The Dutch Social Insurance System for Self-Employed

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SAMENVATTING

In Nederland zijn bepaalde sociale risico's van zelfstandig werkenden gedekt door de volksverzekeringen en de sociale voorzieningen. Zoals iedere Nederlandse burger hebben de zelfstandigen vanaf hun 65ste recht op een pensioen op basis van de AOW en in bepaalde situaties kunnen de zelfstandig werkenden evenals iedere Nederlandse burger een beroep doen op de bijstand. Ook zijn de ziektekosten van de zelfstandig werkenden gedekt door de Ziekenfondswet, die per 1 januari 2006 wordt vervangen door de Zorgverzekeringswet, en de AWBZ.

Hoewel de zelfstandig werkenden in Nederland mogelijk meer bescherming en compensatie genieten dan in de meeste andere Europese landen, zijn de zelfstandig werkenden wel minder beschermd tegen de arbeidsgerelateerde risico van werkloosheid, ziekte en arbeidsongeschiktheid dan de werknemers dat zijn. In theorie zijn de zelfstandig werkenden zelfs uitgesloten van de werknemersverzekeringen WW, ZW en WAO, die per 1 januari 2006 wordt vervangen door de WIA. In de praktijk hebben de zelfstandig werkenden toch enige toegang tot deze werknemersverzekeringen. In het verleden hadden de zelfstandig werkenden hun eigen sociale verzekeringen, zoals de IOAZ en de WAZ. Deze sociale verzekeringen beschermden hen tegen de risico's van ziekte, arbeidsongeschiktheid en ouderdom, maar deze verzekeringen zijn per 1 augustus 2004 afgeschaft. Daarvoor hadden de vrouwelijke zelfstandigen recht op een bevallingsuitkering van 16 weken, maar met de afschaffing van de WAZ is ook deze verzekering opgeheven.

Deze drie sociale verzekeringen voor zelfstandig werkenden zijn per 1 augustus 2004 opgeheven, omdat de Nederlandse wetgever van mening is dat de sociale risico's van zelfstandig werkenden eenvoudiger op de private verzekeringsmarkt te verzekeren zijn dan de sociale verzekeringen van werknemers. De sociale verzekeringen van zelfstandigen zijn dientengevolge aan de markt gelaten en deze ontwikkeling past in een bredere ontwikkeling in Nederland. Het past in de trend van de hervorming of privatisering van het socialezekerheidsstelsel.

Abstract

In the Netherlands the self-employed are insured against a number of social risks through social security provisions and residence-based social insurances. The self-employed are, for example, insured against the risk of old age: like every other Dutch resident, they receive a pension under the General Old-Age Pensions Act when they turn 65. In certain situations the self-employed are like every other Dutch resident entitled to benefits under the General Supplementary Benefits Act. The self-employed also are insured for the costs of healthcare through the Health Insurance Act and the General Exceptional Medical Expenses Act. But though they probably are protected and compensated at a higher level in the Netherlands than in most other European countries, the self-employed nevertheless are protected against these risks to a lesser extent than employees are. In theory, the self-employed are even excluded from the employee insurance schemes, though in practice they do have some access to these insurances. In the past the self-employed had their own employment-based insurance schemes, such as the Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed Persons and the Self-Employed Persons Disablement Insurance Act. These insurances protected them against the risks of incapacity for work due to illness, disability or old age. The self-employed were also insured against the risks of parenthood, as they enjoyed the right to a paid maternity leave under the General Work and Care Act.

On 1 August 2004 these three social insurances for the self-employed were abolished because the Dutch government maintained that the social risks faced by the self-employed are easier to insure against on the private market than are the risks faced by employees. It thus decided to leave the risks faced by the self-employed to the private insurance market. This decision conforms with a larger trend in the Netherlands, the trend of reconstructing or privatising the social security system.

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Introduction

In most European countries a sharp distinction is made between employees and self-employed persons with respect to social security. Of course, the social security regimes of the different European countries do vary, but a general principle of these regimes is that employees are always protected better than self-employed persons. This distinction between employees and self-employed persons has a historical basis. In theory, at least, employees enjoy social security and the self-employed do not, because the social risks of employees are considered to be collective risks—risks that society should protect against—whereas the social risks of the self-employed are considered to be individual risks, or risks that society need not protect against (Schmid & Schömann 2004). In practice, however, self-employed persons in the Netherlands do enjoy social security, though not to the extent that employees do.

In the Netherlands the industrial revolution took off in the late nineteenth century, introducing new forms and means of industrial production (a Taylor-Fordist organisational model). In this new environment dependent employment, in which the employee is subordinate to the employer, became widespread and thus the dominant legal form for exchanging personal labour for financial remuneration. Today dependent employment is still the dominant legal form in the Netherlands. Labour law governs dependent employment. However, back then, around the turn of the twentieth century, some workers stayed away from the factories, worked from their own workshops and never became dependent on or subordinate to an employer. This more traditional legal form for exchanging personal labour for financial remuneration is called self-employment. Self-employed persons are often professionals active in occupations which—whilst not conforming to the Taylor-Fordist organisational model—are governed by the principles of civil and commercial law (Perulli 2003: 6). This distinction between legal contracts of labour goes back even further than the industrial revolution, having first been made in ancient Roman law. Roman law is the common feature of the legal systems in the different European countries (Jansen 2003).

This distinction between dependent employment and self-employment is recognised in most European countries and is regarded as being clear-cut. Employees work on the basis of a labour contract, whereas the self-employed work on the basis of a service contract. In reality, the distinction between employees and self-employed persons is not at all clear-cut. In fact, it is sometimes difficult to distinguish the self-employed from employees, because often they do the same work and work under thesame circumstances and on the basis of the same conditions. Often the only cleardistinction between the self-employed and employees is their legal status (Heijden 1997). There is evidence that one of three self-employed persons is a pseudo employee (Zwinkels 2000).

This paper examines the Dutch social insurance system and the various social insurance schemes for the self-employed. The first section provides an introduction to the self-employed in the Netherlands, describes trends in self-employment and discusses the grey areas between employees and the self-employed. The following section presents general information on the Dutch social security system and describes how this social security system was constructed and is now being reconstructed. It also focuses on the structure of this regime and the scope of the employee insurance schemes. The third section describes the employee insurance schemes for dealing with the economic risks of sickness and disability, parenthood, old age and unemployment. The fourth section examines the insurance schemes for these same risks for the self-employed. The next section discusses certain aspects of the social security system in practice, in particular the borderline between employees and self employed persons, and examines the recent shift in mandatory regulations from protecting to not hindering the self-employed. The sixth and last section presents some concluding remarks.

1 Trends in self-employment

More and more people in the Netherlands are now combining dependent employment with self-employment, either simultaneously or consecutively. A growing number are even leaving their jobs to start their own companies. This trend began in the 1970s and peaked in the 1990s. The increase in self-employment in non-traditional sectors like construction, education, healthcare, information and communication technology, financial services, personal services and transport was conspicuous. In this period about 30,000 people per year started their own company; the trend peaked in 2001, when, in the course of one year, over 40,000 people started up their own business (Hessels & Vroonhof 2003).

The term ‘self-employed without staff’ (*zelfstandige zonder personeel -zzp’er*), came into use during the 1990s. It originates from the construction industry, a sector that showed a strong increase in self-employment in the 1990s. The number of self-employed without staff in this economic sector increased by 86% from 17,405 in 1993 to 32,425 in 2000. This explosive growth can be attributed to economic trends, such as the overstrained labour market; changes in management models, such as those making use of subcontracting and outsourcing; and changes in government policy, such as the abolition of certain licenses (Scholman 2001: 22; Hessels & Vroonhof 2003).

Nowadays the number of self-employed without staff is stabilising. In the traditional economic sector of agriculture the number of self-employed people is even declining. Despite a more positive attitude towards self-employment, the Dutch still prefer a stable, long-term subordinate employment relationship with one employer. In fact, the average employee works about nine years for the same employer (Schnabel 2001).

Other forms of flexible labour, such as part-time work (which creates flexibility for the employee) and temporary agency work (which creates flexibility for the employer), are more common than self-employment in the Netherlands.

Table 1: Active workforce in the Netherlands

	1999	2000	2001	2002	2003
Total	7,946,000	8,124,000	8,291,000	8,325,000	8,294,000
Employees	6,789,000	6,969,000	7,124,000	7,166,000	7,141,000
Self-employed persons	1,148,000	1,155,000	1,167,000	1,159,000	1,153,000

Source: Centraal Bureau voor Statistiek, *Sociaal-economische trends, 2e kwartaal 2005*, 2005.

As shown in Table 1, about 14% of the active workforce—here comprising everyone who works 12 hours or more per week—is self-employed. This data from the Central Office for Statistics (Centraal Bureau voor Statistiek) include traditional sectors such as the agricultural sector, and no distinction is made as to whether or not the self-employed employ staff. According to a study comparing European countries, the number of self-employed persons is about 9.7% of the active workforce, excluding the agricultural sector. Again, no distinction is made between self-employed with staff and self-employed without staff. Only 33% of self-employed persons employ staff and are considered employers. Thus, 66% of the self-employed can be regarded as self-employed persons without staff. Approximately 6.5% of the active workforce, or 540,000 persons, are self-employed persons without staff (Schulze Buschoff 2004: 22– 23; Perulli 2003).

