persons.

1.3 Affordable and accessible occupational disability insurance

A broader debate is currently underway on the future of the labour market, the value of work and how it is to be regulated.[11] The present proposal closes a gap in social security and does not aim to resolve all of the issues facing the labour market. The Foundation has arrived at a proposal that can be transposed into legislation within a few years to provide protection for the self-employed, and has thus complied with the Minister's request.

Not only is the number of self-employed persons in the Netherlands growing rapidly, but it is also a highly diverse group. It ranges from proud retailers to freelancers who would have really preferred a regular employment contract, and from 'hybrid' workers who combine various contract types to business owners who work mainly for a single client. The diversity in backgrounds and views also emerged in the Foundation's discussions with self-employed persons and their representative organisations.

The Foundation is at special pains to point out the most vulnerable groups of self-employed. In an earlier report, for example, the SER concluded that 'the labour market situation in the arts and culture sector is worrying'.[12] Indeed, this sector is striking for having a large number of self-employed persons in general, and a large percentage who earn very little. The same applies to independent journalists and photojournalists and to self-employed persons working in broadcasting. Addressing this issue in 2017, the SER said wrote: 'The economic crisis and government austerity measures of the past five years have put further pressure on the negotiating position and income of employees and independent professionals and freelancers'.[13] This issue involves much more than just a low rate of coverage. For these vulnerable groups of self-employed persons, the enacting of compulsory occupational disability insurance represents an additional burden.

Allowing this group to remain uninsured is not an acceptable option in the Foundation's view, nor does it resolve the problems at hand. Good insurance will inevitably be an expense. That is why the Foundation is urging the Government to take a close look at where these groups of

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younger self-employed persons (who have a longer period to cover until reaching the state pension age). Buitenhuis, M., *Zelfstandigen met weinig vermogen vaak ook niet verzekerd*, ESB, 104(4779), 14 November 2019.

9 Berkhout, E., and R. Euwals, 2016, *Zelfstandigen en Arbeidsongeschiktheid*, CPB Policy Brief, p. 6.

10 *Zelfstandigen Enquête Arbeid 2019*, TNO and CBS, p. 67. Letter to Parliament from the Minister of SZW, *Gesprekken met verzekeraars over aov voor zelfstandigen*, 26 November 2018.

11 See e.g. the WRR report *Het betere werk* (2020) and the report *In wat voor land willen wij werken?* (2020) by the Committee on the Regulation of Work .

12 'The declining employment rate, the relatively high risk of unemployment, low and dwindling incomes, the poor negotiating position of employees and self-employed persons, loss of income in the event of occupational disability, which is often uninsured, and limited pension accrual – all this combined puts working people in a vulnerable position.' *Verkenning arbeidsmarkt culturele sector* (2016), p. 7.

13 Ibid., p. 59.

self-employed persons stand within the broader labour market and consider introducing additional measures designed to make the insurance more affordable. This is also consistent with the motion on this subject adopted by the House of Representatives in February 2020.[14]

In addition, there is the broader labour market issue of what constitutes an employment relationship and when is the designation ‘contract for services’ unclear or simply incorrect. The situation of platform workers is one example. Occupational disability insurance is not the right way to resolve this issue.

The Minister also drew attention to a motion adopted by the House of Representatives back in 2019 calling on the Foundation to ‘look explicitly’ at the ‘affordability of the contribution’ and the ‘accessibility of the insurance’.[15] The Foundation has sought to strike the right balance between an affordable contribution and proper protection. After all, the more comprehensive the coverage offered, the higher the contribution will be. With the group of self-employed persons being so diverse, the Foundation has opted for customisation. In its proposal, proper insurance for all self-employed person is the standard, with the self-employed remaining at liberty to take out additional insurance or make other arrangements if they so wish. There will naturally be a price tag attached to this insurance. After all, when a self-employed person becomes unfit for work, they lose a significant proportion of their income. The income security that the insurance provides is in proportion to the associated contribution.

The discussion concerning the tax position of the self-employed and other labour market aspects is beyond the scope of this proposal. The Foundation suggests that the Government should consider compulsory occupational disability insurance for the self-employed and the impact of the contribution on their purchasing power within the broader context of its general purchasing power policy and tax measures over the coming period.

The Government has decided to gradually reduce the income tax deduction for self-employed persons. One of the purposes of this deduction is to finance occupational disability insurance premiums and old-age pension contributions. If it takes time to enact the relevant legislation and have the UWV and the Tax and Customs Administration proceed to administer the scheme, the self-employed person's deduction can be used to guarantee the affordability of the insurance.

Ultimately, the introduction of this compulsory insurance will affect each self-employed person differently. In the case of self-employed persons contracted to work for a client, the costs associated with compulsory insurance should naturally be reflected in their fee. Although this is self-evident, the Foundation realises it will not always turn out this way in real-life situations. Some of the self-employed simply lack market power. The group of low-paid self-employed has a particularly large proportion of ‘price takers’. One way of increasing their market power would be to look more broadly at extending the scope for collective bargaining by the self-employed. The Foundation would like to draw attention to this possibility, which is, once again, a discussion that should be considered within the context of the Government's broader labour market policy.

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[14] *Motie van het lid Asscher* (Motion submitted by MP Asscher), Parliamentary Document 29.544, no. 983 (2020).

[15] *Motie van de leden Asscher en Klaver* (Motion submitted by MPs Asscher and Klaver), Parliamentary Document 32.043, no. 459 (2019).

2. Details of the insurance

2.1 Insured parties

The Pension Agreement stipulates that compulsory occupational disability insurance must be introduced for the self-employed. It is important to begin by defining which groups are covered under the term 'self-employed'. The Foundation proposes that this insurance should apply to the following groups:

- Independent professionals and freelancers who earn an income from business activities;
- Professional practitioners ('results from other work');
- Director-major shareholders with no employees;
- Assisting spouses.

