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WIM VAN OORSCHOT AND KEES BOOS*

The Battle against Numbers: Disability Policies in the Netherlands

Abstract: Over the last twenty years, there has been a vigorous and ongoing disability debate in Dutch social policy over ways of controlling and reducing the number of people claiming disability insurance benefits. Many measures have been taken in this time. A first strategy was to reduce the inflow of claimants, but when this proved unsuccessful, a second strategy to promote outflow by promoting activation of claimants was emphasised. This article presents a review of the measures taken and critically discusses their effects. In addition, it briefly summarises developments in the provision of services, the promotion of equal treatment, and the relationship between national and EU level disability policies. Many new proposals for reducing the number of disability claimants have recently been put forward, but most of these can be described as 'more of the same', and their effectiveness is doubtful.

1. INTRODUCTION

For the last twenty years, debates on disability in the Netherlands have been dominated by concern over the relatively high numbers of disability benefit claimants. Dutch disability policies in this period can be described as 'a battle against numbers' rather than an attempt to achieve the social and vocational or reintegration of disabled people.[1]

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1 One might wonder how there could be a continuing public and political debate on disability, yet so little development in the field of reintegration of handicapped people. Part of the explanation lies in the fact that, in the Netherlands, the 'disability' problem *(het arbeidsongeschiktheidsprobleem)* is seen as something quite separate from the problem of the social and economic integration of handicapped people. The first is viewed as a major socio-economic and budgetary problem in the field of social security, the second as a quite specific, socio-medical and socio-cultural problem for a relatively limited group. In the process of policy development, Dutch governments have repeatedly actively sought the advice of the Social and Economic Council (*Sociaal Economische Raad SER:* composed of experts from both sides of industry and some independent experts) but not the Council of Handicapped People *(Gehandicaptenraad)*. The latter does not present itself as only representing the interests of people on disability benefit. There have been locally organised networks of disability benefit claimants, and there has even been a corresponding national umbrella organisation *(Het Landelijk WAO-Beraad)*, but the impact of such networks and organisations on national disability policies has never been strong.

In 1967, the Dutch Disability Act (WAO)[2] introduced a national social insurance scheme for disabled people, covering all workers in the Netherlands and offering unlimited earnings-related benefits. It was based on the principle that 'every citizen has a right to self-realisation and to equality of chances'.[3] For this reason, the WAO did not distinguish between disability incurred in the workplace ('risque professionel') and disability incurred elsewhere ('risque social'), and the definition and measurement of 'disability' was broad, giving the scheme a low-access threshold. When, in the course of the 1970s and early 1980s, oil price shocks led to economic recession, employers had to lay off many workers, causing a large labour surplus. For employees as well as for employers, the WAO was seen as far superior to time-limited unemployment benefits, and access was easy, especially for redundant older workers.[4] Between 1970 and 1985, the number of WAO claimants rose steadily from 215,000 to 763,000. Since then, the Government has introduced a continuous stream of measures which have attempted to stabilise the numbers of WAO claimants, but to no avail. Partly as a result of the sharp increases in labour market participation among Dutch women over the last ten years, and partly as a result of the steady ageing of the Dutch population, the numbers have continued to rise. In 1999, the estimated number of claimants was 924,000,[5] and it is expected that the threshold of one million claimants will be crossed in 2003. These figures can be compared to the much smaller numbers claiming unemployment benefit (250,000) and social assistance (350,000).

In the 'battle against numbers', two general strategies have been pursued. The first strategy attempted to reduce the inflow of WAO claimants by cut-backs in the existing benefit scheme and the introduction of new ones. When, in the early 1990s, it became clear that this strategy had not been successful, and that any further erosion of the WAO scheme would seriously endanger its ability to offer basic protection, the emphasis shifted to a second strategy, namely the 'activation' of WAO claimants to stimulate their reintegration into the labour market.

This article concentrates on the description and, where possible, evaluation of policies that have been applied in the field of disability benefit. In addition, some other specific policy changes relevant to disabled people and their integration in society in the field of services and equal treatment are also briefly discussed. Finally, the article looks at the relationship between EU level and Dutch disability policies, and draws some overall conclusions.

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2 A list of abbreviations is provided at the end of the article.

3 TK (Minutes of Parliament) 1962-1963, Arbeidsongeschiktheidsverzekering, Memorie van Toelichting.

4 Cie. BUURMEIER, *Enquete naar het functioneren van de organen belast met de uitvoering van de sociale verzekeringswetten, Commissie Buurmeier* (The Hague, SDU, 1993).

5 LISV, *Kroniek van de Sociale Verzekeringen 1999* (Zoetermeer, LISV, 1999).

2. Controlling Inflow: the reconstruction and Introduction of Benefit Schemes

During the economic crisis of the early 1980s, many measures to control social expenditure on disability were proposed, leading to legislation in 1985. Among the first measures proposed was a reduction of the earnings replacement rate for disability (and unemployment) benefit from 80 per cent to 70 per cent. This had very little effect, and from then on many more measures were adopted.[6] The most important of these measures and their effects will be discussed here; firstly, those regarding long-term disability schemes, and secondly, those regarding short-term disability (or sickness) schemes since, in the Dutch social security system, long-term benefits replace short-term benefits after a year of sickness. Linked to short-term disability policies, polices concerning the improvement of working circumstances will also be discussed.