The number of self-employed persons is higher in the Netherlands than in Germany, France, Luxembourg, the Scandinavian countries and even Great Britain. On the other hand, in Belgium, Ireland and the Mediterranean countries the number of self-employed persons is much higher than in the Netherlands. The relatively high number of self-employed persons in the Netherlands can be traced to the strong growth of the Dutch service sector (Hessels & Vroonhof 2003: 37). There are good reasons why about 60% of Dutch self-employed persons work in this sector (Schulze Buschoff 2004: 26). The service sector is very labour-intensive, yet has low start-up costs. A self-employed person only needs a few investments, such as a computer, a telephone and a car, to start a business. But the most important explanation for the high percentage of self-employed is the favourable financial infrastructure of the Netherlands. It is relatively easy for self-employed persons to get a bank loan to start up their own venture. In addition,

the tax authority supports the self-employed as entrepreneurs through several kinds of tax regulations and reductions in tax.

Research shows that in the Netherlands most self-employed people enter the labour market as an employee and decide to start their own company later on in their career. Two-thirds of all self-employed persons were employees before they started up their own business. The average age of the self-employed is 45 years, which is much higher than the average age of employees (Hessels & Vroonhof 2003: 56). Relatively more older workers, and more older male workers than older female workers, are active on the labour market as self-employed persons. In 2004, about 18% of the active workforce between the ages of 50 and 74 were self-employed. For the age groups 55 to 59, 60 to 64, and 65 to 74, the share of the active workforce that was self-employed was 17%, 33% and 60%, respectively (Centraal Bureau voor Statistiek 2005: 14).

2 General information about social protection in the Netherlands

Social security is a system of income protection that provides income security in situations of income loss or lack of income due to circumstances like sickness, disability, incapacity for work, unemployment and old age. In addition to this protective function, social security has a preventive function: the social security system also attempts to prevent people from leaving the labour market definitively by reintegrating the unemployed and those who have not been able to work into the labour market. Social security is based on solidarity, and, in the modern welfare state, the nation-state is responsible for implementing the social security system. It took the Dutch government 75 years to construct a social security system, which reached its peak in the 1970s. Since then, the government has been reconstructing and reforming the social security system at a rapid pace (Noordam 2004: 25–27).

2.1 Constructing and reconstructing the social security regime

The construction of the Dutch social security system began in the second half of the nineteenth century with the introduction of unemployment benefits and pension schemes for civil servants and the implementation of the Poverty Act in 1854. With the establishment of the poverty act, relief for the poor became a task for the Dutch government rather than one for the churches.

1854 Poverty Act
1901 Work Injury Act
1913 Sickness Benefit Act (ZW)
1913 Disability Act
1939 Child Allowance Act
1949 Unemployment Benefit Act (WW)
1956 General Old-Age Pensions Act (AOW)
1959 General Widows and Orphans Act
1962 General Child Benefit Act (AKW)

1964 Health Insurance Act (ZFW)
1965 General Supplementary Benefits Act (ABW)
1967 Occupational Disablement Insurance Act (WAO)
1968 General Exceptional Medical Expenses Act (AWBZ)
1976 General Disability Benefit Act (AAW)

Over the course of the social security system's construction, certain acts were modernised or replaced by other acts. For example, in 1921 and again in 1927 the Work Injury Act was modernised, and in 1967 the Work Injury Act, together with the Disability Act, was replaced by the Occupational Disablement Insurance Act (WAO). The expansion of the social security system reached its 'peak' with the implementation of the General Disability Benefit Act (AAW) in 1976. This AAW 'replaced' the WAO by reducing it to a supplementary insurance for employees.

During the last two decades of the twentieth century the social security system has undergone a series of rapid changes. The Dutch government has pursued modernisation and privatisation measures in its efforts to reconstruct the system. In 1980 the General Child Benefit Act (AKW) was modernised, as were the Unemployment Benefit Act (WW) in 1968 and the General Supplementary Benefits Act (ABW) in 1996 and again in 2004. Choosing the 'third way,' the Dutch government has shifted its role from protecting people to enabling people, from provider of social security to regulator of social security. Nowadays the Dutch government leaves an increasing share of the social insurances to the social partners or, if possible, to the market of private insurance companies. The Dutch state is no longer the sole provider of social security. The government still regulates the social security system, however, and if private insurance companies consider a particular social risk uninsurable, the government considers it its task to insure against this risk.

1986 Act on Income Provisions for Older, Partially Disabled Unemployed Persons (IOAW)

1987 Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed Persons (IOAZ)
1996 Act on Extending Payment of Wages in Case of Sickness
1996 General Surviving Relatives Act (ANW)
1998 Occupational Disablement Insurance Act (WAO)
1998 Occupational Disablement Assistance Act for Handicapped Young Persons (WAJONG)
1998 Self-Employed Persons Disablement Insurance Act (WAZ)
1998 Act on Income Provision for Artists (WIK)
2001 General Work and Care Act
2002 Gatekeeper Act
2002 Improved Gatekeeper Act
2002 Statement of Work Relationship (VAR)
2003 Act on Abolition of Follow-up Unemployment Benefit
2004 Act on the Extension Period of Continued Wage Payment During Sickness
2005 Act on Extending the Effects of the Statement of Work Relationship
2005 Act on Work and Income Provision for Artists (WWIK)

The Sickness Benefit Act (ZW) was 'privatised' in 1994 and again in 1996 with the implementation of the Act on Extending Payment of Wages in Case of Sickness, thereby giving employers financial responsibility for their employees in the event of illness. In 1996 the General Widows and Orphans Act was replaced by the General Surviving Relatives Act (ANW). The difference between the two is that, unlike the General Widows and Orphans Act, the ANW is means-tested. A major reform, which is connected with the 'privatisation' of the Sickness Benefit Act, took place in 1998 when the General Disability Benefit Act (AAW) was replaced by the Occupational Disablement Insurance Act (WAO), the Occupational Disablement Assistance Act for Handicapped Young Persons (WAJONG) and the Self-Employed Persons Disablement Insurance Act

(WAZ).[1] In addition to this change, the way in which the WAO is financed was changed drastically.

2.2 The structure of the Dutch social security system

In the Netherlands a distinction is made between social security provisions and social insurances. The Poverty Act of 1854 was the first Dutch social security provision. The Work Injury Act of 1901 was the first Dutch social insurance. The difference between social security provisions and social insurances is that they are financed differently. Social security provisions are financed by the Dutch government, whereas social insurances are financed by the beneficiaries themselves—whether employees, self-employed persons or residents. Nevertheless, the Dutch government sets the level of contributions for the social insurances (Noordam 2004: 33).

Social security provisions

All residents of the Netherlands are entitled to social security provisions, which provide security in the form of a basic income provision. If his or her circumstances justify it, every resident of the Netherlands can make use of these social security provisions, which include the General Supplementary Benefits Act, the Act on Work and Income Provision for Artists (WWIK), the Act on Income Provisions for Older, Partially Disabled Unemployed Persons (IOAW), the Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed Persons (IOAZ) and the Occupational Disablement Assistance Act for Handicapped Young Persons. These social security provisions apply if a Dutch resident is unemployed or otherwise unable to work due to an incapacity. The General Supplementary Benefits Act applies to all residents, whereas the other social security provisions apply only to specific groups, such as artists, employees, the self-employed or young disabled persons. The General Child Benefit Act applies to every resident who is raising one or more children. During the General Disability Benefit Act (AAW), which

[1]During the General Disability Benefit Act (AAW), which was implemented in 1976 and abolished in 1998, the WAO was only a supplementary insurance for employees on top of the AAW and with the abolition of the AAW the WAO again became the main employee insurance against the risk of incapacity for work.

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Residence-based social insurances

Some social insurances, such as the General Old-Age Pensions Act, the General Surviving Relatives Act and the General Exceptional Medical Expenses Act (AWBZ), are residence-based. The contribution for these three social insurances comes from the payroll taxes and is levied, together with the wage tax, by the tax authorities. Like the social security provisions, the other residence-based social insurances are financed through income tax revenues but are not part of the payroll taxes. The Dutch income tax regime applies to every Dutch resident. It is a progressive, cumulative tax regime over the total income (e.g. employment, interest, assets), which consists of four income scales with their own tax percentage. For example, a person under the age of 65 who earns €30,000 per year pays a tax of 34.4% for the first €16,983 earned and a tax of 41.95% for the remaining €13,017 earned.

Table 2: The Dutch tax regime

	Up to the age of 65	65 or older
Scale 1:		
Income up to €16,893	AOW 17.90 %	AOW 0%
	ANW 1.25 %	ANW 1.25 %
	AWBZ 13.45 %	AWBZ 13.45 %
	Wage tax 1.80 %	Wage tax 1.80 %
	Total 34.40 %	Total 16.50 %
Scale 2:	AOW 17.90 %	AOW 0 %
Income between	ANW 1.25 %	ANW 1.25 %
€16,894 and €30,357	AWBZ 13.45 %	AWBZ 13.45 %
	Wage tax 9.35 %	Wage tax 9.35 %
	Total 41.95 %	Total 24.05 %
Scale 3:	AOW 0 %	AOW 0 %
Income between	ANW 0 %	ANW 0 %
€30,358 and €51,762	AWBZ 0 %	AWBZ 0%
	Wage tax 42 %	Wage tax 42 %
	Total 42 %	Total 42 %
Scale 4:	AOW 0 %	AOW 0 %
Income from	ANW 0 %	ANW 0 %
€51,763 and up	AWBZ 0 %	AWBZ 0 %
	Wage tax 52 %	Wage tax 52 %
	Total 52%	Total 52 %

Source: Tax authorities.