Adopting a broad definition of this group will ensure that as many self-employed persons as possible are protected against long-term loss of income.

Some parties have proposed combining the compulsory insurance and the WIA into a single insurance scheme covering all working people. The Committee on the Regulation of Work writes that a single insurance scheme would avoid a situation in which hybrid workers have to deal with two different systems and would promote a level playing field; at the same time, the Committee proposes introducing a lower level of insurance coverage for self-employed workers.[16]

The Foundation agrees that *all* working people must be insured against the risk of occupational disability, but does not elect to do this under a single insurance scheme. In the Foundation's view, employees and the self-employed should not be grouped together in a single category. In the event of illness and disability, their situations are very different. Moreover, a combined insurance scheme of this kind would involve reforming the occupational disability system for the entire population of employees and self-employed persons, entailing a delay of many years. Employee occupational disability insurance is now covered under the WIA and the Foundation sees no reason to change this. In addition, setting up a separate scheme for the self-employed will not result in a higher contribution because this group is now so large and diverse that it has the same occupational disability risk profile.[17]

The Foundation shares the Committee's concern that hybrid workers should not have to deal with two very different systems. Making the UWV responsible for administering the new scheme and aligning the claim assessment system and occupational disability criterion with that of the WIA will minimise the differences between the two schemes. In most cases, hybrid workers will then be dealing with one and the same agency and occupational disability assessment procedure, avoiding a situation in which they are forced to deal with two different ones.

The Foundation has been asked to propose a compulsory occupational disability insurance scheme for self-employed persons. Self-employed persons who are not themselves employers

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16 Commissie Regulering van Werk (Committee on the Regulation of Work), *In wat voor land willen wij werken?*, 23 January 2020, pp. 80-1.

17 The current average employee contribution rates are roughly equal to the rates that would be appropriate under a separate scheme for the self-employed. It should be noted that the two contributions are not entirely comparable, because the WIA does not have a uniform contribution rate owing to the differentiated contribution for the Work Resumption Fund (Whk).

obviously belong to this category; this is largely the group that is envisaged both in common parlance and in the political-administrative context when referring to the self-employed (i.e. *de facto* independent professionals and freelancers). The Government, too, restricts its definition of self-employed to independent professionals and freelancers in its draft Minimum Remuneration for Self-Employed Persons Act. The Government also points out that self-employed persons who have employees are in a less vulnerable position than independent professionals/freelancers (who do not have employees).[18]

The dividing line between independent professionals/freelancers and self-employed employers is clear: employers are obliged by the Tax and Customs Administration to withhold tax and social insurance contributions. To prevent easy circumvention of this compulsory insurance scheme, the Foundation endorses the threshold of 'substantial employment' proposed by the Government in its Minimum Remuneration for Self-Employed Persons Act.[19] Self-employed persons who are insured under this public scheme and then hire staff may opt to remain insured.[20] In line with this, the Foundation proposes to investigate whether self-employed persons with employees can be offered a one-off opportunity to join the insurance scheme when it is introduced.

2.2 Level of insurance coverage

The Foundation has discussed different levels of insurance coverage. The diversity of the self-employed population means that there are different groups that prefer different types of coverage. Some self-employed consider a low level of coverage sufficient because they then pay a lower premium and they run little risk of occupational disability anyway. Others prefer more coverage because the benefits then correspond more closely to what they would lose in income if they were to become unfit for work.

The Foundation believes that, given the diversity of the self-employed population, custom insurance coverage is desirable. On the one hand, the insurance must provide enough income to cover basic living expenses. At the moment, premium differentiation among private insurers makes it very expensive for a certain group of self-employed persons to insure themselves. By insuring everyone by default, that basic level of insurance will become much more affordable. On the other hand, the insurance scheme need not cover a person's entire income, allowing self-employed persons who earn more to decide for themselves whether they want to take out supplementary insurance covering the rest of their income. This approach offers both security and freedom of choice.

The Foundation proposes standard income-related insurance coverage that provides for a maximum benefit of approximately € 1,650 gross per month (100% SMW[21]). The insurance is intended to absorb loss of income; obviously, a self-employed person on a lower income will also receive a smaller amount in benefits and pay a lower contribution. The benefit equals 70% of the self-employed person's last-earned income, with income being insured up to a maximum of

[18] Draft Explanatory Memorandum, *Wet Minimumbeloning zelfstandigen en zelfstandigenverklaring*, p.16.

[19] 'Substantial employment refers to a situation in which the business owner's employees, either individually or jointly, perform more than 8 hours of paid work per week on average and are recorded as doing so in the insurance policy records, with the exception of an employee who does not need to be recorded in these records, for example because the employee is seconded from abroad.' Draft Explanatory Memorandum, *Wet Minimumbeloning zelfstandigen en zelfstandigenverklaring*, pp. 16-17.

[20] This is similar to how self-employed persons can now voluntarily retain their WIA insurance if they do so within 13 weeks of the termination of their employment contract.

[21] Also indexed because it is linked to the statutory minimum wage.

approximately € 30,000 per year (142.9% SMW). This gives the self-employed an incentive to go back to work when possible. Benefits under the AAW and the WAZ were at social assistance level, but by opting for a higher level of coverage, 70% of the self-employed would receive an income-related benefit.[22]

It is difficult to determine the precise amount of the contribution, in part because we do not know the level of occupational disability risk among the self-employed. Since the group of self-employed persons has grown significantly, the risk of occupational disability is likely to be just as high as for employees. It can also be assumed that loss of income represents as powerful an incentive as those used by employers to encourage the reintegration of employees.[23]

Based on these assumptions, the Foundation estimates that with standard insurance and a waiting period of 52 weeks, the contribution will come to 8.0% of income[24]; currently, that would be approximately € 140 gross a month for a self-employed person earning the SMW (€ 1,650) and a maximum of approximately € 205 a month for self-employed persons earning € 2,360 per month or more. These contributions are gross amounts and therefore tax deductible. The net contributions would then lie between € 95 and € 135.