2.1 Long-Term Disability

Soon after the reduction of the earnings replacement ratio in 1985, a most important change in the WAO scheme was the abolition in 1987 of the provision prescribing compensation for the reduced labour market prospects of partially disabled workers. Partially disabled people without a job used to receive the full earnings-related disability benefit for as long as their disability lasted, on the grounds that their prospects in the labour market were virtually non-existent. It was this provision, combined with the unlimited duration of the WAO benefit, which made claiming the WAO benefit much more attractive than claiming unemployment benefit. After this change, partially disabled workers without a job were only entitled to a partial, rather than a full, wage-related disability benefit, and had to combine this with a time-limited unemployment benefit (WW). Once entitlement to this was exhausted, partially disabled workers had to apply for means-tested social assistance, which often meant a sharp reduction in income.

The measures taken did not prevent a further increase in the number of disability benefit claimants. As a reaction to this, two major pieces of legislation were implemented in the early 1990s. The first of these, the 1992 Act on Reducing the Disability Volume (TAV), aimed at increasing incentives for employers to prevent disability benefit claims. It introduced a 'bonus-malus-system', offering employers a subsidy if they recruited a disabled worker for at least a year. In addition to this one-off subsidy, a 20 per cent wage subsidy was also introduced. At the same time, a fine or 'malus' was introduced for employers where an employee is disabled and this results in the termination of employment. The fine turned out to be very unpopular with employers and the administrative boards experienced considerable practical

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6 L. Aarts, R. Burkhauser, Ph. de Jong (eds.) *Curing the Dutch Disease* (London, Avebury, 1996).

difficulties in implementing this measure, leading to its abolition in 1995. In 1993, a second piece of legislation, the Act on Reducing Disability Claims (TBA), which attempted to reduce the inflow by sharpening the definition of disability and its practical assessment, was passed. Under the TBA, disability was determined medically, and the assessment of benefit entitlement was based on loss of earning capacity as a consequence of illness or physical defects. The TBA stipulated, firstly, that the relationship between defect and earnings loss has to be 'directly and medically objective', in an attempt to limit the supposedly generous subjectivity of disability examiners. Whereas loss of earnings had previously been calculated on the assumption that the incapacitated worker could continue to earn a living by doing 'suitable work', defined as work suited to the worker's educational level and previous type and level of employment, the TBA required, secondly, that it be calculated on the basis of 'generally accepted work', a much broader concept which is not related to education or to former employment. As a result, more jobs were now regarded as being 'available' to the disabled, thus making it more difficult for any worker to be assessed as incapacitated. The TBA meant that, in effect, decisions about the degree of a worker's disability were no longer determined by earning capacity lost, but by work capacity remaining, and that only persons unable to work long hours were entitled to full benefit.[7] Thirdly, the TBA stipulated that every existing WAO claimant under fifty years of age had to be re-assessed in accordance with the new standard. In the first two years after its implementation, this rule resulted in a withdrawal of the full WAO benefit in 50 per cent of all reassessed cases. Those who had their WAO benefit withdrawn were declared to be fully unemployed rather than disabled or partially disabled, and thus had to rely on an unemployment benefit, with its limited duration. Fourth, the TBA introduced age as a criterion for assessing the level and duration of benefit payments, meaning that the WAO benefit no longer stood at 70 per cent of previous earnings for as long as incapacity to work lasted, but was limited to a maximum of six years for people over 58 years (after which they became entitled to the state pension; the AOW). For younger people, the period in which the WAO benefit was earnings-related was shorter than six years. When the earnings-related benefit expired, people received a lower level 'follow-up benefit' for as long as their disability lasted. The difference between the previous level of 70 per cent and the age-related 'follow-up benefit' became known as the 'WAO-gap' (*WAO-gat*). Through collective labour agreements this gap has been 'repaired' for an estimated 60 per cent of employees, by means of private or semi-private insurance.

These 'volume' policies of the early 1990s did result at first in a stabilisation of numbers but, by 1996, the inflow of claimants was once again larger than the outflow. Since the size of the working population increased significantly in the mid-1990s, the number of disabled claimants as a percentage of the working population decreased from 11 per cent in 1993 to 9.7 per cent in 1997.[8]

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7 SN, *Sociale Nota 1999*, Tweede Kamer 1998-1999, 26202, Nos. 1-2 (The Hague, SDU, 1999) p. 60.

8 CTSV, *Augustusrapportage Arbeidsongeschiktheidsverzekeringen 1998* (Zoetermeer, College van Toezicht Sociale Verzekeringen, 1998).