Employment-based social insurances

Other social insurances are employment-based, and some of these apply only to employees. The employee insurances schemes include the Sickness Benefit Act, the Occupational Disablement Insurance Act and the Unemployment Benefit Act. One employment-based social insurance applied only to the self-employed: the Self-Employed Persons Disablement Insurance Act (WAZ), which was abolished in 2004.The Health Insurance Act (ZFW) used to be an employee insurance scheme, with both

employee and employer paying the premiums for the scheme. Nowadays the ZFW also applies to most self-employed persons and most groups of retired workers. The ZFW has virtually become a residence-based social insurance. If a self-employed person or a retired person is insured for the ZFW, he pays the premiums himself, including the employer's share of the premium.

The employment-based social insurances are financed mainly through social security contributions. The employers pay the contributions for the insurances established by the Sickness Benefit Act and the Occupational Disablement Insurance Act. Both employers and employees pay the contributions for the insurance from the Unemployment Benefit Act. The self-employed had paid the contributions for the WAZ themselves. In sum, 27.6% of the Dutch gross national product is spent on social security, which is what is spent on average in the European Union countries (Noordam 2004: 51).

Table 3: Costs of social security in 2003 (billions of euros)[2]

Social security benefits: 90,8	
Social security provisions: 9,7	Social insurances: 81,1
ABW 4,7	ZW 1,6
AKW 3,2	WAO 12,1
IOAW/IOAZ 0,2	WAZ 0,6
WAJONG 1,6	WW 6,4
WWIK 0,03	ZFW 16,1
	AWBZ 19,1
	AOW 23,1
	ANW 1,6

Source: Noordam 2004: 51.

[2] Only the costs of the social security provisions and social insurances described in this paper are taken into account for table 3.

Four pillars of social security

The social security provisions and the social insurances together compensate for most social risks and labour-related risks, but they represent just the first two pillars of the Dutch social security regime. On top of these social security provisions and social insurances there is a third pillar, the supplementary pension schemes, which are the result of collective labour agreements. The fourth pillar of social security consists of private insurances. Since 2004 one employment-based social insurance, the Self-Employed Persons Disablement Insurance Act (WAZ), has been abolished and left to the private insurance market. Only the costs of the social security provisions and social insurances described in this paper are taken into account for table 3.

Table 4: Pillars of social security

		Residents		
Social security provisions	Family Incapacity for work Destitute	AKW WAJONG (Young disabled persons only) ABW, IOAW, IOAZ (abolished in 1004), WWIK		
		Residents	Employees	Self-employed
Social insurances	Illness Incapacity for work Old age Surviving relatives Unemployment	ZFW, AWBZ AOW ANW	ZW, WAO WW	WAZ (abolished in 2004)
Collective labour agreements	Old age		Supplementary pension schemes of most groups of employees	Supplementary pension schemes for some groups of self-employed
Private insurances	Incapacity for work			Occupational disability insurances

Source: Noordam 2004: 37, 54.

The risks that employment-based social insurances compensate for are risks closely related with being active on the labour market and involved in paid labour. The risks related with unpaid labour are excluded from the social insurances. This situation causes problems in particular for women who are not active on the labour market but choose to stay home and raise their children. If these women are unable to work, they do not receive any benefits. They also are excluded from entitlement to the General Work and Care Act, which deals with the combination of working and raising children (Noordam 2004: 37). The male breadwinner-model (i.e. the husband raises the income, the wife raises the children) has not vanished entirely in the Netherlands, though more and more women do work part time. Social security organisations Both the social security provisions and the social insurances are regulated by the state and uniform throughout the country. The Employee Insurance Implementing Body (UWV) is responsible for the administration of the employment-based social insurances that compensate for the labour-related risks of sickness, disability and employment, such as the Sickness Benefit Act, the Occupational Disablement Insurance Act, the Unemployment Benefit Act and the Self-Employed Persons Disablement Insurance Act. The UWV also is responsible for the administration of social security provisions like the Occupational Disablement Assistance Act for Handicapped Young Persons. The UWV must ensure that those employees and self-employed persons at risk receive the benefits to which they are entitled. The ultimate responsibility at government level for legislative and budgetary issues related to the employment-based social insurances and most of the social security provisions lies with the Ministry of Social Affairs and Employment. The Social Insurance Bank is responsible for the administration of some social security provisions and social insurances, such as the General Child Benefit Act, the General Old-Age Pensions Act and the General Surviving Relatives Act. The Health Care Insurance Board coordinates the implementation and funding of the Health Insurance Act (ZFW) and the General Exceptional Medical Expenses Act (AWBZ). The Ministry of Public Health, Welfare and Sport determines policy for the ZFW and AWBZ insurances. The municipal social services are responsible for the administration of most social security provisions, such as the General Supplementary Benefits Act, the Act on Work and Income Provision for Artists, the Act on Income Provisions for Older, Partially

Disabled or Unemployed Persons and the Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed Persons.

2.3 The scope of the employment-based social insurances

In theory, only employees have access to employee insurance schemes like the Sickness Benefit Act, the Occupational Disablement Insurance Act and the Unemployment Benefit Act. The self-employed are excluded from these insurances schemes. In reality, however, some groups of self-employed persons have access to these social insurances, usually because of their background as an employee. Some groups of self-employed persons even have a supplementary pension fund on the basis of their profession. In addition, some self-employed persons, such as painters, metalworkers and steelworkers, fall under the scope of the trade unions and therefore have a supplementary pensions fund. In theory, it is possible for self-employed persons to fall under the scope of the trade unions of works council's domain, just as employees do, but most trade unions and work councils ignore this possibility. The distinction between employees and self-employed persons is also diffused by the introduction of the notion of the fictitious employee. Athletes and artists, for example, are considered to be fictitious employees.

Fictitious employees

If a worker belongs to the scope of the social insurance schemes, the Sickness Benefit Act (ZW), the Occupational Disablement Insurance Act (WAO) and the Unemployment Benefit Act (WW) are mandatory. All employees belong to the scope of the social insurance schemes (Article 3 ZW, WAO and WW). Some workers are not officially considered employees because they do not work in a dependent employment relationship, yet their socio-economic position is very similar to the socio-economic position of employees. Thus, these workers, who are not employees, are considered employees as far as the employment-based social insurances are concerned. Classified as 'fictitious employees' for this purpose, this group includes certain contractors and

their workers, people employed by intermediaries and their workers, certain fishermen, students and interns, silent partners, outworkers, musicians, artists, athletes and people who exchange personal labour for financial remuneration and work fewer than two days a week for the same employer and earn less than 40% of the minimum wage. All these fictitious employees fall under the scope of the social insurances (Articles 4 and 5 ZW, WAO and WW).

Table 5: Scope of the social insurances ZW, WAO and WW

	Employees; Article 3 ZW, WAO and WW	Fictitious employees; Article 4 ZW, WAO and WW	Fictitious employees; Article 5 ZW, WAO and WW
ZW	Employee (natural person, younger than 65 years, Employed in private Business or public services) Excluding: ministers, secretaries of stage, ombudsmen and their substitutes, public safety workers, voluntary municipal firemen, managing directors and domestic staff; excluded by Article 6 ZW, WAO and WW	Contractors employed by natural persons People employed by Intermediaries Certain fishermen Students and interns Silent partners	Homeworkers Musicians Artists Athletes People who exchange personal labour for financial remuneration and work fewer than two days a week for the same employer and earn less than 40% of the minimum wage Excluding: governors and board members, clergymen, certain authors and editors; excluded by a governmental regulation
WAO	Idem ZW	Idem ZW Excluding: students and interns	Idem ZW
WW	Idem ZW	Excluding: students and interns	Idem ZW

Source: Sociaal-Economische Raad (Social and Economic Council) 2004.

However, some fictitious employees have been excluded from the social insurances through governmental regulation. Fictitious employees like governors and board members, clergymen and certain authors and editors are excluded from mandatory

coverage and participation. Moreover, employees who work in employment relations as formulated in Article 6 of ZW, WAO and WW are excluded from the scope of the social insurances. Thus, ministers, secretaries of state and national ombudsmen (and their substitutes), public safety workers, voluntary municipal firemen, managing directors, and domestic workers who work no more than two days per week for a private individual do not fall under the scope of the social insurances for employees. This does not mean that these workers have no access at all to employment-based social insurances. Ministers and secretaries of state have their own reduced pay schemes. Managing directors and domestic workers who work no more than two days per week for a private individual were treated like self-employed persons and were insured under the Self-Employed Persons Disablement Insurance Act.