2.3 Contribution base

The Tax and Customs Administration will levy the contribution as a percentage of gross income earned from self-employment, capped at € 30,000. This can be either income from business activities or results from other work. Once the tax return has been filed, the Tax and Customs Administration will determine how much contribution must be paid over the past year.

As for administering the scheme, the Foundation has examined the systems used for previous insurance schemes for the self-employed.[25] The WAZ involved a contribution-exempt amount, meaning that self-employed persons who earned less than the exemption threshold were insured 'for free' and those who earned a high income paid a large amount in contributions for minimum coverage. This is in part why the scheme came under considerable fire and was soon abandoned. The Foundation has therefore not opted for a contribution-exempt amount. This means that self-employed persons will pay a contribution that is in proportion to the benefit that they would receive in the event of long-term occupational disability.

The averaging formula will be similar to that of the WAZ. Because self-employed persons' incomes can fluctuate considerably, the WAZ provided that 'it is not the income earned in the reference year but (where this is more favourable) the average income earned in the three years

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[22] According to Statistics Netherlands, 891,500 self-employed persons earn up to €30,000 a year; 382,300 self-employed persons earn more. The 147,700 self-employed with a negative income have not been included. *CBS Statline, 2015*.

[23] Whereas employees are subject to the Permanent Invalidity Benefit (Restrictions) Act (*Wet Verbetering Poortwachter*) and reintegration obligations, the self-employed face the loss of their entire income if they become unfit for work. The assertion that these two effects are more or less equal is supported by statistics on the influx of WAZ and WAO benefit recipients and the effects of the PEMBA and Permanent Invalidity Benefit (Restrictions) Act. Van Sonsbeek and Gradus, 2012, *Estimating the effects of recent disability reforms in the Netherlands*, Oxford Economic Papers, 65(4), 832-855.

[24] A structural cost-effective contribution is assumed, ensuring that there is enough revenue to cover expenditure in the long term. In the first few years, however, there will be an incidental increase in revenue because relatively few people will be entitled to benefits. Because this insurance must align with the private market, it is not possible to adjust the contribution incrementally.

[25] Details are provided in Section 3.7 under the heading 'Legislative history'.

preceding the individual's occupational disability that is used to determine the benefit base'.[26] This precludes a situation whereby a self-employed person who has earned very little in the year prior to becoming disabled receives a much lower benefit.

Some self-employed persons earn very little from self-employment. While it would be possible to claim a small contribution from them and pay out a small benefit, the administrative burden would be disproportionate to the benefit they would receive. The AAW contained an entitlement requirement for this very reason, but it was voided by the Central Appeals Tribunal for having discriminatory effects.[27] The WAZ did not have an entitlement requirement. Under the Unemployment Insurance Act (WW) a benefit of 'less than one eighth of the minimum wage' is simply not paid out.[28] However, the WW is a short-term benefit, whereas even a tiny amount can be a major source of income for those on long-term benefit.

Startup entrepreneurs are only entitled to a benefit if they have actually earned an income from business activity. For those who have been operating their business for fewer than three financial years, the yardstick is the income earned between their starting up the business and the onset of occupational disability.

2.4 Deferred period or uninsured risk period

The insurance covers only long-term occupational disability. Benefit payments therefore only start after an uninsured risk period. The longer the deferred period, the longer before self-employed persons can claim benefits, and the lower the contribution. Conversely, a shorter deferred period means that they can claim benefits sooner but also pay a higher contribution. The self-employed will have to get through the deferred period on their own.[29]

The Foundation proposes maintaining a standard deferred period of 52 weeks. This was also the deferred period under the WAZ and it strikes a good balance between an affordable contribution and a time period that the self-employed can manage on their own. In addition, the Foundation also recommends offering optional deferred periods of 26 weeks and 104 weeks for a higher and lower contribution, respectively. Self-employed persons who want a shorter or longer deferred period can activate the relevant option. They must specify their chosen option when their insurance coverage commences. Those who do not specify an option will be automatically subject to the standard deferred period of 52 weeks. They will not be permitted to switch to a longer or shorter deferred period afterwards because doing so would have major contribution effects.

The Foundation has adopted this flexible solution to accommodate the different groups of self-employed. The Foundation believes that two years without an income would be financially untenable for some self-employed persons. Information from the Dutch Association of Insurers shows that the self-employed who have already taken out insurance often opt for a short deferred period. Those who do not have sufficient assets themselves may have ways of covering

[26] Draft Explanatory Memorandum, Parliamentary Document 24 758, Nr. 3, p. 8 (1996).
[27] Draft Explanatory Memorandum, Parliamentary Document 24 758, Nr. 3, p. 5 (1996).
[28] Article 41, Unemployment Insurance Act.
[29] The WIA stipulates a deferred period of two years but because employees continue to receive their wages when ill, they are not obliged to cover this period themselves.

the deferred period, for example by setting up or joining a mutuality group.[30] Currently, 4% of the self-employed are members of a mutuality group.[31]

The Foundation realises that offering optional deferred periods could lead to administrative issues and to undesirable contribution effects. It therefore intends to monitor these options closely as they are introduced and, if necessary, resume its discussions with the agencies administering the scheme.

2.5 Duration of compulsory insurance

Some private occupational disability insurance schemes stipulate that benefits will be paid out until the insured reaches 60 or 65 years of age. This means that there is a gap between the termination of occupational disability benefits (AOV) and the payment of pension benefits under the General Old Age Pensions Act (AOW) – the 'AOW-AOV gap'.