In a further attempt to control the inflow of WAO claimants, the Act on Premium Differentiation and Market Regulation (PEMBA) was passed in 1998. Like the TAV, it aimed to promote employers' individual responsibility for the prevention of disability and for the integration or reintegration of disabled workers. Under the PEMBA, employers' contributions to the WAO scheme, which used to be the same for all employers, were differentiated according to risk, i.e. to the number of disability claims coming from individual firms and from different sectors of industry. As a result, firms and sectors of industry that generate more disability claims pay higher contributions. They can cut costs by preventing disability claims through improved working conditions or by adapting workplaces for disabled employees. The PEMBA also offers individual firms the option of opting out of the collective (WAO) scheme for the first five years of disablement and assuming responsibility for disability and subsequent claims generated by it. The Government expects that, as a result of the PEMBA, numbers of new WAO benefit claimants will decrease by 10 to 15 per cent. However, recent research[9] has found that only 8 per cent of employers expect that disabled persons will have a better chance of employment thanks to PEMBA, and 60 per cent regard PEMBA primarily as a reason for scrutinising new employees more stringently for being possible disability risks. The Government had anticipated this kind of reaction and, in 1998, introduced the 'Act on Medical Examinations' (WMK), stipulating that the medical examination of job applicants is only permissible where special fitness demands are a job requirement. Nevertheless, in the study referred to above, 44 per cent of employers indicated that medical examinations and questions about health status are, in effect, standard procedure, leading the study to conclude that the negative effects of risk averse selection will overshadow the potentially positive effects on reintegration that the PEMBA might have.

2.2 Short-Term Disability: Sickness

Like the WAO benefit scheme, the earnings replacement ratio in the national sickness benefit scheme (ZW) was reduced from 80 per cent to 70 per cent in 1985. However, the main revisions to the ZW were not introduced until 1994. Before the revisions, national sickness benefits had been paid out from a collective sickness fund to which employers and employees contributed at a level differentiated in terms of the risks associated with different branches of industry. Thus, at the level of individual firms, there were no incentives to prevent sickness absence. This changed with the 1994 Act on Reducing Sickness Absence (TZ), under which employers became responsible for paying sick employees at least 70 per cent of their wage for the first six weeks of absence (two weeks for companies with less than 15 employees). In effect, this meant that benefits for the initial weeks of sickness became privatised and were no longer a charge on the the national sickness fund. Employers

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9 *See supra* note 7.

either now paid wages to sick employees directly or, as most did, reinsured the risk with a private insurance company. The TZ also imposed a second obligation on employers, namely the reduction of sickness absenteeism, by requiring all firms to develop and implement sickness absence prevention and control policies. The privatisation of the first weeks of sickness benefit had an immediate and significant effect. The number of ZW claimants fell from 345,000 in 1993 to 175,000 in 1994, while the total number of sick employees dropped from 345,000 to 290,000.[10] Although there is a natural floor to sickness absenteeism, the Government hoped that further privatisation would result in further decreases and extended the period of employer responsibility for sickness benefits to one year. The measure, known as the WULBZ, came into effect in March 1996. However, absenteeism decreased by only 0.3 per cent to 4.6 per cent in the following year and there was no further drop after that.[11] Although the WULBZ implied the practical abolition of the national ZW sickness benefit. ZW still covers specified categories of the population, such as pregnant women, disabled or partially disabled workers and people on temporary contracts and apprentices – an estimated 15 per cent of the population previously covered. However, for the majority of Dutch workers, ZW has been replaced by the employer's obligation under civil law to replace earnings during sickness leave. Thus, ZW has, in effect, been transformed from a fully-fledged national insurance scheme into a safety net for specific vulnerable groups.

Employers have undertaken various measures in attempts to cope with the financial consequences of the TZ and the WULBZ. Thus, there has been a large-scale move towards reinsuring with private companies against the risk of sickness absenteeism. The financial consequences for employees are limited since, as a result of collective bargaining, most companies pay 100 per cent of wages in cases of sickness. However evaluation studies[12] have shown that chronically ill and disabled or partially disabled people experience greater difficulty in entering or re-entering jobs because employers screen new employees' health status more stringently, and that the chances of workers with a poor health status being fired have increased. It has also been found that the number of temporary labour contracts, which are used as a means of screening employees' 'sickness leave behaviour', nearly doubled (from 11 per cent to 20 per cent of all labour contracts) between 1993 and 1995. The practice of employers hir-ing workers through employment agencies to reduce their responsibility for sickness pay also rose (from 4 per cent to 9 per cent) in this period. In addition, since the WULBZ, employers have intensified their guidance and control

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10 CTSV, *Augustusrapportage Arbeidsongeschiktheidsverzekeringen 1997* (Zoetermeer, College van Toezicht Sociale Verzekeringen, 1997).

11 *See supra* note 7.

12 SCP, *Sociaal en Cultureel Rapport 1996* (Rijswijk, Sociaal en Cultureel Planbureau, 1996); SCP, *Rapportage Gehandicapten 2000* (Rijswijk, Sociaal en Cultureel Planbureau, 2000).

practices in relation to sickness absence. A trend towards a more active absence policy is noticeable.[13]

2.3 Working Circumstances

Alongside the TZ in 1994, a new Act on Working Circumstances made employers directly responsible for the prevention of sickness and disability among their employees. This Act implements the 12 June 1989 EEC Directive on measures for stimulating the safety and health of employees at work. The Directive is general in character and aims to harmonise the general regulations on employee health and safety in EU countries.[14] The Act requires that employers design an explicit anti-absenteeism policy and that they improve working conditions. Employers are required to hire the expertise of a certified 'arbo-dienst', i.e. a private company which specialises in occupational health and safety services for:

- support in the event of the absence of a sick employee;
- support in making a health risk inventory and evaluation;
- regular voluntary medical examinations of employees, medical consulting hours; and
- medical examination in the event of first appointments.

