Chapter 5

The New Dutch Disability Benefits Act: The Link between Income Provision and Participation in Work

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1. INTRODUCTION

1.1. General

In the 1990s, the then Dutch Prime Minister Mr Ruud Lubbers held a speech in which he claimed that 'the Netherlands is ill'. By this statement he meant that the number of persons claiming sickness benefit and disability benefit was much higher than in other, comparable countries.

In the 1980s and 1990s disability benefit did indeed become the benefit which concerned politicians most. The reason for this was the relatively large number of claimants – in 2001 there were around 950,000 claimants,[1] whereas the working population amounted to seven million persons. Thus 12.2% of the working population was disabled.

1. This number of claimants refers to all benefit recipients, including those receiving partial benefit; in the year 2000, 38% of claimants had a partial benefit.

Stamatia Devetzi & Sara Stendahl, *Too Sick to Work?: Social Security Reforms in Europe for Persons with Reduced Earnings Capacity*, pp. 77–93.

After some less successful attempts to stop the growth of new entrants into the system, between 1995 and 2004 two impotant measures were taken. One was the reform of the sickness benefit system; the other was the introduction of the new Disability Benefits Act (WIA – see below).

The main objective of the new Disability Benefits Act was to gear all conditions for receiving benefits towards stimulating the disabled to remain in work or to re-enter work. In this chapter it describes the methods by which this is achieved (section 2).

The exact relation between benefit conditions and income protection and activation will subsequently be studied from a more systematic point of view (section 3).

First, it describes the historical background to the establishment of the new Act, in which the measures concerning sick pay will be also described (section 1.2).

1.2. Background to the New Disability Act

1.2.1. The Increase in Disability Figures in the Twentieth Century and Possible Explanations of This

Since the beginning of the 1990s, disability benefit has been the benefit which concerns politicians the most. The reason for this is the consistent increase in the influx of benefit recipients, which was growing at 2.5% a year (see Table 5.1).[2]

Although these figures can be criticized and put into perspective,[3] as is always the case with figures, consensus gradually grew that the number of recipients of disability benefits was too high and that structural reforms were necessary.

There are some elements in the old Disability Benefits Act (the *Wet arbeidsongeschiktheidsverzekering*, WAO), which remained in force until 2004, which may explain why the Netherlands had more recipients of this type of benefit than other countries.

Table 5.1. Persons Who Were Fully Disabled as a Percentage of the Working Population, 1998

	NL	*Germany*	*Denmark*	*Sweden*	*UK*
Of the population aged 15–64 years	6.3	3.6	4.3	5.8	4.7
Of the working population	8.6	5.0	5.4	7.5	6.2

2. In 1998 there were 109,000 new claimants, in 2000, 110,000. In the latter year the right to benefit was terminated for 94,000 beneficiaries.
3. Some comments are: in the Netherlands there are no special schemes for accidents at work or occupational diseases; victims have to rely on the general disability benefit schemes. Moreover, the Dutch figures include the self-employed, the young disabled and civil servants. In other countries, general figures on the disabled usually do not include these groups.

A first factor was that a relatively low degree of disability (15% – how this is calculated is explained in section 2.2.3 below) could lead to benefit entitlement; moreover, there were no qualifying periods for benefit entitlement, and the level of benefit did not depend on the duration of insurance.

Another important factor was a benefit rule which existed until 1993 that allowed the benefit administration, in assessing a claimant's level of incapacity for work, to take into account the reduced chances of the claimant of finding work. For instance, if a person was assessed to be 25% incapacitated for work, but was considered to be unable to *find* a job due to his or her reduced capacity to work, he or she could thus be awarded a full benefit. Workers who were made redundant and who had some health impairment were thus awarded full disability benefit. This type of benefit was more attractive than unemployment benefit, as unlike the latter benefit, disability benefit is payable until pension age. Consequently, the numbers of persons receiving disability benefit rose sharply, and the costs of these benefits became a major political problem. Systems in some other countries do also take into account the reduced chances of the disabled on the labour market when assessing the incapacity rate, but in the Netherlands this tended to happen on a larger scale, in particular during the labour market restructuring of the 1970s and 1980s.

In 1993, the rule that took labour market factors into account for the assessment of the incapacity rate was finally abolished. As we shall see in section 2, after the broad use of this rule in the twentieth century, the present rules require an extremely strict assessment of the incapacity for work, one which aims to exclude all labour market elements from the assessment.

However, despite the abolition of this rule, the numbers of claimants continued to grow, so other factors were also driving the growth of claimant numbers.

From the figures on the causes of disability, it appeared that a relatively large number of new entrants consisted of persons with psychological problems. One explanation was that working circumstances and work pressure led to their disability.[4] This assumption led to the conclusion that labour market factors influenced the high disability rate, so that a new approach in the Act was necessary.