The Labour Foundation proposes extending coverage under compulsory disability insurance right up to the age at which individuals start receiving the state pension, analogous to the WIA and other social insurance schemes. The contributions would also remain payable until that age, just as under the WIA.

2.6 Administering the compulsory insurance scheme

The Foundation recommends having the UWV, a public body, administer the occupational disability insurance scheme. The Tax and Customs Administration would be responsible for collecting the contributions.

The Foundation has discussed the timeline for implementing the scheme with the UWV and the Tax and Customs Administration. The discussions revealed that it would take several years to draft the relevant legislation and prepare the systems. The Foundation trusts that implementation will be carried out as scrupulously but also as swiftly as possible and that both the UWV and the Tax and Customs Administration are already making preparations for the self-employed persons' insurance scheme.

The Foundation is conscious of the complexity involved in administering a new insurance scheme, in part because the scheme provides for different options. At the same time, the Foundation considers that it has come up with an appropriate solution that will accommodate the different groups of self-employed. The Foundation trusts that the agencies administering the scheme will find a workable solution.

2.7 Occupational disability criterion and degree of occupational disability

The Foundation proposes aligning the occupational disability criterion with the WIA by opting for 'work of a generally acceptable nature'. This means considering the work that self-employed persons remain capable of doing, regardless of how it relates to their previous work or level of education. This approach encourages as many people as possible to return to work.

The WIA distinguishes between those who are partially unfit for work (Regulation governing the re-employment of partially disabled individuals, WGA) and those who are wholly unfit for

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[30] Mutuality groups are groups of self-employed persons who gift other members a sum of money in the event of illness for a maximum number of years. Most groups have set a cap of two years. Membership of a mutuality group offers a means of supplementing compulsory long-term occupational disability insurance.

[31] *Zelfstandigen Enquête Arbeid 2019*, TNO and CBS, p. 66.

work (Regulation governing income protection for individuals registered as wholly and permanently incapacitated, IVA). The Foundation recommends offering both options to the self-employed and using the same Claims Assessment and Guarantee System (CBBS) as under the WIA. In principle, this should also apply to the administration system, provided that an appropriate solution can be found for establishing self-employed persons' work records and determining their residual earning capacity. As a result, the self-employed would be insured against occupational disability in all of its many forms. Using the same system as the WIA makes it easier to implement and simplifies matters for hybrid workers.

2.8 Reintegration into working life

The Labour Foundation considers reintegration into working life to be an important aspect of compulsory occupational disability insurance. It is important that the UWV has the financial resources necessary to start the reintegration process as soon as the deferred period begins. An extra financial commitment to reintegration will generate a return on investment, as it were, because it will help more self-employed persons get back to work sooner.

The UWV can put self-employed persons who are now receiving WAZ benefits in touch with occupational health and safety experts who offer training/retraining and reintegration programmes. The Labour Foundation considers that occupational disability should be prevented wherever possible. Reintegration into working life should therefore begin as soon as possible. After a self-employed person notifies the UWV of their illness – which they must do within a week, as in the WAZ – the procedure should be the same as under the Sickness Benefits Act. This will involve drawing up a reintegration report within six weeks and adopting an action plan within eight weeks.[32] A medical examination will take place two weeks before payment of the benefit commences.

The Labour Foundation advises setting up an Occupational Health and Safety Centre for the self-employed, financed by contribution payments, which would concentrate specific knowledge in the field of occupational health to achieve effective interventions for recovery and resumption of self-employment.

In its study *Toekomstvisie voor een stelsel van arbeidsgerelateerde zorg*, the SER has considered the position of self-employed persons. Industry institutions with extensive knowledge of employee sickness prevention, absenteeism solutions and reintegration can assist in the effective reintegration of the self-employed. They are in a position to generate and organise sector-specific knowledge about work-related complaints, treatment methods and prevention.[33] Applying occupational medical expertise in primary health care – something that the SER has already advocated – will put more of the spotlight on the 'labour factor' in mainstream care. One relevant aspect in this regard is the grant that the independent research organisation Panteia received from the Dutch non-profit Instituut Gak to conduct research into work-related healthcare for self-employed persons. This research will also cover reintegration into working life and the results can be used to create an efficient system of reintegration for the self-employed.

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32 'Stappenplan bij ziekte werknemer', UWV. *https://www.uwv.nl/werkgevers/werknemer-is-ziek/loondoorbetaling/stappenplan-bij-ziekte-werknemer/index.aspx*

33 SER Advisory Report 14/07, *Toekomstvisie voor een stelsel van arbeidsgerelateerde zorg*, September 2014, p. 45.

2.9 Supplementary coverage options for self-employed persons

The Foundation considers that self-employed persons with a monthly income in excess of € 2,360 should be able to take out supplementary insurance coverage. The Foundation has investigated whether such an option could be included in the public insurance scheme, but this would drive up contributions to undesirable levels and lead to additional administrative complications for the Tax and Customs Administration.[34] The best way for self-employed persons to insure a larger amount is therefore by taking out supplementary private insurance.

Nevertheless, the Foundation has concerns about access to this private insurance market. Self-employed persons who belong to certain occupational groups, have a medical history or are above a certain age may not be able to take out private insurance because they cannot afford the high premiums or because insurers may even refuse to cover them.

Since the self-employed can choose whether or not to insure themselves privately, insurance companies must take steps to avoid antiselection and charge premiums appropriate to the individual risk. In the absence of further measures, there will continue to be self-employed persons who have difficulty accessing the private market for supplementary insurance, for the reasons set out above.