In 1998, the Act on Working Circumstances was revised by strengthening the responsibilities of employers. This time the notion was introduced that policies on working conditions should be 'tailor made'. The previously-enacted regulations were simplified and turned into more general aims and labour inspectors began to control the ways in which companies fulfilled the rules in the Act. Since 1998, labour inspectors have had the power to impose fines on employers without the interference of a judge.

Geers and Popma[15] argue that, in practice, it will be rather difficult to realise the main aims of the Act on Working Circumstances. Firstly, the obligation on employers to make an inventory and evaluation of health risks is rarely observed

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13 *See supra* note 7.

14 TK (Minutes of Parliament) 1992-1993, 22898, No. 3, Wijziging van de Arbeidsomstandighedenwet en enige andere wetten in verband met de tenuitvoerlegging van de Richtlijn van de Raad van de Europese Gemeenschappen van 12 juni 1989 betreffende de tenuitvoerlegging van maatregelen ter bevordering van de verbetering van de veiligheid en de gezondheid van werknemers op het werk en in verband met enige andere onderwerpen, Memorie van Toelichting. The changes involve the implementation of the EEC-Directive of 24 June 1982, concerning the risks of severe accidents related to certain industrial activities (the so-called Seveso Directive, subsequently changed by the directive of 24 November 1988) and the EEC Directive of 25 June 1991 concerning the working circumstances of atypical labour relations.

15 A.J.C.M. Geers, J.R. Popma, 'Arbowet 1998 niet millenniumproef' in *Sociaal Maandblad Arbeid*, Vol. 54, No. 5, May 1999, p. 238.

sufficiently, and the quality of such inventories is not very good. Secondly, the independent nature and quality of work of the 'arbo-diensten' have been disputed on the grounds that it is difficult for them to criticise the working circumstances of the companies that hire their services and questionable whether they can do this effectively. Nevertheless, in the years to come the Dutch government plans to intensify its working conditions policy. It plans to increase the available budget from NLG 25 million in 1999 to NLG 100 million in 2002.

3. The Activation Strategy: Stimulating Labour Market integration

The Activation Strategy encompasses those policy measures that aim to increase the labour market prospects of disabled workers, and thus to increase their actual labour market participation. In the Netherlands, this was traditionally done by means of vocational rehabilitation and the adjustment of working conditions. The WAO benefit scheme contained some opportunities for this. In addition, there was and still is a relatively extended system of sheltered workplaces. However, there has been little pressure on the disabled to make use of any of these provisions, and employers have not been pressured to promote the employment of disabled people. The substantial rise in the number of disability benefit claimants from the late 1970s onwards induced the Government to adopt additional measures. Many of these consisted of (financial) incentives designed to influence the choices and behaviour of employers and disabled workers. This general commitment to activation became the core of Dutch socio-economic policy in the early 1990s,[16] and this commitment was recently boosted by the Luxembourg Employment Summit, the Treaty of Amsterdam and the European Employment Guidelines. A National Employment Action Plan was issued by the Dutch government in 1999, in which measures for implementing the Guidelines are presented. Central to the plan is a so-called 'comprehensive approach', which aims above and beyond all existing measures for unemployed and disabled people to intensify policies for preventing long-term unemployment and dependency on disability benefits. It will be regarded as successful if it results in unemployed and disabled people actually finding paid work, instead of simply becoming better qualified through training and the creation of additional jobs. Developments in reintegration policies for disabled people will now be discussed in more detail.

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16 W. van Oorschot, R. Engelfriet, *Work, Work, Work: Labour Market Policies in the Netherlands* (Tilburg, Tilburg Institute for Social Security Research, 1999); A. Hemerijck, & J. Visser, *A Dutch Miracle: Job Growth, Welfare Reform and Corporatism in the Netherlands*, (Amsterdam, Amsterdam University Press, 1997).