Both factors – the old rule that took chances on the labour market into account, and the impact of working conditions on disability – explain why the changes which were sought for the disability system were mainly focused on excluding from the Disability Act factors relating to unemployment, that is, on trying to define as clearly as possible the disability risk that has to be compensated. Other factors, such as the low disability threshold, the absence of a qualifying period, and the absence of a distinction between work-related and non-work-

4. For literature on the growth in the number of beneficiaries, see P. Auer, *Employment Revival in Europe: Labour Market Success in Austria, Denmark, Ireland and the Netherlands* (Geneva: ILO, 2000); S. den Uijl et al., 'Reintegration of Partially Disabled Employees: From Market Efficiency vs Social Justice to Market Efficiency and Social Justice?', in *Market Efficiency vs. Equity*, ed. B. Hessel, J. Schippers & J. Siegers (Amsterdam: Thesis Publishers, 1998).

related incapacity for work, were not affected, since it was thought that those who are genuinely disabled should receive adequate protection.

In order to prepare a reform of the disability benefit system, a special committee, the Donner Commission, was established, which wrote a report with proposals for reforms.[5] These proposals finally lead to a new Disability Benefits Act, the *Wet werk en inkomen naar arbeidsvermogen* (WIA – Law on work and income according to working capacity).[6]

The commission argued that it was in the interest of the partially disabled to remain in work; being dependent on benefits is a form of social exclusion, since working provides many advantages, including a higher income, a better social status, and more social contacts. The commission no longer used the term 'partially disabled persons', but instead promoted the term 'partially able persons'.

The main objective of the new Act was to ensure that those who are partially disabled remain, to the highest possible extent, in work. In order to realize this objective, starting even during the period preceding disability, i.e. the period of sickness, the employer and employee are now required to make all possible efforts to try to keep or reintegrate the ill employee back into work.[7] This is important since a major condition for WIA entitlement is that the efforts to keep the worker out of the disability system have been sufficient.

In order to give a comprehensive picture of the activation policies in the new Act, this phase will be described below (section 1.2.2).

1.2.2. The Reform of the Sickness Benefits Act

1.2.2.1. The Obligation of the Employer to Pay Sick Pay

In the 1990s, the Sickness Benefits Act was reformed in order to reduce the sickness rate and to reduce the influx into the disability benefit system covered by the Disability Act. The relation with the Disability Act was that it was assumed that the longer a person remains ill, the more difficult it becomes to get him or her back into work. The reason for this is that the longer one remains inactive, the more one tends to consider oneself to be completely unable to work. For this reason it was considered necessary to make employers and employees proactive in reducing any periods of sickness, and to ensure that this began even in the early stages of sickness.

Encouraging employers to become proactive was firstly achieved by making them responsible for the income provision of their ill workers. This responsibility for income provision was introduced gradually. From 1 January 1994, employers became liable for continuing to pay wages for six weeks of sickness.

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5. Adviescommissie Arbeidsongeschiktheid, *Werk maken van arbeidsgeschiktheid* (Den Haag, 2001).
6. Act of 10 Nov. 2005, *Stb.* 2005, 572.
7. The term *ill employee* means a person who cannot do his or her normal work due to physical or psychological impairments.

As of 1 March 1996 this period was extended to 52 weeks, and from 2006 the (regular) maximum period of sick pay has been 104 weeks. The statutory obligation is to pay 70% of the wage; individual or collective agreements often require a supplement to this.

An employee who has the right to claim sick pay from his employer thus does not receive sickness benefit on the basis of the Sickness Benefits Act. The Sickness Benefits Act became just a safety net provision for specific circumstances only: for people who have a fixed-term contract for a definite period which terminates during sickness, and for several categories of persons who are not employees, but who are still covered by the Sickness Benefits Act, such as home-workers[8] and unemployment benefit recipients.

The rationale for shifting the responsibility for providing the income of ill employees to the employer was that it was expected that, since they were confronted with the financial effects of having ill employees, they would check more carefully whether an employee was rightfully absent or not.

Within the space available for this contribution I cannot fully describe all elements related to sick pay,[9] so I will limit myself to those elements relevant to us, in particular to the work activation elements.

One of these elements is that the employer does not have to pay sick pay if the employee concerned refuses to carry out suitable work for his employer without good reason, provided he is capable of doing so. The employer can also request his ill employee to do suitable work for another employer. Refusal means there is no entitlement to sick pay.

1.2.2.2. Reintegration Efforts Required of the Employer and Employee

The mere obligation of the employer to continue to pay the wages of his ill employees appeared to be insufficient to result in adequate reintegration effects. One reason was that private insurance negated the financial effects. Another was that employers sometimes considered reintegration measures more expensive or bothersome than having to continue to pay an ill employee's wages.