The self-employed are always excluded from employee insurance schemes, but very often a self-employed person is considered to be a fictitious employee. This is especially the case when a self-employed person has a small contract, working fewer than two days a week for a certain employer, and earns with that labour less than 40% of the minimum wage (Article 5 ZW, WAO and WW). These so-called fictitious employees often consider themselves to be self-employed persons and act according to this status. These workers work for different employers, simultaneously or consecutively; because they sometimes work on a very regular basis or for a certain period of time for the same employer, this labour relation is considered to be one of fictitious employment. Even the tax authority treats these workers as self-employed entrepreneurs, granting them the tax reductions for entrepreneurs. Only the Employee Insurance Implementing Body treats them as fictitious employees with respect to the employee insurances. Some self-employed are fictitious employees because they fall under the scope of the social insurances. It is sometimes very difficult to distinguish a fictitious employee from a self-employed person. The fictitious employee represents a grey area between employees and the self-employed.

Artists and athletes

Some artists and athletes are employees, others are self-employed. The same social security provisions and social insurances apply to these artists and athletes as to other employees or self-employed persons. Often it is not easy to decide whether an artist or athlete is an employee or a self-employed person. It is especially difficult to determine the legal status of artists and athletes who work on a freelance basis or on the basis of consecutive short-term fixed contracts of less than three months for different employers. A special rule applies to these kinds of artists and athletes: they are considered to be fictitious employees, and, although they work on the basis of a shortterm labour contract, the employee insurances do apply to them. Moreover, these artists and athletes fall under a different tax regime and pay less income tax than employees do.

Artists even have their own social security provision. The Act on Work and Income Provision for Artists (WWIK) was implemented on 1 January 2005 and replaced the Act on Income Provision for Artists (WIK). Artists who do not earn enough income to support themselves can apply for the WWIK and receive it for four years. They can spread these benefits over a period of ten years. However, if an artist receives benefits under the WWIK, he or she cannot apply for benefits under the General Supplementary Benefits Act.

3 Social security schemes for employees

About 86% of the active Dutch workforce are employees. Thus, the employment-based insurance schemes apply to a large share of the Dutch population. These employmentbased insurances protect employees against the economic risks of sickness and disability, parenthood, old age and unemployment. In the Netherlands, most employee insurances deal with the costs and risks of sickness and disability.

3.1 The economic risk of sickness and disability

Many social insurances are aimed at the economic risk of sickness and disability. The Health Insurance Act and the General Exceptional Medical Expenses Act deal with the costs of medical care. The Sickness Benefit Act (ZW) and the Occupational Disablement Insurance Act (WAO) are concerned with the costs of income loss due to sickness and disability. The ZW and the WAO are closely interconnected.

Health insurance

The Health Insurance Act (ZFW) insures people against the costs of 'normal' medical care. About 65% of the Dutch population is statutorily insured under the ZFW. People who work for a municipality, province or police force (ca. 5%) are insured separately by means of a public insurance. The rest of the population—about 30%—are not eligible for the ZFW and have taken out private insurance for their healthcare costs. Private healthcare insurance varies from one insurance company to the next. The one exception to this rule is the standard package of all private healthcare insurance companies: it is uniform. A new health insurance regime will be implemented on 1 January 2006. This new Health Insurance Act will replace both the public and the private healthcare insurances.

The Health Insurance Act applies to (a) all persons under the age of 65 who are in paid employment and whose income is below the ceiling of €33,000 per year, (b) all self-employed persons under the age of 65 whose taxable income is below €20,800 per year and (c) recipients of social security benefits up to the age of 65 (e.g. beneficiaries of incapacity pensions) if the level of incapacity is over 45%, beneficiaries of widows' or orphans' pensions and beneficiaries of unemployment benefits. It even applies to persons 65 years or older if these persons were insured under this act before they reached the age of 65. This insurance is optional for persons 65 years or older if their taxable income is below €20,750 per year.

Everyone who meets the criteria set out in the legislation is automatically insured by mandate for healthcare expenses under the Health Insurance Act and must pay the statutory contribution. Employers, employees and self-employed persons contribute to this insurance. The employer contributes 6.75% of the employee's gross income to this insurance. The employee contributes 1.45% of his or her gross income (as of 1 January 2005). If a person does not have an employer because he or she is self-employed, this person contributes 8.20% to this insurance. People older than 65 also contribute 8.20% of their benefits received under the General Old-Age Pensions Act, but contribute less for any further income received.

General Exceptional Medical Expenses Act

Normal medical costs are covered by the Health Insurance Act and the medical expenses insurance. On 1 January 1968 the General Exceptional Medical Expenses Act (AWBZ) was established for serious uninsurable medical risks. Parents of a severely handicapped child, for example, might face high medical costs for a lifetime. The AWBZ covers every Dutch resident and even people who are not residents but who work and pay taxes in the Netherlands. Every Dutch resident contributes through his or her income taxes to this insurance, paying 13.45% of his or her gross income up to €30,357,into this insurance scheme.[3] The AWBZ is financed through employee and state contributions. As a general social insurance for serious medical risks and medical expenses, the AWBZ obliges all residents of the Netherlands to insure themselves against the costs of hospitalisation and nursing in the event of chronic illness and/or a physical or mental disability.

[3] See table 2

Sickness benefit

As a consequence of the ‘privatisation’ of the Sickness Benefit Act in 1994 and 1996, the risk of employee sickness leave has been transferred from the industrial sector as a whole to the individual employer. The period of employee sickness leave during which the employer must pay the wages of the employee has been extended. Before 1994 this period was two days. In 1994 it was extended to two or six weeks, depending on the size of the company. As of 1 March 1996, the Act on Extending Payment of Wages in Case of Sickness prolonged this period to 52 weeks.

The Gatekeeper Act came into effect on 1 January 2002 and introduced several measures to facilitate a speedier intervention in the first year of an employee’s sickness leave. On 1 April 2002 the Improved Gatekeeper Act came into force. This act tightened the rights and obligations of both the employer and the employee during the first 52 weeks of employee sickness leave (MISSOC 2004). Employees who are on sickness leave and who refuse to cooperate in efforts to reintegrate them back into their own position or an other, suitable position may be dismissed or have their wages suspended, providing that the Employee Insurance Implementing Body (UWV) has been asked for a second opinion. Employers that do too little to help an employee on employee sickness leave re-enter working life may be forced by the UWV to continue paying the employee’s wages for up to one year after the first 52 weeks. The UWV is responsible for collecting the contributions, assessing claimants’ incapacity for work and paying out the benefits.

With the implementation of the Act on the Extension Period of Continued Wage Payment During Sickness on 1 January 2004, the Sickness Benefit Act and the Occupational Disablement Insurance Act were again reformed. From this date on, employers have been obliged to pay 70% of an employee’s salary for a period of 104 weeks, rather than the previously arranged 52 weeks of employee sickness leave. Most collective labour agreements stipulate that an employer pays 100% of an employee’s salary during the first year of employee sickness leave. If the employer pays more than 70% of the employee’s last-earned wage during the second year of employee sickness leave, the

employer can be fined by having the duration that the employer has to pay the employee's wages prolonged. This sanction is introduced to prevent that employers pay more than 70% of the employee's last-earned wage during the second year of employee sickness leave: this is only allowed during the first year. The aim of the Act on the Extension Period of Continued Wage Payment During Sickness is to reduce employee sickness leave, decrease the number of occupational disability beneficiaries and give employers an incentive to stimulate their employees on sickness leave to resume work (MISSOC 2004). Since 1 January 2004, the period for which the employer is responsible for payment of sickness benefit has been extended to two years. Thus, most employees in the Netherlands no longer receive sickness benefits on the basis of the Sickness Benefit Act. Employers can choose to insure this
risk on the private insurance market.

The Sickness Benefit Act remains in force as a safety net for several groups of individuals, such as unemployed persons who receive unemployment benefits, employees on paid maternity leave, employees who are not able to work due to an organ transplantation and individuals with an incapacity for work who have re-entered the labour market. The Sickness Benefit Act is still considered to be a social insurance because the above-mentioned groups of employees can still apply for benefits underthis act. These benefits are financed from the Redundancy Payment Fund of the UWV and the General Unemployment Funds, and employers continue to pay for this insurance in order to create this safety net. The contribution of the employers varies by economic sector. Employees do not contribute to this social insurance. A person who receives benefits under the Sickness Benefit Act for over two years or whose employer has paid his or her wages for over two years of sickness leave becomes eligible for occupational disability benefits, but not before the UWV assesses his or her level of incapacity (Mudde 1997).

Occupational disability benefit

Incapacity for work is defined as an individual's inability to work as a result of a physical or mental disability (Noordam 2004: 202). A person is considered to have a complete or partial incapacity for work when, as a result of sickness or infirmity, he or she cannot earn the same wage that a healthy worker with similar training and equivalent skills normally would earn at the location where he or she works or most recently worked or, alternatively, at a comparable location in the vicinity. No distinction is made with respect to the cause of incapacity (MISSOC 2004). It does not matter, for instance, whether an employee breaks his leg on the work floor or during a skiing trip. There is also no distinction made between labour-related risks and social risks: all these risks are insured under the Occupational Disablement Insurance Act (WAO). The WAO dates from 1967, when it replaced the 1921 Industrial Accidents Act. Since 1967 the WAO has insured employees in the Netherlands against loss of wages due to disability, regardless of whether or not the disability relates to the job performed (Knegt 2001).During the General Disability Benefit Act (AAW), which was implemented in1976 and abolished in 1998, the WAO was only a supplementary insurance for employees on top of the AAW.