3.1 Reintegration

The WAGW Act on Work for Disabled Workers, which was linked to the 1987 revision of the WAO scheme, was introduced in 1986 as the first major piece of legislation in the Netherlands to promote reintegration. It was based on an acknowledgement of the greatly reduced labour market prospects for disabled people as a result of the growth in general unemployment, and of increasing numbers of disability benefit claimants in the 1980s. It was primarily concerned with equity and with the rights of disabled persons, and referred to society's responsibility to ensure the labour market participation of those disabled people who want and are able to work, and the importance of solidarity between employers, non-disabled and disabled employees. However, the WAGW did not contain many new concrete measures. Instead, it offered a wider legal framework for existing measures and imposed on employers and unions the responsibility for promoting equal opportunities and adopting measures that preserve, recover and promote the working capacities of disabled people. In order to achieve this, employers could use existing (and according to the Government, under-utilised) provisions in the WAO scheme. Most notably, the WAGW introduced the possibility of a quota of between 3 and 7 per cent on a branch of industry where progress towards integration or reintegration was insufficient. It is clear that the WAGW has never been seriously implemented, since the proportion of disabled workers in employment has not increased, and a quota has not been imposed on any branch of industry. There is general agreement that the act was used as a 'sweetener' to precede the 1987 WAO reforms. However, it was not without significance. In de first place, it was the first piece of legislation to express a general concern for the growing number of disability benefit claimants. The explanatory note to the WAGW explicitly states that, next to promoting the self-realisation of and equal chances for disabled persons, the aim of the act is to implement a 'volume policy'; that is, a policy aimed at reducing the inflow into disability benefit schemes. Secondly, the WAGW assumes that enhancing the prospects of disabled people involves intervening in the labour market. Without such intervention, they would have no prospects and the number of disability benefit claimants would rise further and further. In a practical sense, however, the interventions which are possible under the WAGW are clearly limited, because little has been added to the limited provisions of WAO scheme. One measure that was introduced was that the administrators of the disability benefit scheme could claim payments from an employer equal to the wage a fired disabled employee would have earned if the employer had not made employment impossible. However, few, if any, such payments have ever been requested. Another measure was that employers were required to adjust their workplaces to facilitate disabled access, but this has never been policed to any serious degree.

Since the WAGW has never been seriously implemented, it has had little effect on claimant numbers. This was recognised by the Government in the 1990s and, in order to realise a more effective reintegration policy, the Act on the Reintegration of Handicapped People (REA), containing several new incentives for employers and employees, replaced the WAGW in 1998. Like the WAGW, the REA provides a com-

prehensive legal framework for measures aimed at stimulating employers, employees and administrative bodies to promote the integration or reintegration of disabled people. It is more general in character than the TAV, TBA and AMBER legislation, in that it stresses the interests of disabled people (while keeping an eye on the negative social and economic effects of the disability volume). It also places a greater emphasis on equity as a reason for integration or reintegration (although it points out that, in individual cases, there has to be a balance between the costs of reintegration and the possible gains), and imposes a general responsibility on employers and unions to promote the labour market participation for disabled people. When the REA was introduced, the Government expressed concern that there had not been so much a lack of measures as a lack of results. It acknowledged that this might have been brought about by earlier intervention, e.g. measures which prevented discrimination against workers with health problems at the point of recruitment. The Act therefore stipulates that employers are to be given a fixed budget on the recruitment of a disabled person. From this budget the employer is expected to pay for necessary adaptations of the workplace and improvements to access. If the costs are less than the budget, the surplus does not have to be given back. If the costs exceed the budget, an extra amount is payable. Furthermore, under the REA, the sickness pay of a disabled person who is recruited is paid from the national sickness fund, rather than by the employer, so that any extra sickness does not burden the employer's wage costs. Employers can also get a reduction on their WAO contributions if the wages paid to disabled employees are more than 5 per cent of total wage costs. Alongside incentives for employers, the REA places more responsibility on disabled persons, for example through the introduction of the experimental 'person-related budgets', given to disabled persons to enable them to buy services which will enhance their labour market prospects. Both the WAGW and 'malus' under the TAV have shown the Government that fines are not an effective way of influencing employers and employees. The REA therefore offers incentives instead. The Government has explicitly stated that, while it makes the provisions, it is up to employers and disabled persons to use them.

Although it may be too early to judge, the general view is that the REA will not have a significant effect on the number of disability claimants. This is partly because reintegration does not always mean that the number of disabled claimants will decrease, as partially disabled people may only work for their 'able part';[17] because of competition between administrative bodies,[18] and/or because both the WULBZ and the PEMBA generate a set of perverse incentives. Early evaluations point to disappointing results[19] and it has been suggested that neither administrative bodies nor disabled workers find the 'person-related budget' helpful.[20] A recent study of the

17 *See supra* note 7.

18 P. LE NOBEL, 'Cadans hoort muziek in de wet REA', in *Sociaal Bestek*, 61, 1999, pp. 13-28.

19 H. KNOL, 'Reïntegratie: het spel of de knikkers?' in *Sociaal Bestek*, 61, 1999, pp. 13-28.

20 H. BOSSELAAR, and R. PRINS, 'PRB nog geen overweldigend succes', in *Sociaal Bestek*, 61, 1999, pp. 21-23.

Dutch Social and Cultural Planning Office has suggested that the REA has failed to acknowledge adequately the interests of disabled people and to offer them legal rights to reintegration and guidance. The authors of this study are hopeful that the WGBG law on the equal treatment of disabled and chronically ill persons, currently under preparation, will improve this situation.[21]

3.2 Sheltered Work

The 1969 WSW Act on Sheltered Workplaces provided working places for those disabled persons who could carry out certain types of activities and were thus capable of work, but for whom, due to personal circumstances, employment under normal conditions and at a normal pace was not possible. Municipalities organised workplaces in which the working capabilities of disabled persons could be preserved, recovered or stimulated. The 1969 WSW was not primarily aimed at reintegrating people into regular paid labour. It offered a wage level just above the minimum wage, implying that most disabled persons would gain from being employed in a WSW job. Taking up a WSW job was unrelated to the level and duration of the AAW/WAO benefit.