In essence, the Foundation believes that supplementary insurance should be accessible and affordable. Access to supplementary insurance must be a realistic option, which is why the Labour Foundation is proposing the following. Access to non-compulsory supplementary insurance will be improved in consultation with the insurance industry, for example by imposing limits on questions concerning an applicant's medical history and by restricting or eliminating discrimination on the basis of occupational group and age. The Foundation has held talks about this with the Dutch Association of Insurers. The Association has expressed its support for the Foundation's aims and recognises opportunities to improve access under the new system. One possibility suggested by the Foundation is to set up a public-law Mutual Guarantee Fund administered under private law and with an underwriting obligation ensuring that every self-employed person can take out affordable private insurance in addition to the basic public insurance.[35]

2.10 Alternative arrangements in compliance with compulsory insurance scheme

The Pension Agreement states as follows: ‘The Government therefore asks whether it would be reasonable and feasible to permit exceptions from such compulsory insurance, for example in the case of more appropriate arrangements, as is customary in the agriculture sector’.

The aim of the compulsory insurance scheme as described in the Pension Agreement is to protect all self-employed persons against long-term loss of income. If self-employed persons are insured under more appropriate arrangements, such arrangements could constitute an alternative means of complying with the compulsory insurance scheme. Self-employed persons cov-

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[34] The expectation being that self-employed persons with a low risk profile will opt for private supplementary insurance and those with a high risk profile will have to rely on public supplementary insurance, which means that the cost-covering contribution for this insurance will increase sharply. Making options available will lead to a complex application process, with the Tax and Customs Administration having to keep track of who falls under which scheme.

[35] Because the contribution is capped, it will not cover costs. The shortfall will be made up by the private insurers.

ered under both the public insurance scheme and private supplementary insurance will be dealing with two different systems for administering the two insurance schemes. The Foundation finds this undesirable because it also complicates reintegration and makes supplementary insurance unattractive.

That is why the Foundation has decided to offer the option of a comprehensive private insurance scheme that the self-employed can take out as an alternative to the public scheme. They would then satisfy the obligations under the compulsory insurance scheme without the burden of dealing with two different systems. To arrive at an objective opinion about more appropriate arrangements of this kind, an assessment framework has been drawn up with input from the Crown-appointed members of the SER. The framework can be used to determine whether such arrangements comply with the obligations under the compulsory insurance scheme.

First of all, the Foundation has identified three important factors for assessing alternative arrangements at *system level*:

- The arrangement should not erode the public insurance scheme and should not create a 'flywheel effect' that drives up the cost of the public insurance contribution.0}
- The alternative scheme must be enforceable and practicable: it must be possible to check whether individuals have continued their coverage under this 'more appropriate arrangement'.
- There must be additional safeguards ensuring access to the alternative arrangements, as specified in 2.9.

In addition, the Foundation has identified two factors at the *individual level* of the insured:

- To prevent insured persons from seeking lower premiums by withdrawing from the arrangement, it must charge at least the same premium as the contribution payable for the standard public insurance scheme while providing at least the same level of coverage up to the state pension age.
- Assets or a partner’s income must not be considered alternative arrangements.

The Foundation has examined in greater detail whether a comprehensive private insurance scheme would meet the requirements of this assessment framework. First of all, it worked with the Ministry of SZW and the Dutch Association of Insurers to study the effect on the public insurance scheme and the risk of a flywheel effect. With so few of the self-employed being privately insured even now, the 'default effect' will be considerable and upward pressure on prices may be limited. To counteract this effect, stipulation agreements [*clausuleafspraken*] will need to be made with private insurers, for example that fully-fledged alternatives must be limited to insurance schemes that charge at least the same premium and offer at least the same coverage. This will prevent the self-employed from switching to alternative insurance schemes for a lower premium. Should these alternative insurance arrangements nevertheless drive up premiums significantly, private funds should be used to stabilise the contribution artificially.[36]

In addition, discussions were held with the Tax and Customs Administration about the feasibility of integrated private insurance. It appears that insurers can report annually which self-employed persons have alternative insurance and what their premium has been over the past year

[36] This would mean that the (relatively) low-risk groups enrolled in private insurance would pay higher premiums to reduce the contributions paid by the (relatively) high-risk groups enrolled in public insurance. The Dutch Association of Insurers has indicated that stabilisation of this kind is a logical way of counteracting an antiselective premium effect.

to the Tax and Customs Administration.[37] The Tax and Customs Administration would then not need to levy a contribution from this group of self-employed persons. The Ministry of SZW must ensure that these alternative insurance schemes comply with the assessment framework.

2.11 The agriculture sector

Upon concluding the Pension Agreement, the parties made special provision for the unique position of the agriculture sector. Exempting this sector from the compulsory insurance scheme poses few administrative problems. The companies belonging to the agriculture sector can be identified by their SBI code as registered with the Chamber of Commerce.[38]

Because owner-managers of agricultural enterprises produce and sell living products, immediate action must be taken if they fall ill or become disabled and are unable to work. The agriculture sector has consequently implemented arrangements ensuring the continuity of business operations so that the agricultural enterprise does not suffer any 'loss of income' in a material sense.

The arrangements customary in the agriculture sector do not cover 100% of the risk of long-term disability for owner-managers. The arrangements usually offer good coverage for loss of income in the event of illness for the first two years. In the longer term, a large proportion of owner-managers would be able to hedge their income risk by selling or dissolving their business.[39]

Whether it is 'reasonable' to exclude enterprises in the agriculture sector is therefore ultimately a political question. It is a question that the Government, the Labour Foundation and the two opposition parties that support the Pension Agreement must consider. Since the entire occupational disability risk spectrum is represented in this group, from high risk to low, exempting it would not result in a rise in the public contribution.