From 1 October 1976 until 1 January 1998 both employees and the self-employed were collectively and publicly insured against the risks of long-term incapacity for work under the General Disability Benefit Act (AAW). As of 1 January 1998, employees under the age of 65 have been insured under the WAO, whereas the self-employed, their spouses who work in the business, and professional practitioners under the age of 65 were insured under the Self-Employed Persons Disablement Insurance Act (WAZ). In addition, all Dutch residents under the age of 65 who already suffered from a disability when reaching the age of 17 or who have become disabled since that date and were students for a period of at least six months in the years immediately prior to that date are insured under the Occupational Disablement Assistance Act for Handicapped Young Persons. In 2004 the WAO was modernised and the WAZ was abolished.

On the basis of the 1967 WAO, the AAW had the same structure as the WAO: people who were unfit for full-time employment for longer than one year received 80% of their last-earned income. When a decline in industrial employment in the second half of the 1970s led to a mass exodus from the labour market, the social partners, among others, used the AAW/WAO scheme to shed redundant personnel under more favourable conditions than those provided by the normal unemployment benefit scheme. Again the number of AAW/WAO benefit recipients began to rise sharply in the early 1980s, and it became clear that both employers and employees were using the AAW/WAO as a means to facilitate organisational restructuring. Subsequent governments made several cuts; for example, benefits were reduced to 70% and linked to the age of the recipient. In those days, the general consensus was that the number of AAW/WAO benefit recipients was too high—almost one million people out of a workforce of about seven million—and that the AAW/WAO scheme did not do enough to reintegrate disabled employees into the labour market. Over the years the Dutch government took steps to solve this problem (Kaar 1999; Knegt 2001; MISSOC 2004).

In 1998, with the re-introduction of the WAO as main insurance against the risk of incapacity for work, employers, rather than public funds, were obliged to pay 70% of an employee's wages during the first year of sickness leave. In practice, employers often pay 100% of an employee's wages. The employer's contribution to the WAO consists of two separate components: a basic contribution, which is the same for all employers, namely, 5.60% (as of 1 January 2005), and a differentiated contribution, which varies by company depending on the number of employees receiving WAO benefits—small companies pay the calculated contribution, large companies pay the maximum of 8.52%. The employer can insure against this risk through a private insurance company or can choose to pay for this risk themselves. If an employer decides to take on the WAO risk alone, during the first five years it pays only the basic premium of 5.60%. An employer that employs a large number of people with an incapacity for work may claim a reduction or remission.

The WAO entitles employees under the age of 65 to a benefit if they are still at least 15% unfit for suitable employment after 52 weeks of incapacity for work. The Self-Employed Persons Disablement Insurance Act (WAZ) entitled and the Occupational Disablement Assistance Act for Handicapped Young Persons (WAJONG) entitle these groups of individuals to a benefit if they are at least 25% unfit for suitable employment after 52 weeks of incapacity for work. The WAJONG is financed with tax revenues, whereas the WAZ was financed by the self-employed themselves. WAZ benefits provided 70% of the minimum wage. If the employee is still unable to work after the first year of sickness leave, he or she then receives WAO benefits that are financed through public funds. Moreover, it has become mandatory for employers to enter into a contract with a health and safety service—a commercial company geared to providing support for sick employees—which offers the employer consultancy services and an assessment of its working conditions policy. Market incentives have also been introduced in the form of differentiated contributions: the higher the number of employees to enter the WAO scheme, the greater the company's WAO contribution (Kaar 1999). The number of employees that become incapable for work increases the WAO contributions, but hiring employees with disability problems decreases the WAO contributions.

On 1 July 2004 the criteria for determining the degree of disability were tightened (to a degree of incapacity for work of 35% or more), and all beneficiaries who became sick before 1 January 2004 and who are under the age of 45 will be re-assessed under the new criteria for the determination of the degree of incapacity for work (MISSOC 2004). The employer is now also responsible for finding or creating an appropriate position for employees with a partial or temporary incapacity for work. This position can be a job in the company concerned, adapted to the employee's capabilities, or another job in a different company. The employee should be actively involved in the reintegration process and be required to accept a different suitable job, as long as the pay is at least 70% of his or her last-earned wage. If the employee's incapacity for work lasts for more than two years and employer and employee efforts do not result in securing a new job, or if the employee does not contribute sufficiently to the reintegration process, the employee can be dismissed. In this case, employees can apply for benefits under a new

unemployment benefits scheme. If the employer did not do enough to reintegrate the employee or to find alternative work, it is required to continue paying the employee's wages for longer than two years (Grünell 2001; Knegt 2001).

If everything goes as planned, a new system for the WAO will be introduced on 1 January 2006, with the implementation of the Work and Income Act. The Work and Income Act is connected with the Act on the Extension Period of Continued Wage Payment During Sickness, which prolongs the qualifying period for the WAO from 52 weeks to 104 weeks. Proposals for a new criterion for the determination of the degree of incapacity for work are under consideration. Employees who became incapacitated for work after 1 January 2004 will, after a qualifying period of 104 weeks, be assessed for the WAO on the basis of the new criterion for the determination of the degree of incapacity for work. The present criterion is based on the loss of earning capacity, whereas the new criterion will be based on the concept of capacity for work.

The Work and Income according to Capacity Act centres on the concept of capacity for work rather than incapacity for work. The WAO will only apply to employees with a complete and permanent incapacity for work (i.e. a degree of incapacity for work of higher than 80%). Employees with a temporary and/or partial incapacity for work (i.e. a degree of incapacity for work of between 35% and 80%) should find a suitable job or receive unemployment benefits; alternatively, they can insure themselves against this risk on the private insurance market (MISSOC 2004). The problem with this approach is that these workers will not easily find a job that suits their needs, and if they are not receiving WAO benefits they will be dependent on entitlements under the Unemployment Benefit Act or, worse, the General Supplementary Benefits Act. Thus, the new Work and Income according to Capacity Act is not solving the problem, just shifting it.

3.2 The economic risk of parenthood

Work and care

The General Work and Care Act is intended to facilitate the reconciliation of work and family responsibilities. The act gives employees the right to work part time, unless the employer can demonstrate that considerable company interests necessitate otherwise. Up to 1 August 2004, it also gave self-employed women the right to a paid maternity leave of at least 16 weeks. Female employees are still entitled to this paid maternity leave. The leave is financed through contributions paid by the employers to the Sickness Benefit Act. These women receive benefits that compensate 100% of their daily wage, though the maximum benefit permitted is €167 per day.

Child allowance

The General Child Benefit Act applies to all parents who live in the Netherlands. Foreigners who work for a Dutch employer in or outside the Netherlands also can claim child benefits. The child allowance is for children, stepchildren and foster children up to the age of 18, even when these children live abroad in a European Union country or in a country with which the Netherlands concluded an agreement on the verification of entitlements. Child benefits are paid on a quarterly basis. In 2004 a parent will receive €175 per quarter for children up to 6 years of age, €215 per quarter for children between the ages of 6 and 11, and €250 per quarter for children between the ages of 12 and 18. When a child turns 16, parents only receive child benefits if the child attends a regular day school, has an incapacity for work or is officially unemployed. Child benefits for children between the ages of 16 and 18 will be discontinued if the child goes to university, pursues higher vocational education or begins to work more than 19 hours per week. Children are allowed to earn a limited amount of money, however, though this may not exceed more than €800 per quarter.

3.3 The economic risk of old age

Every person who legitimately stays in the Netherlands and is a resident of the Netherlands, whatever his or her nationality, and who is 65 years of age or older receives a basic pension paid under the General Old-Age Pensions Act (AOW). All persons between the ages of 15 and 65 who live in the Netherlands, whether they receive an income or not, are insured under this pension act. Even those who do not live in the Netherlands but work and pay taxes there will be insured under the AOW scheme. This general pension scheme for all Dutch residents is financed by tax contributions on earned income. The premiums for the AOW scheme are incomerelated,and every person in the Netherlands with an income pays these premiums.

The amount a person receives depends on his or her domestic situation and on the number of years he or she has been insured under the AOW scheme. If a personhas lived in the Netherlands continuously from the age of 15 to the age of 65, this person will be entitled to a full (100%) pension (50 years, at 2%for each year of residence). The full pension is reduced by 2% for each year of non-insurance. The only way a person is not insured is when he or she no longer lives in or works and pays taxes in the Netherlands. The old-age pension scheme came into effect on 1 January 1957, with a transitional arrangement for people who were older than 15 in 1957. For these people, the years between their fifteenth birthday and 1 January 1957 are treated as years of insurance if they have Dutch nationality or if they have lived in the Netherlands, the Dutch Antilles or Aruba for six years after their fifty-ninth birthday and are living in the Netherlands when they turn 65.