In 1998, a new WSW Act on Sheltered Labour came into effect, defining the responsibilities of municipalities more strictly. In this piece of legislation, the 'normalisation' of disabled labour became a goal, and it became possible and desirable to place workers in regular workplaces. The possibility of a placement in a sheltered workshop still remains but it can be concluded that, in the WSW 1998, the reintegration of disabled people into regular paid labour became substantially more important.

3.3 General Activation Measures

There are a number of activation measures in the Netherlands (measures which are aimed primarily at the young and long-term unemployed) which are of importance to partially disabled persons who are unemployed for their 'able part'. There have been numerous measures in this field and drastic changes in the last two decades,[22] but here the focus will be on recent developments.

In 1998, the WIW Act on the Insertion of Job Seekers was introduced as an integrating framework for existing activation schemes. It aims at facilitating the combined use of different activation measures simultaneously, and thus at increasing the chances of people finding jobs. The WIW has the explicit aim of placing unemployed people in regular paid work, and has extended previous activation mea-

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21 SCP *Rapportage Gehandicapten 2000* (Rijswijk, Sociaal en Cultureel Planbureau, 2000).

22 W. VAN OORSCHOT, R. ENGELFRIET, *Work, Work, Work. Labour Market Policies in the Netherlands*, (Tilburg, Tilburg Institute for Social Security Research, 1999).

sures so that they are no longer restricted to the young or long-term unemployed. There is a central role for municipalities, not only because they are the main administrators of existing measures, but also because the WIW provides funds for municipalities to implement any extra measures they might deem effective. The idea behind this is that local authorities have a good understanding of local possibilities and restraints, and, for this reason, they should therefore be given the opportunity to formulate policies.

The WIW legislation has several distinct parts, the main one concerning WIW Employment. This creates additional jobs for the unemployed within the broad municipal organisation, with the ultimate goal being eventual outflow into regular paid work. A WIW job consists of 32 hours per week with payment at the minimum wage level and a maximum duration of four years. In order to ensure that all WIW jobs are truly additional, it is a feature of the jobs that unemployed people do not 'replace' former employees who have recently left. A second part of the WIW is the creation of work experience opportunities. These take the form of subsidised jobs in the private sector with a minimum duration of six months. The idea here is that subsidised jobs will eventually be turned into regular jobs. The third part of the WIW is concerned with education and training. Several existing education and training programmes are financed by WIW subsidy, and there is the potential for new initiatives. The fourth part of the WIW aims at facilitating the combination of work and childcare for unemployed people through such measures as day-care subsidies. Municipalities are again the main administrators here, and have relatively high levels of autonomy in designing policies. The final part of the WIW is the 'incentive budget'. This is payable to unemployed people upon accepting a job, or upon the completion of a course of education or training. The maximum level for this one-off subsidy is NLG 2,100. In addition, newly employed workers may receive up to NLG 3,240 a year through policies designed to prevent the poverty trap.

In the field of taxes, the Special Tax Reduction scheme (WVA-SPAK) offers a tax and social security contribution reduction for employers on the wages of those of their employees with salaries below 115 per cent of the minimum wage. This measure was introduced to stimulate employment in lower level jobs for which unemployed people with low skill levels may be qualified. First evaluations of the scheme have shown that it has been a success in terms of enhancing the labour participation of unemployed people.[23] However, the degree to which disabled persons take part in and benefit from the schemes mentioned above is not known.

4. Services and Equal Treatment

Although the disability debate has been dominated by concerns about benefit claimant numbers, there have been some developments in the field of service provisions and the promotion of equal treatment.

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23 *See supra* note 6.

4.1 The Provision of Services for Disabled Persons

The provision of services for disabled persons used to be part of the disability benefit scheme. This meant that disabled people over 65 were excluded. The 1994 WVG Act on Disablement Provisions opened up these provisions to all, transferring the budget and responsibility for ensuring that all handicapped persons have adequate provisions (such as adjustments to their home and provisions for transportation) to municipalities. The general aim of the WVG has been to encourage elderly and handicapped people to live independently for as long as possible, and to facilitate labour market participation for unemployed and self-employed disabled persons.[24] In addition to the WVG, the AWBZ General Act on Exceptional Medical Expenses has provided insurance for severe medical risks for all Dutch citizens, requiring everyone to make provision for home and residential care, including care for mental, physical and sensorial handicapped persons.[25] Finally, since 1997, the TOG Act on Allowance for Cost of Maintenance of Multiple and Severely Physically Handicapped Children has offered financial support to parents looking after severely handicapped children (between 3 and 18 years) in their own homes. The allowance is payable if the child(ren) concerned would otherwise need to be placed in a nursing home financed by the AWBZ. The AWBZ originally provided collective services. However in 1996, a new 'individual budget' instrument was introduced, offering people a 'personal account' from which they can purchase the services of their choice, leading to greater flexibility, freedom of choice and 'tailor-made' care.