2.12 Transitional arrangements

The Foundation proposes honouring all existing occupational disability insurance schemes for the self-employed. Self-employed person who had already taken out private insurance before the publication of this proposal can choose to retain it and not to enrol in the public insurance scheme.[40] If the self-employed discontinue their private insurance or if the policy expires before they reach the state pension age, they will be enrolled in the public insurance scheme. Financial arrangements will have to be made with private insurers about the possibility transferring self-employed persons currently receiving private insurance benefits.

2.13 Accessibility

Whereas occupational disability insurance schemes for the self-employed do not currently accept all occupations and ages, the Pension Agreement stipulates that the compulsory insurance scheme must ‘guarantee that everyone can insure themselves’. This means that all self-employed persons must be accepted into the occupational disability insurance scheme. The contribution will not be tied to individual disability risk, meaning that high-risk individuals will not

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37 The Tax and Customs Administration can only make a final assessment of a scheme's feasibility after testing its implementation based on a detailed bill.

38 All enterprises whose SBI codes start with a number between 011 and 016 could then be excluded.

39 Because the owner-managers of agricultural enterprises tend to be older (only 9% are under the age of 45), the period of time before they reach the state pension age is shorter and in most cases they will be able to raise enough equity by selling their enterprise.

40 This will operate in a manner similar to the comprehensive private insurances described in 2.10.

have to pay higher contributions. The purpose of the Mutual Guarantee Fund is to make supplementary insurance more accessible as well.

2.14 Conscientious objections

The Stoffer/Bruins motion[41] concerns conscientious objections to compulsory occupational disability insurance. The current national and employee insurance schemes provide for an exemption for those who have conscientious objections to compulsory insurance. The Foundation proposes adhering to current regulations in such instances.

2.15 Neutral effect on EMU balance

The Pension Agreement stipulates that the insurance scheme must have a neutral effect on the EMU balance. The Foundation has treated this stipulation as a political factor in its discussions and one that could be at odds with the affordability of the insurance as outlined in 1.3. However, assuming that the scheme will have a neutral effect on the balance, the implication is that the associated incomings and outgoings will be even over the longer term. By opting for a structural contribution that will cover the expense associated with benefit payments and reintegration efforts, there will be no additional pressure on the national budget. A fund will be set up that will receive all incomings and disburse all outgoings.

2.16 EU law

The Crown-appointed members of the SER and the Ministry of SZW have advised the Foundation on whether there are any objections under EU law to compelling self-employed persons to enrol in this insurance scheme. It appears that if the insurance scheme is publicly administered by the UWV, it will not be contrary to EU law. When enacting the scheme, it may be necessary to explain why it is in the public interest. Most EU member states already have compulsory insurance for self-employed persons or groups of self-employed persons.[42]

[41] *Motie van de leden Stoffer en Bruins* (Motion submitted by MPs Stoffer and Bruins), Parliamentary Document 32.043, nr. 470 (2019).

[42] Klosse, S. and S. Montebovi (2019), ‘Sociale zekerheid voor zelfstandigen: hoe regel je dat? Een blik over de grenzen’, *Tijdschrift Recht en Arbeid* 20/3.

3. Background information

With a view to arriving at its recommendations, the Labour Foundation set up a working group consisting of its six permanent consultation partners as well as FNV Zelfstandigen (on behalf of employees) and PZO (on behalf of employers). The working group held its own discussions, organised its own meetings and sought information on several occasions from the authorities involved, such as the Ministry of SWZ, the UWV, and the Tax and Customs Administration. Below is a brief summary of all interviews and discussions and the most important outcomes. A brief legislative history is also provided.

3.1 Organisations representing the self-employed

On 21 November 2019, the working group spoke with various organisations representing the self-employed. The working group invited a number of them personally and also issued a press release inviting all other representative organisations to discuss the compulsory insurance scheme. The parties attending the meeting criticised having the decision form part of the Pension Agreement and stated that their presence at the meeting did not imply that they were in favour of this measure. Most parties said that they recognised the need for occupational disability insurance for the self-employed but preferred having a national insurance scheme covering all working people. In their view, there were advantages to making all working people subject to a single insurance scheme: no one would fall between the cracks and it would be easier for hybrid workers because they would not have to deal with two different schemes.

This national insurance scheme should offer a minimum benefit to the self-employed without compromising the rights of employees covered under the WIA. Self-employed persons could take out additional private insurance. Concerns were expressed about selection by private insurers. In the minimum-benefit scenario, the parties preferred to see as few exceptions as possible and a deferred period of two years. One party stated that this was too long for its members; three months was a realistic deferred period, in its view. Other representative organisations also argued in favour of a basic insurance scheme that would provide more than a minimum benefit, allowing for a reasonable lifestyle. Although they shared a desire for an insurance scheme covering all working people, the various representative organisations also had differences of opinion concerning such matters as the deferred period and the size of the contribution and benefit.

There were further discussions about the details of the occupational disability insurance during the second meeting on 14 January 2020. In addition, the working group had the opportunity to question the representative organisations about their ideas. The organisations stated that they were not opposed to compulsory insurance but feared that the social security system would become compartmentalised. To prevent this from happening, some of the organisations attending said that they wanted limited insurance for all working people with a deferred period of two years, limited coverage and wage-related benefits. The insurance would only be intended for fully and permanently disabled self-employed persons who met the 1225-hour criterion. The scheme could be incorporated into the WIA, with one scheme then covering all working people.

One representative organisation stated that it was not possible to work as an employee within its sector. The nature of the work required working people to be self-employed. Expensive insurance premiums with a long deferred period could put their livelihood at risk. This group therefore perceived this measure as an additional burden on top of others that had been introduced in recent years.

After the representative organisations had clarified their ideas, the working group then explained that they had largely encountered the same dilemmas. The working group chairperson then outlined the current state of affairs.