The entitlements under the AOW are related to the minimum wage. If a person is married, the gross amount of the AOW pension is maximised at €631.67 per month; if a person is single, this amount is maximised at €921.12 per month; and if a person is a single parent and is taking care of children under the age of 18, the maximum gross amount is set at €1,141.04 per month (2004 figures). If a person has a partner (spouse or other partner) who is under the age of 65, this person will, in principle, be entitled to a

supplementary allowance on top of his or her pension. The amount of the supplementary allowance depends on the partner's insurance record, and whether he or she meets the conditions of the transitional arrangement. Moreover, this supplementary allowance depends on the income of the partner. It is payable until the partner turns 65. People who turn 65 on or after 1 January 2015 will not be entitled to a supplementary allowance for a younger partner. They will receive only a pension at the rate of a married person. Most employees—about 90%—have a compulsory supplementary pension scheme as well. These compulsory supplementary schemes are based on agreements between the social partners (the employer or employers' organisation and the trade unions) and are part of collective labour agreements.

3.4 The economic risk of unemployment

Unemployment, like incapacity for work, means that an individual is not working or cannot work. This situation arises because no work is available or because an employer does not wish to make work available (Noordam 2004: 202). The economic risk of unemployment for employees is covered by the Unemployment Benefit Act. For the self-employed, this economic risk is considered to be uninsurable, because a self-employed person can influence his of her situation of unemployment more than an employee can. If an employee is summarily dismissed because of his or her own wrongdoing, or if an employee quits voluntarily, this employee will not receive benefits under the Unemployment Benefit Act. The contributions required through the Unemployment Benefit Act actually fund two separate components of this act: the General Unemployment Funds and the Redundancy Payment Funds. The contributions to the General Unemployment Funds amount to 7.35% of wages in total, of which 5.80% is contributed by the employer and 1.55% by the employee. The contributions to the Redundancy Payment Funds are paid by the employers alone and amount to 1.89% of wages. This percentage represents the average contribution; it may vary by industry. The Unemployment Benefit Act contributions are maximized at a wage of €167 per day, with contribution-free allowances of €58 per day.

As of 2003, with the implementation of the Act on Abolition of Follow-up Unemployment Benefit, employees who become unemployed no longer are entitled to a Follow-up Unemployment Benefit (70% of the minimum wage). This benefit had followed the wage-related unemployment benefit (70% of the employee's wage), extending coverage for an additional two years. The aim of this act is to stimulate unemployed persons to resume work in order to decrease the costs of the Unemployment Benefit Act and to prevent employers from using this unemployment scheme as an early retirement scheme for older employees. Moreover, as of 1 January 2004 unemployed persons older than 57.5 years must actively search for jobs, which previously was not the case (MISSOC 2004).

The Unemployment Benefit Act is currently under revision. If everything goes as planned, the requirements to qualify for this benefit will be stricter than before. To qualify for unemployment benefits, an employee must have worked 26 of the preceding 36 weeks (before May 2005 it had been 39 weeks). If an employee only meets this requirement, the unemployment benefits will last for a maximum duration of three months. The first two months the employee will receive 75% of his or her last-earned wage and the third month only 70% of his or her last-earned wage. This type of unemployment benefit is short-term; if an employee wishes to qualify for long-term unemployment benefits, he or she must meet the requirement mentioned above, called the 'weeks requirement', as well as another requirement, the 'years requirement'. This requirement is met if an employee has worked at least 52 days in four of the preceding five years. If an employee meets both requirements, the unemployment benefit could last for a maximum duration of three years and two months (before May 2005 this had been five years). For the first two months the employee would receive an unemployment benefit of 75% of the last-earned wage, and from the third month on 70% of the last-earned wage.

If an older, unemployed or (partially) incapacitated employee does not receive enough benefits under the Unemployment Benefit Act or the Occupational Disablement Insurance Act to support himself, this person can apply for benefits under the Act on Income Provisions for Older, Partially Disabled Unemployed Persons. This social

security provision raises benefits to the social security provision level of 70% of the minimum wage. In the Netherlands the minimum wage is age-related. If a person is 23 or older and works full time (38 hours per week), the minimum wage is €1,264.80 per month (in 2005).

4 Specific aspects of social protection for the self-employed

Although it is true that the self-employed have less social security than employees, they are not totally left to their own devices. Like every other Dutch citizen, they can receive entitlements under the social security provision schemes. The self-employed are insured against the risk of parenthood under the General Child Benefit Act. If circumstances make an individual unable to work this person can receive benefits under the General Supplementary Benefits Act. A self-employed person could fall back on the General Supplementary Benefits Act even in the case of unemployment, but then would have to sell or otherwise terminate his or her company. In the Netherlands the self-employed have access as well to the residence-based social insurances, such as the General Old-Age Pensions Act, which provides financial support in old age; the General Surviving Relatives Act, which is a surviving relatives pension. It insures people against the risk of losing a spouse or, if the beneficiary is younger than 18, of losing a parent. The self-employed also fall under the scope of the General Exceptional Medical Expenses Act, which insures against the costs of exceptional medical expenses.

In theory, the self-employed are excluded from all employment-based social insurances except the Health Insurance Act. Many self-employed persons fall under the scope of this act. Some self-employed persons, however, could apply for benefits under the employment-based social insurances, primarily because of their history as an employee. If for a certain period of time an employee was insured against sickness through the Sickness Benefit Act and against incapacity for work through the Occupational

Disablement Insurance Act (WAO), then he or she can voluntarily continue both insurances as a self-employed person. Other self-employed persons might apply for all three employee insurance schemes—the Sickness Benefit Act, the WAO and the Unemployment Benefit Act—because they are regarded as fictitious employees by the Employee Insurance Implementing Body. However, most of these self-employed persons do not qualify for benefits under these employee insurance schemes because they do not meet the requirements.

4.1 The economic risk of sickness and disability

In the past, self-employed persons were collectively and publicly insured against the risk of long-term incapacity for work. This situation changed only a year ago. Employees are still collectively insured in the Netherlands, but the self-employed are not. Insurance for the self-employed against the economic risk of long-term incapacity for work has been left to the private insurance market. The Sickness Benefit Act is an employee insurance and never applied to the self-employed, except in those cases in which the self-employed continued their employee insurance on a voluntary basis after making the transition from employment to self-employment. All other self-employed persons always had to insure on the private insurance market against the economic risk of sickness and disability during the first year (and later, first two years) of sickness leave, or had to rely on their savings or social safety net, such as their family, spouse or partner.

Health insurances

The Health Insurance Act applies to all self-employed persons under the age of 65 whose taxable income is below €20,800 per year. This income is determined as an average of the taxable income in the third, fourth and fifth years preceding the year of insurance. This requirement was introduced because self-employed persons often make more profit in some years than in others. A determination of average income over three years helps prevent situations in which a self-employed person is covered by the Health Insurance Act one year but the next year is not, thus obliging him or her to obtain private

health insurance. If a person switches several times between public and private health insurance, the premiums of the health insurance tend to rise. Moreover, because private insurance companies may subject the self-employed to a medical examination, there is always the possibility that a self-employed person may become an ‘uninsurable risk’ in the eyes of the private insurance company. A new health insurance regime will be implemented on 1 January 2006. This new Health Insurance Act will replace both the public and the private healthcare insurances of the self-employed. Finally, just to note, the General Exceptional Medical Expenses Act applies to every Dutch resident and thus also to the self-employed.

Self-Employed Persons Disablement Insurance Act

From 1 October 1976 until 1 August 2004 the self-employed were collectively and publicly insured against the risks of long-term incapacity for work, first on the basis of the General Disability Benefit Act (AAW) and then, from 1 January 1998 until 1 August 2004, on the basis of the Self-Employed Persons Disablement Insurance Act (WAZ). Both the AAW and the WAZ were mandatory social insurances. The AAW applied to all residents of the Netherlands, including the self-employed. The WAZ was mandatory for the self-employed; freelancers; employees who are excluded from the employee insurance schemes, such as managing directors and domestic workers; fictitious employees such as homeworkers and fishermen; and fictitious employees who are excluded from the employee insurance schemes, such as writers and editors. To ensure that even self-employed persons with a low risk of incapacity for work insured themselves against these risks, participation in the disablement insurance scheme was mandatory.

Approximately one million self-employed persons were insured under the WAZ.
This group consisted of about 600,000 to 700,000 self-employed persons (of which 90,000 to 130,000 were managing directors) and about 300,000 professionals, such as dentists, midwives, barristers and solicitors (Boot 2004: 152–154). The group of WAZinsured persons (ca. one million) was larger than the group of self-employed (540,000) because certain groups of employees and fictitious employees were also

insured under the WAZ. More WAZ premiums were received than WAZ benefits paid. The WAZ fund contained over one billion euros on 1 January 2004 (Lagerveld, Minderhout & Zwinkels 2004: 8) In 2002 about 57,000 people received benefits under the WAZ, and the number was declining (UWV 2003). Two-thirds of WAZ beneficiaries received benefits longer than five years (LISV 2000), which means that they already received these benefits under the General Disability Benefit Act. Most likely these beneficiaries were not self-employed at all, but were employees whenthey became incapacitated for work.