4.2 Equal Treatment

Member States of the EC identify prejudice against disabled people in terms of the capabilities of disabled people being seen as obstacles to their labour market participation. Difficulties in accessing public buildings, transportation and the workplace are equally regarded as impeding the full participation of disabled people in society and particularly in employment.[26] A proposal for legislation on the equal treatment of disabled and chronically ill people is currently being prepared in the Netherlands.[27] The WGBG Act will focus on recruitment and selection, sport and access to buildings for disabled and chronically ill people, and will formalise their entitlement to equal treatment in law. However, the legislative process has been

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24 M. Toet, Schematisch Overzicht van de Sociale Voorzieningen (The Hague, Kluwer, 1997).

25 TG, Tegemoetkomingen Gehandicapten. Een Rapportage van de Bevindingen van een Inventarisatie van de Belgische en Britse Stelsels van Financiële Tegemoetkomingen voor Gehandicapten Kinderen, Volwassenen en Ouderen. (The Hague, SDU, 1999).

26 SEC, *Raising Employment Levels of People with Disabilities: the Common Challenge.* Commission Staff Working Paper (Brussels, 22.09.1998), p. 1550.

27 TK (Minutes of Parliament) 1997-1998, 24170, nr 36, *Gehandicaptenrecht.*

delayed as a result of the complexity of the legislation and insufficient knowledge of the social impact of the new act. The Government has explicitly declared that, in addition to national developments, the inspiration for the WGBG Act from the outset came from the implementation of Article 13 of the Amsterdam Treaty.[28]

5. The European Context

In the previous sections, it was suggested that European directives have had an influence on Dutch policies concerning disability and unemployment. It is obvious that the two levels of policy making are inter-related. This can be seen both when European policy makers have referred to Dutch examples, such as the 'arbo-diensten' occupational health and safety services,[29] and when Dutch policy makers have referred to European directives, treaties and guidelines. The European directives concerning working conditions and equal treatment, the implementation of Article 13 of the Amsterdam Treaty, the European Guidelines and the NAP 1999 have all been referred to. According to the Dutch government, the implementation of the WIW and the REA has led to a comprehensive approach for unemployed and handicapped people. In this way, Dutch policies have moved towards meeting the requirements of the European Guidelines concerning the unemployed and the reintegration of handicapped people.[30] However, there is no clear direction of influence between the Dutch and European policy levels, and indeed there are examples in both directions. For example, in 1999, the European Council declared that employment was the top priority of the European Union.[31] A few years earlier (in 1994), the Dutch government had stated that its main priority was 'work, work, work'. In its Employment Guidelines, the Council stated that its first guideline had been part of Dutch labour market policy since 1992.[32] It even concluded that in the Netherlands 'the shift from passive income to active labour market measures ... has gone beyond the policy design'.[33] Thus, in this sense, Dutch policies have seemed to precede European policies. On the other hand, the resolution of the European Council of 17 June 1999 concerning equal employment prospects for handicapped people referred back to such legislation as the foundation treaty of the European Community, an ILO Treaty of 20 June 1983, a Resolution of the United Nations (20

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28 TK (Minutes of Parliament) 1999-2000, 24170, nr 46, *Gehandicaptenbeleid.*

29 *See supra* note 27.

30 Pillar 1 'Improving Employability', in *National Employment Action Plan 1999: the Netherlands* (Luxembourg, European Commission, 1999).

31 EC, *Council Resolution on the 1999 Employment Guidelines,* http://europa.eu/.../guide_en.htm. 1999

32 NAP, *National Employment Action Plan 1999: the Netherlands* (Luxembourg, European Commission, 1999).

33 *See supra* note 26.

December 1993) and European Recommendations of 24 July 1986 and 9 April 1992 concerning occupational rehabilitation, reintegration, employment and equal chances for handicapped persons.[34] If these documents are taken into account, it seems to be the case that Dutch policies have rather hesitantly followed European (and other international) policies. In short, although an inter-relationship exists between Dutch and European policies, it is quite difficult to identify the degree and indicate the direction in which they have influenced each other.

6. Conclusions

Since the 1980s, Dutch disability policy has been dominated by concern about the large number of disability benefit claimants. Over the years, but mainly since the beginning of the 1990s, the Dutch government has introduced a series of measures intended to stimulate employers to hire and not to fire disabled workers, and to encourage claimants of disability benefits to accept jobs. The Dutch government's 'battle against disability numbers' has only been partly successful. The growth in the number of claimants has slowed down, but as yet there has been no sign of a substantial decrease. It seems that the slowdown has been more than a mere 'passive' consequence of the re-labelling of disabled claimants as 'unemployed' (as in the re-assessment of those under 50, and the broadening of the assessment standard from 'unfit for suitable work' to 'unfit for generally accepted work'). It is also a result of all the active measures taken. When the REA was introduced, the Dutch government admitted that previous measures had been insufficiently effective. The sheer number of claimants in relation to the limited number of suitable jobs available for them, as well as the limited capacities of administrative bodies, still justifies a sceptical view of the actual and possible effects of the measures that have been introduced. Experts have been critical of the success of the new REA act so far. The number of disability benefit claimants is not expected to drop significantly in the future. On the contrary, there is an ageing Dutch labour force[35] and increasing female labour market participation (women traditionally have a higher chance of disability). Equally important is the fact that changes in the long-term and short-term disability benefit schemes (privatisation and premium differentiation) have meant that employers profit most from hiring employers with a minimal disability and sickness risk. This is evident in light of the practice of medical examinations for job applicants (despite legal limitations in this field), rather than a serious commitment to sickness and disability prevention in the workplace.