3.2 Mutuality groups

On 12 November 2019, the working group interviewed a number of mutuality groups about their arrangements. Mutuality groups are groups of entrepreneurs who gift one another a sum of money in the event of illness. They focus on the first months of illness, ensuring that a large proportion of the members who appeal to the group for assistance receive donations throughout their period of illness. A mutuality group usually provides benefits for a maximum of two years, but they stated that around 93% of members who had been sick had gone back to work before then. Private insurance covered disability beyond the two-year period.

One significant reason to join a mutuality group was the financial aspect, the board members stated: it was cheaper to become a member of a mutuality group than to take out insurance without a deferred period. In addition, members found it appealing to participate in a collective that had a social purpose, for example because they knew one another and therefore knew who was receiving the gift. Other self-employed persons preferred an anonymous mutuality group because they did not want their peers knowing that they were sick or unfit for work. Those attending stated that only a small percentage of the self-employed were members of a mutuality group. Broodfonds had 24,150 members; the other mutuality groups interviewed by the working group had more than 6,000 members. Some mutuality groups worked with selection criteria and were therefore not accessible to everyone.

3.3 Crown-appointed members of the SER

The working group asked the Crown-appointed members of the SER to examine a number of questions. The Crown-appointed members investigated factors under EU law, considered how to prevent abuse of the scheme, and helped to draw up an objective assessment framework for exemptions from the compulsory insurance scheme. They reported several reasons for being very reticent about allowing exemptions. A transitional arrangement for self-employed persons who already had insurance appeared necessary but allowing exemptions unconditionally would lead to risk selection. Given the aims of the compulsory insurance scheme, i.e. income protection for the self-employed and the wish to create a level playing field in the labour market, exempting director-major shareholders could be justified because they did not compete with employees.

3.4 UWV

The working group interviewed the UWV on 26 November 2019 because it was likely to be the organisation charged with administering the insurance scheme. The UWV previously administered the AAW and WAZ and was still disbursing WAZ benefits, so it could easily undertake the same tasks for another scheme. Experience had shown that the WAZ was easy enough to administer and that there were no groups that fell between the cracks. Having a contribution-exempt amount had driven up the contribution. It would therefore be better to omit the contribution-exempt amount in any new scheme. It was important to define the group of insured persons under the new scheme clearly. In theory, it was also possible to insure a larger sum at the UWV using a sliding scale, or to cut back on the deferred period while simultaneously increasing the contribution. At the moment, the UWV did not usually play a role in supplementary insurance schemes.

The UWV currently did little in the way of reintegration. It had been pointed out that the organisation administering the scheme could play a significant role in this respect, including during the uninsured risk period. If the self-employed opted to take out additional private insurance, agreements would need to be made about which party was responsible for reintegration. It would also be possible to determine a self-employed person's income using an averaging system, similar to the one used under the WAZ. It was difficult to estimate how long the implementation period would be, but adhering to the WIA system would be helpful. The Ministry of SZW said it would take 18 months to pass the bill into law and the scheme would only be administered after it had been debated in the House of Representatives. If a new system had to be set up, it was unlikely to be implemented before 2024.

The working group also consulted the UWV several times to discuss various questions while working on the proposal details. For example, the UWV provided additional information on what it could do in terms of reintegration, how to streamline the administrative procedures (example by adopting the CBBS system), and what effects it expected from the various alternative scenarios for compliance with the compulsory insurance scheme.

3.5 Dutch Association of Insurers

The working group met with the Dutch Association of Insurers on 26 November 2019, in this instance representing the various insurers that already offered occupational disability insurance. The Association agreed that the current rate of coverage was too low and supported the idea of compulsory insurance, but did not see itself as the appropriate party to administer a uniform basic insurance scheme. Insurers were eager to work with clients on offering custom solutions and that idea was incompatible with a compulsory and uniform scheme.

The Association envisaged a role for private insurers with regard to supplementary insurance for the self-employed. In the Association’s view, it should also be possible for self-employed persons to withdraw from the compulsory scheme and insure themselves comprehensively with a private insurer for both the compulsory and supplementary coverage. That way, they would comply with the law stipulating compulsory insurance but only have to insure themselves with a single organisation. The Association did not believe that this would undermine the public insurance scheme. There was only a small difference between the public insurance contribution and the private insurance premium and the Association did not expect individuals to withdraw for that reason. The Association also stated that self-employed persons who had already taken out insurance should be able to retain their current policies.

The working group had several discussions with the Association throughout this period, for example about the premium effects of an alternative, comprehensive insurance and how to neutralise and attach conditions to these effects. The Association also furnished information on current reintegration expenditure, reporting of premiums to the Tax and Customs Administration, and possible ways to improve access to the private market.

3.6 Tax and Customs Administration

The working group spoke to the Tax and Customs Administration about collecting the contributions and the implementation period. The Tax and Customs Administration helped to come up with ways to streamline collection. It also suggested a simpler implementation method, i.e. to lower the tax deduction for self-employment and use the resulting tax revenue to finance a provision. This suggestion was rejected, however, because there would be no connection between contribution and benefit and because the large group of self-employed persons who generate ‘results from other work’ would be insured free of charge. A further possibility was to collect the contribution at the same time as the income-related healthcare insurance contribution (under the Healthcare Insurance Act, Zvw or the Long-Term Care Act, WLZ) or as a surcharge on the latter contribution. It was likely to take more time to implement this. In addition, the Tax and Customs Administration explained that exemptions from the compulsory insurance scheme could be difficult to administer if this meant it having to assess compliance with various requirements on a case-by-case basis.

The Tax and Customs Administration subsequently provided written information on the feasibility of various options, for example excluding self-employed persons with employees, reporting of insurance premiums to the tax authorities, supplementary public insurance and a comprehensive, alternative insurance. The Tax and Customs Administration warned, however, that it could only assess the feasibility of various options after actually testing them, and that would only be possible after the bill had been submitted to Parliament.