The benefits of the WAZ were maximised at the social security provision level, which is 70% of the minimum wage. In fact, however, these benefits were gradual and amounted to—according to the degree of disability—between 21% and 70% of the minimum wage. If the self-employed earned an income below the minimum wage, the WAZ benefits would be 70% of that income. The premiums for the WAZ were incomebased, and the scheme had a qualifying period of 52 weeks (i.e. the first year of illness). After this qualifying period, the insurance offered self-employed persons entitlement to benefits equal to 70% of the minimum wage. In cases of maternity leave, the insurance paid out 100% of the minimum wage for a period of 16 weeks. The qualifying period of 52 weeks meant that self-employed persons were not insured against the risks of long-term incapacity for work in their first year of illness. If the self-employed wanted to insure against this risk, they had to find an insurer on the private market. If the self-employed wanted a supplementary insurance on top of the WAZ, they had to purchase it on the private insurance market as well. A considerable number of self-employed persons insured themselves on the private market against the risk of (long-term) occupational disability in the first year; many also purchased a supplementary insurance for the latter years from a private insurance company.

On 1 August 2004 the WAZ was abolished. The act has been abolished in the sense that, since 1 January 2004, no one pays premiums any longer for this insurance and, since 1 August 2004, no new persons receive benefits through this insurance (after the qualifying period of one year; thus, to be more precise, as of 1 August 2005). Individuals

who already receive benefits under the WAZ will continue to receive these benefits. The act was abolished because none of the parties involved were pleased with the act: the premiums were considered to be too high in relation to the entitlements provided under the insurance. According to the Dutch government, the main reason for its abolishment is that it is relatively easy for the self-employed to insure against the risk of long-term incapacity for work through private insurance companies, and that many already do so (Noordam 2004: 150–152). It is thought that occupational disability insurance for the self-employed should not be a public concern, but rather be a matter of the self-employed themselves (Lagerveld, Minderhoud & Zwinkels 2004: 9). Data show, however, that in 2001 only 40% to 50% of the self-employed insured themselves against the risks of sickness and incapacity for work on the private insurance market. The majority of the self-employed that did not insure themselves said that they did not do so because private insurance is too expensive. In 2002, the average premium of a private insurance was about €300 per month (Evers, De Muijnck & Overweel 2002).

Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed

If an older, unemployed and partially incapacitated self-employed person did not receive enough benefits under the Self-Employed Persons Disablement Insurance Act (WAZ) to support himself, this person could apply for benefits under the Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed Persons (IOAZ). This social security provision raised the benefits to the social security provision level of 70% of the minimum wage. The individual had to receive benefits under the WAZ in order to be eligible for benefits under the IOAZ. When the WAZ was abolished, so too were the IOAZ for new beneficiaries and the paid maternity leave for self-employed women.

Alternative social insurance

The Dutch government abolished the WAZ, but created an alternative social insurance against the risk of incapacity for work. It did this because many self-employed persons were rejected by insurance companies when they applied for a private occupational

disability insurance. Private insurance companies are not obliged, as they say, to insure ‘burning houses’, and thus tend to turn down people on the basis of their age or medical history. If an insurance company does insure a person with a medical history, it tends to demand a longer qualifying period than usual, raise the premiums or even exclude certain illnesses or complaints.

This alternative insurance against the risk of long-term occupational disability is voluntary, and only certain groups of self-employed persons can sign up for it: self-employed persons who insurance companies consider uninsurable because of their age or medical background, people who receive WAZ benefits and lost these benefits because they are considered fit to work, and people who were not able to buy a private occupational disability insurance that insures them until the age of 65. The insurance has a qualifying period of two years and only pays out benefits when a person has no capacity at all for work. If the self-employed person still has some capacity for work, he or she will not receive any benefits. The benefits may not exceed €11,500 per year (in 2004), and the premiums for this insurance are rather high, at somewhere between €2,000 and €2,500 per year (in 2004).

Some people argue that this alternative insurance is a bogus insurance. The premiums are very high in relation to the entitlements under the insurance; in fact, they are even higher than the WAZ premiums. The only difference between this insurance and the General Supplementary Benefits Act is that the self-employed beneficiary does not have to sell or otherwise terminate his or her company.

Voluntary continuation of the employee insurance schemes

If a self-employed person worked in the past as an employee, he or she can continue the employee insurance schemes against the risks of sickness and incapacity for work on a voluntary basis. To qualify for this voluntary continuation of the schemes, the self-employed person must have been insured through the Sickness Benefit Act and the ccupational Disablement Insurance Act (WAO) for a period of three years. In addition, the self-employed person must make this decision within four weeks of his or her

transition from employment to self-employment. Only 6% of the self-employed are voluntarily insured under the Sickness Benefit Act and the WAO. Under these schemes, they receive benefits after just three days of sickness leave, and the benefits amount to 70% of the insured wage, though this amount may not exceed €165 per day. The premiums for these insurances are paid by the self-employed themselves and correspond to 5.33% of the insured wage for the Sickness Benefit Act and 7.43% of the insured wage for the WAO. The Employee Insurance Implementing Body does not actively promote this voluntary continuation of the employee insurance schemes (Lagerveld, Minderhoud & Zwinkels 2004: 9–10).

4.2 The economic risk of parenthood

With the abolition of the Self-Employed Persons Disablement Insurance Act (WAZ), the paid maternity leave for self-employed women also was abolished. Up to August 2004 self-employed women were entitled to 16 weeks of paid maternity leave on the basis of the General Work and Care Act. The entitlements were paid from the WAZ fund. During these 16 weeks self-employed women received 100% of the minimum wage, or less if they earned less than the minimum wage.

Since August 2004, self-employed women must pay for their maternity leave themselves if they wish to take time off around their pregnancy. To justify this change in legislation, the Dutch government argued that it is easy to insure for paid maternity leave on the private insurance market. But in making this argument, the government failed to address the fact that the insurance companies use a qualifying period of two years for paid maternity leave. The Equal Treatment Commission already has ruled that this qualifying period is in contravention of the General Equal Treatment Act and the directive 86/613/EEG. The Minister of Social Affairs and Employment has promised to consult with the Equal Treatment Commission and the International Labour Organization (ILO) about how to insure the need for a paid maternity leave. The minister is also of the opinion that the abolition of public insurance for this risk was appropriate (Asscher-Vonk 2004: 433–435). One benefit for self-employed persons with children now remains: the

General Child Benefit Act, as a social security provision that applies to all parents, also provides benefits to parents who are self-employed.

4.3 The economic risk of old age

In the Netherlands all residents, and thus, too, the self-employed, are entitled to a basic pension scheme under the General Old-Age Pensions Act. Some self-employed persons qualify for entitlements under the supplementary pension schemes. Pension funds run the pension scheme for everyone who falls under the scope of the pension fund. If a person falls under the scope of a pension fund, the pension scheme of that pension fund is mandatory. Self-employed plasterers, terrazzo workers and persons working in the stone industry, for example, fall under the scope of the pension fund of the construction industry (Kamerstukken II, 2000–2001 27 686, no. 5, p. 6). The Mandatory Participation in an Additional Branch Pension Fund Act stipulates that self-employed carpenters, joiners, metalworkers, steelworkers and painters are obliged to take part in their branch pension funds. The Mandatory Participation in an Additional Occupational Pension Act stipulates that self-employed general practitioners, medicalspecialists, apothecaries, dentists, midwives, veterinary surgeons, physiotherapists,actuaries, exchange brokers, lawyers, notaries and ship pilots must take part in the occupational pension scheme that has been set up by their particular occupational group. The additional pension scheme of the ship pilots includes an occupational disability insurance (Schoukens 2000: 203). Self-employed persons who have worked in the past as an employee can continue the mandatory supplementary pension scheme belonging to their branch or enterprise on a voluntary basis.

4.4 The economic risk of unemployment

If an employee makes the transition to self-employment, he does not immediately lose his rights to certain employment-based social insurances, such as that provided under the Unemployment Benefit Act. He keeps his right to unemployment benefits for the first eighteen months after he started up his own company. He can, if necessary, regain his

rights as an employee to unemployment benefits, but if he does so he must terminate or sell his company in order to gain access to these benefits.

If the self-employed person does not have a background as an employee, he or she is not insured against the risk of unemployment. The Unemployment Benefit Act applies only to employees. Even private insurance companies consider the risk of unemployment uninsurable for self-employed persons. Thus, in the event of unemployment, the self-employed must fall back on their savings or on the income of their spouse or partner or, if they are willing to sell or close their company, they can fall back on the General Supplementary Benefits Act.

5 Certain aspects of social protection in practice

5.1 The borderline between employees and the self-employed

Many studies point out that a grey area exists between dependent employment and self-employment. Some types of labour are considered grey because they do not easily fit into the binary system of employment and self-employment. They do not fit because they display characteristics of both employment and self-employment. The ILO (2003) refers to these types of labour as objectively ambiguous employment relationships. Adalberto Perulli has called them ‘difficult-to-classify forms of employment’. Other types of labour are exist in this grey zone because they appear to be self-employment but are in fact dependent employment. The ILO (2003) refers to these types of labour as disguised employment relations. Perulli calls them ‘falsely self-employed persons’ (2003: 14–15).

In the Netherlands the binary system of employment and self-employment is diffused through the notion of the fictitious employee. Very often individuals who consider themselves to be self-employed persons are regarded as fictitious employees as far as

the social insurances are concerned. The binary system is also diffused through the voluntary continuation of employee insurance schemes by former employees who have made the transition from employment to self-employment.