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34 ER, Resolutie van de Raad van 17 Juni 1999 betreffende gelijke kansen op werk voor mensen met een handicap, (Publicatieblad van de Europese Gemeenschappen, 1999/C 186/022.7.1999, C186/3).

35 Expected to lead to an extra 50000 WAO claimants in the next ten years; SCP, *Rapportage Gehandicapten 2000* (Rijswijk, Sociaal en Cultureel Planbureau, 2000).

With the 2002 general election in sight, the disability debate in Dutch politics has been recently revived. Again, the problem is being defined in terms of numbers. The Government is being urged by political parties both within and outside the ruling coalition to take strong measures to prevent numbers-reaching the threshold of one million claimants. The proposals made by the various parties include improving the effectiveness of 'arbodiensten', a legal right to reintegration, the re-introduction of a quota-system, penalties for disabled workers who reject job offers and for employees who do not co-operate in the integration of disabled workers, and a further sharpening of disability assessment criteria. The Secretary of State for Social Affairs has tried to play down the seriousness of the problem by pointing to the fact that disability numbers are equally high in France and Sweden. This attempt to 'put the problem in perspective' is quite remarkable from someone in such a central policy-making role. It has been a long time since this point was made. At the same time, the Secretary of State has proposed new measures to get the number of disability benefit claimants under control. One such measure is allowing disabled people to work while keeping their full benefit plus a 10 per cent bonus. The complexity of the matter for the present Government seems clear from the fact that a National Commission on the Disability Problem is to be set up with the task of making policy recommendations.

In our view, the various measures proposed thus far simply come down to 'more of the same', and it is highly doubtful whether they will be effective. We therefore do not dismiss the possibility that, as the general election draws nearer, a debate at a more basic level on the 'deservingness' of categories of disability benefit claimants will take place. A differentiation between the entitlements and treatment of people with 'mental' and 'physical' disabilities might be considered, perhaps even the exclusion of the former, who might be depicted as consisting mainly of those who have difficulty coping with the stresses of work, but who otherwise are in no 'real' sense unable to work. Another differentiation which might be considered, one which is advocated by employers, is between those whose disability is incurred in the workplace ('risque professionel') and those for whom it is incurred elsewhere ('risque social'). Both types of differentiation would entail a fundamental divergence from the Dutch disability insurance model, but this might well seem appealing to politicians, who appear to be becoming increasingly desperate in the battle against numbers.

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ABBREVIATIONS

ARBO	Arbeidsomstandigheden Wet *(Working Conditions Act)*
AWBZ	Algemene Wet Bijzondere Ziektekosten *(General Act on Special Sickness Costs)*
CTSV	College van Toezicht Sociale Verzekeringen *(Social Security Supervisory Board)*
LISV	Landelijk Instituut Sociale Verzekeringen *(National Institute for Social Insurances)*
PEMBA	Premiedifferentiatie en Marktwerking bij Arbeidsongeschiktheidsverzekeringen *(Act on Premium Differentiation and Market Competition in the Disability Insurances).*
REA	Wet op de (Re)integratie van Arbeidsgehandicapten *(Act on Reintegration of Handicapped Persons).*
TAV	Wet Terugdringing Arbeidsongeschiktheidsvolume *(Act on Reducing the Disability Volume).*

TBA	Wet Terugdringing Beroep op de Arbeidsongeschiktheidsregelingen *(Act on Reducing Disability Claims).*
TOG	Tegemoetkoming Onderhoudskosten Thuiswonende Meervoudig en Ernstig. (Lichamelijk Gehandicapte Kinderen) *(Allowance for Maintenance Costs of Multiple and Severely Handicapped Children).*
TZ	Wet Terugdringing Ziekteverzuim *(Act on Reducing Sickness Absence).*
WAO	Wet op de Arbeidsongeschiktheidsverzekering. *(Disability Insurance Act).*
WGBG	Wet Gelijke Behandeling Gehandicapten en Chronisch Zieken. *(Act on Equal Treatment of Handicapped and Chronically Ill People*
WIW	Wet Inschakeling Werkzoekenden. *(Act on the Insertion of Jobseekers).*
WMK	Wet op de Medische Keuringen. *(Act on Medical Examinations).*
WSW	Wet Sociale Werkvoorziening *(Act on Social Labourprovision).*
WULBZ	Wet Uitbreiding Loondoorbetalingsplicht bij Ziekte. *(Act on Extension of Obligation to Pay Wages in Case of Sickness).*
WVG	Wet Voorzieningen Gehandicapten. *(Act on Provisions for Handicapped Persons).*
WW	Werkloosheidswet. *(Unemployment Insurance Act).*
ZW	Ziektewet. *(Sickness Insurance Act).*