3.7 Legislative history

In addition to all the background discussions, the working group looked at previous legislation meant to protect the self-employed against the risk of occupational disability. The Invalidity Insurance Act (WAO) was introduced for employees in 1967; in 2005, it was replaced by the Work and Income (Capacity for Work) Act (WIA). The General Disablement Benefits Act (AAW) was introduced in 1976 to provide social security coverage for the self-employed and disabled young persons. This act was replaced in 1998 by three separate laws, including the Disability Insurance (Self-Employed Persons) Act (WAZ).

Prior to the enactment of the AAW, the Government concluded that very few self-employed persons had covered the risk of long-term occupational disability by taking out private insurance.[43] Contrary to the recommendations of the SER in a 1965 advisory report, a conscious decision was taken not to enact legislation that applied only to the self-employed but to opt instead for a national insurance scheme. The main objections to a scheme exclusively for self-employed persons were the following: (a) it would be difficult to define who qualified as self-employed and ascertain how to deal with those who were both self-employed and in employment, (b) it would be necessary to register all insured persons individually (generating a great deal of red tape), (c) it would place a relatively heavy burden on those self-employed who were least well-off (assuming everyone paid the same nominal contribution) and (d) it would be complicated to effectuate transitional arrangements for those already unfit for work when the scheme entered into effect.

The AAW thus became a national insurance scheme for working people under the age of 65. The act aligned with the WAO in determining the degree of occupational disability (using the same range of disability categories), while the size of the benefit (in the event of full occupational disability) was linked to state pension benefits. Although the benefit was a fixed amount, the contribution was income-based (at the time of enactment, the Government assumed an income percentage of 8.8%). There was also a deferred period of 52 weeks. ‘For employees, who already had access to the WAO, the AAW was a basic provision that was combined with their WAO benefit and paid out as a single amount.’[44]

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[43] 23% of the self-employed active in agriculture (1968) and 35% of entrepreneurs (1969). Explanatory memorandum upon enactment of the AAW, Parliamentary Document 13 231, No. 3, p. 43 (1975).

[44] Explanatory Memorandum, Parliamentary Document 24 758, No. 3, p. 5 (1996).

The law was reformed in the late 1990s 'to boost market forces in the social security domain'.[45] The portion of the AAW pertaining to employees came under the WAO, and a separate law (the WAZ) was enacted to insure the self-employed against the risk of occupational disability. The WAZ was meant for three groups of self-employed persons: entrepreneurs (income from business activities), professional practitioners (results from other work) and assisting spouses (person who works in his or her spouse's business).[46] Directors-major shareholders would be covered by the WAO.[47] After much criticism, the Government changed tack and decided to cover director-major shareholders under the WAZ after all.[48] As in the case of the AAW, the benefit came to 70% of the minimum wage; unlike the AAW, however, persons with a lower income could receive a smaller benefit.

The WAZ contribution ended up being somewhat higher than the AAW contribution.[49] To avoid ‘a disproportionate drop in income' for self-employed persons who earned very little, it was decided to introduce a ‘contribution-exempt amount [non-contributory base] of NLG 23,000 and to cap contributions at an annual income of NLG 78,000’.[50] Since the nominal value of the benefit was the same, adding the contribution-exempt amount represented a greater level of solidarity between higher and lower income categories. Self-employed persons who earned less than the contribution-exempt amount were insured free of charge, while those earning the maximum income for contributions paid a contribution percentage of more than 35% relative to the benefit.[51]

Access to the WAZ was blocked as of 1 August 2004. The Government stated that the self-employed did not see the need for the WAZ in its current form because they found the principle of income solidarity too onerous and the contribution too expensive, and because they felt that private insurance offered them more freedom of choice.[52] The evaluation of the act revoking the WAZ (2009) revealed that, like the WIA but unlike the WAZ, private insurance does not lead to solidarity between low-income and high-income groups and only limited solidarity between low-risk and high-risk groups.[53] As a result, the private insurance premiums paid by older self-employed persons or those in a higher risk class were more expensive.

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45 Explanatory Memorandum, Parliamentary Document 24 758, No. 3, p. 1 (1996).

46 ‘The size of the group is estimated at around 300,000 persons. The vast majority are those whose results from other work fall below the WAZ non-contributory amount.’ Explanatory Memorandum, Parliamentary Document 24 758, No. 3, p. 17 (1996).

47 Based in part on the Council of State's opinion that groups would fall 'between the cracks', the Government 'made additional arrangements'. Opinion of the Council of State and Nader Report, Parliamentary Document 24 758, No. A, p. 2 (1996).

48 Memorandum concerning report, Parliamentary Document 24 758, No. 6, item 2.2.1 (1996).

49 Under the AAW, the contribution was 6.7% of total taxable income; under the WAZ, the contribution was estimated at 8.55%, but this was based only on income from business activity or results from other work, thus limiting the total tax burden. Opinion of the Council of State and Nader Report, Parliamentary Document 24 758, No. A, item 5 (1996) and Explanatory Memorandum, Parliamentary Document 24 758, No. 3, p. 27-35 (1996).

50 Explanatory Memorandum, Parliamentary Document 24 758, No. 3, pp. 28-29 (1996).

51 At the time of implementation, a contribution of 8.85% was assumed. Based on an annual income of NLG 78,000, this amounted to a monthly contribution of NLG 575, while the benefit was set at minimum level (NLG 1600).

52 Explanatory Memorandum, Parliamentary Document 29 497, No. 3, item 3 (2004).

53 Evaluation of the Act blocking access to the WAZ, Parliamentary Document 32 135, No. 1, p. 3 (2009).