5.2 Benefits entitlement revisited

In the past many people who considered themselves to be self-employed were treated by the Employee Insurance Implementing Body as fictitious employees, meaning that they and their employers had to pay premiums for the employee insurance schemes. This situation caused problems for these self-employed persons. For one, potential employers did not want to hire them because often they did not know whether the self-employed person was really self-employed or a fictitious employee. These potential employers feared that they might have to pay premiums for the employee insurance schemes or even fines if they had not paid these premiums. In addition, even when the self-employed and their employers paid the premiums for the employee insurance schemes, these self-employed persons hardly benefited from these insurances because they almost never qualified for the schemes.

With the introduction of the Statement of Work Relationship (VAR) in 2002, the Dutch government tried to solve these problems faced by self-employed persons who are regarded as fictitious employees, and even tried to promote self-employment. The VAR is a voluntary declaration issued by the tax authorities on request, which is meant to provide clarity on both the legal status of the employed and any obligation to insure under the employee insurance schemes. This declaration was introduced because self-employed individuals and their employers would like to be certain in advance about the manner in which their employment relationship will be assessed by the tax authorities and the Employee Insurance Implementing Body (UWV). Moreover, the self-employed and their employers would like to have a definitive answer as to whether they are obliged to pay premiums for employee insurance schemes.

In principle, the self-employed would have certainty about their status in advance were it not for the fact that the UWV can assess employment relations in retrospect and conclude that the self-employed individual in question was in fact a fictitious employee. In such cases, retrospective collection of income taxes takes place and the employee insurance scheme premiums are recovered from the self-employed person, unless the employer of the individual in question could reasonably have assumed that the labour performed was in a relationship of employment and not independent labour. An employer could reasonably be expected to know that a self-employed individual is an employee if this individual previously worked as an employee for the same employer or if the individual performed the same work as an employee in the service of the same employer. Under such circumstances, retrospective collection of income taxes takes place, and the employee insurance scheme premiums are recovered from the employer.

In practice, whereas the UWV never has imposed retrospective collection on the self-employed, it always has done so on the employers of these self-employed individuals. This policy pursued by the UWV has made employers hesitant about engaging the services of self-employed individuals, thus detracting from one of the most important objectives of the Statement of Work Relationship (VAR). Although the objective of the VAR is to provide self-employed individuals with more security in advance, so that they are in a better position to bring in more work, the policy of the UWV actually costs them work.

In order to tackle these problems, an act extending the effects of the VAR was introduced on 1 January 2005. The most important component of this act is that no retrospective collection affecting either the self-employed or the employer takes place if it appears in retrospect that the self-employed individual was in fact a fictitious employee—unless, of course, a possible case of fraud is involved. In addition, the VAR of the self-employed individual can be reconsidered. If deemed an employee, the self-employed person may no longer seek recourse to employee insurance schemes under the Sickness Benefit Act, the Occupational Disablement Insurance Act (WAO) or the Unemployment Benefit Act, as this ‘employee’ did not pay any premiums for these

employee insurance schemes. Before the introduction of the act extending the effects of the VAR, an individual's status as 'employee' was sufficient to gain access to the schemes under the Sickness Benefit Act, the WAO or the Unemployment Benefit Act. The payment or non-payment of employee insurance scheme premiums did not play a role. Whether or not premiums have been paid is now an important precondition if recourse to employee insurance schemes is sought.

Because employee insurance scheme premiums no longer can be collected in retrospect, the tax authorities have to monitor the employment relationships of the self-employed more closely. To this end, the VAR's term of validity has been reduced from two years to one. Secondly, the VAR of the self-employed individual is checked after the year has passed on the basis of the income tax return submitted by the person in question. If the tax return deviates from the VAR, the VAR will be revised. Thirdly, the application form for the VAR has become more comprehensive. The tax authorities now explicitly ask (a) whether the self-employed individual concerned has worked in the past as an employee for his or her employer and (b) whether the individual has carried out the same activities as a self-employed individual for an employer as those carried out by employees and (c) whether the employer is a secondment or a temporary employment agency. The tax authorities now also pay closer attention to aspects of entrepreneurship when assessing the employment relationships of the self-employed.

These efforts will prevent some self-employed individuals from being considered employees in retrospect. Yet, despite this stricter monitoring, it will continue to be difficult to distinguish between fictitious employees and the self-employed on the basis of the VAR alone. This problem relates to the way in which the VAR is assessed: the VAR is issued in advance on the basis of all the employment relations that the self-employed individual anticipates within that year, and not on the basis of each separate employment relationship.

Self-employed individuals have been given some security in the sense that they should receive more work now that employers need not fear possible retrospective collection of

income taxes and employee insurance scheme premiums. It remains to be seen, however, whether such security for employers weighs up against the additional risks for the self-employed, who no longer have access to employee insurance schemes. If deemed to be employees in retrospect, self-employed individuals will have no access to employee insurance schemes, because it will be clear from the VAR issued in advance that they are self-employed and thus have not paid premiums for the employee insurance schemes.

Organisations that represent the self-employed are enthusiastic about the act extending the effects of the VAR, because it gives the self-employed and their employers the security that they long have been asking for. Having obtained a guarantee that the Employee Insurance Implementing Body no longer can collect insurance scheme premiums in retrospect, employers no longer will be hesitant about engaging the services of a self-employed person. In turn, this arrangement gives the self-employed the security they want: the guarantee that they can work.

The relevant question now is why only 60,000 workers per year apply for a VAR, which is a voluntary declaration (Sociaal-Economische Raad, 2004). There are about 540,000 self-employed persons in total, which means that only 11% of the self-employed apply for a VAR. The Social and Economic Council (Sociaal-Economische Raad) expects that the number of applicants will increase as a result of this new act, and anticipates that 180,000 workers, or 33% of the self-employed, will apply for a VAR. What this expectation is based on is not clear. This estimate corresponds with the belief that one out of three self-employed persons is a pseudo employee.

6 Concluding remarks

In the Netherlands the difference in levels of protection and compensation between employees and the self-employed goes back to the legal distinction between these two

types of workers. The employee and the employer have an authoritative labour relationship, based on subordination. The legal definition of dependent employment is that an employer is entitled to instruct a worker as to how the work is carried out and to ensure that good conduct is maintained within the company (Article 7:660 of the Civil Code). A self-employed person is considered an equal to the employer and therefore does not need to be protected against and compensated for the labour-related risks of unemployment and incapacity for work. Thus, the most important distinction between employees and self-employed persons is that employees are legally subordinate to their employer, whereas self-employed persons are not. Employees are considered to be legally subordinate to and economically dependent on their employer, and therefore need to be protected with social insurances. The self-employed do not require protection, and, in theory, the employee insurance schemes do not apply to the self-employed because the self-employed are not legally subordinate to and economically dependent on one employer or one employment relation. In fact, they are supposed to divide labour-related risks over several, preferably more than three, employers.

Although employers do not compensate the labour-related risks of the self-employed, the tax authority does compensate for the cost of these risks. The premiums that a self-employed person pays for a private insurance against the costs and risks of sickness and incapacity for work are tax-deductible. And if a self-employed person is saving for his or her old age, these savings can be deducted from his or her income taxes. Even investments may be tax-deductible. The tax authority compensates the self-employed through tax reductions. In view of these advantages, perhaps there is noneed for a compensating employer.

There has been a good deal of discussion in the past about whether or not a self-employed person should enjoy the same protection against social risks and labourrelated risks as employees do. For a long time many believed that both the self-employed and employees should enjoy the same protection. When the Self-Employed Persons Disablement Insurance Act was implemented in 1998, it was still considered undesirable to have the self-employed make their own decisions about whether or not

they would insure themselves against the risk of long-term incapacity for work (Asscher-Vonk 2004). Only six years later, this decision has been left to the self-employed after all. In the past the policy was to include the self-employed in the employee insurances schemes, whereas nowadays it seems that the policy is to exclude the self-employed from employee insurances schemes (Berg 2004: 193).

The mandatory Self-Employed Persons Disablement Insurance Act was abolished, and the risk of incapacity for work has been left to the private insurance market. This recent trend mirrors a larger trend in the Netherlands, namely, the modernisation and privatisation of the social security regime. More and more has been left to the social partners and private markets. The risks of the self-employed, however, are thought to be even easier to insure on the private market than the risks of employees. This belief explains why the privatisation of insurances is progressing more rapidly for the self-employed than for employees.

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Abbreviations

AAW General Disability Benefit Act
ABW General Supplementary Benefits Act
AKW General Child Benefit Act
ANW General Surviving Relatives Act
AOW General Old-Age Pensions Act
AWBZ General Exceptional Medical Expenses Act
IOAW Act on Income Provisions for Older, Partially Disabled Unemployed Persons
IOAZ Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed Persons
UWV Employee Insurance Implementing Body
VAR Statement of Work Relationship
WAJONG Occupational Disablement Assistance Act for Handicapped Young Persons
WAO Occupational Disablement Insurance Act
WAZ Self-Employed Persons Disablement Insurance Act
WIK Act on Income Provision for Artists
WW Unemployment Benefit Act
WWIK Act on Work and Income Provision for Artists
ZFW Health Insurance Act
ZW Sickness Benefit Act

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