For this reason additional legislation (*Wet Verbetering Poortwachter* – the Gatekeepers Act – which was meant to narrow 'the gate' to the Disability Benefits Act) was introduced, which requires employers and employees to undertake reintegration efforts in the case of illnesses that are expected to last for a long period (of course, in most cases of illness, such as fevers, no measures are necessary).

Thus, if an employee is expected to be ill for more than six weeks, the employer and employee are obliged to make a plan for reintegration. The plan can entail, for

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8. Under some conditions home-workers (persons who earn a certain income from home during a certain period) are insured by employee insurances (they are assimilated for social security purposes with employees).
9. For further details, see F. Pennings, 'The Netherlands', in *International Encyclopaedia of Laws, Encyclopaedia of Social Security Law* (Alphen aan den Rijn: Kluwer Law International, looseleaf).

instance, that the workplace of the employee is adjusted to his impairments and/or that training or work experience in another job have to be tried. Subsequently the employer and employee have to meet on a regular basis to see how the reintegration efforts are proceeding and if the plan has to be adjusted. One party can oblige the other to cooperate, if necessary, including by legal means.

An assessment of whether the reintegration activities have been sufficient takes place three months before the employee applies for disability benefit. The employee has to produce a report on the reintegration activities which have taken place. If the employer's actions are considered insufficient by the benefit administration, its obligation to pay wages is extended (by up to a maximum of 12 months). If it is the employee who has not cooperated satisfactorily, he or she can be refused disability benefit for a certain period.

Thus the new system introduced a serious activation system in the period prior to claims for disability benefit. It indeed led to a reduction in the sickness rate, although this was also partly due to lower rates of registration of cases of (short-term) sickness. Larger firms, in particular, developed comprehensive policies for ill employees.

2. THE NEW DISABILITY BENEFITS ACT

2.1. Overview of the New Act

The new Disability Benefits Act makes a distinction between persons (a) who are permanently disabled to at least a level of 80% and (b) who are either not permanently disabled, or who are permanently disabled to a lower extent. The former group (group a) deserves, in the view of the legislature, a generous disability benefit, and activation measures are not considered relevant for its members.

The second group (group b) is made subject to conditions and rules meant to reinforce their activation.

Under the Disability Benefits Act, the threshold for receiving benefits is that claimants have to be at least 35% disabled (under the preceding Act this was lower, at 15%). Persons in this category, if they satisfy qualifying conditions, first receive a wage-related benefit, the duration of which depends on their employment record. After this period (or immediately, if they do not satisfy the qualifying conditions) they receive a benefit to supplement their wage, if they earn an income corresponding to at least 50% of their remaining earning capacity; if they earn less (or nothing) they receive a (low) benefit.

2.2. Description of the Incapacity Benefit System

2.2.1. Aims of the New Act

As was described above, the aim of the new act is to provide a good benefit income to those who are 'permanently and completely' disabled. For others, the aim is to

encourage them to seek work. To this end, whilst the benefit scheme compensates them for their loss of earning capacity, the benefits paid are considerably higher if the person concerned does actually earn part of his remaining earning capacity.

The benefit paid is related to the previously earned wage, except for those in the stage after the wage-related benefit if they do not earn at least 50% of their earning capacity. If the benefit is below the applicable subsistence level, additional means-tested benefits are payable (which also take the income of the partner, if any, into account).

2.2.2. Who Is Insured?

The Disability Benefits Act covers employees. This is a broad group, including all those working under a contract of employment: no thresholds or income ceilings apply for insurance, and civil servants are also included. Categories assimilated with employees by statutory schemes are also covered, e.g. home-workers and other categories of persons performing work, provided they are not self-employed. Persons receiving unemployment benefit under the Unemployment Benefits Act are also covered. For some of these groups additional schemes apply, which provide a supplement to the disability benefit payable under the Disability Benefits Act.

The self-employed are not covered. For them, up until 2004, a special disability benefit applied, providing a benefit related only to the minimum wage. As the self-employed considered this unattractive (they often had to buy additional insurance in order to receive the level of benefit they desired), the Act was repealed.

For individuals who are already disabled before the age of 18, and students who become disabled, a separate Act applies, the *Wet arbeidsongeschiktheidsvoorziening jonggehandicapten* (Wajong). This Act provides an income related to the minimum wage and the person's level of disability. As of 2010, activation measures have also been introduced for the recipients of this benefit.[10]

2.2.3. How Is the Incapacity Rate Assessed?

The calculation of the loss or reduction of earning capacity is essential for understanding the benefit system; therefore this will be described here.

A claimant's remaining earning capacity is defined as the wage which he can earn by doing 'generally accepted work which he is capable of doing with his strength and competence', despite his illness or infirmity. The determination of earning capacity thus not only requires a medical assessment, but also an ergonomic assessment by a job expert (who works for the benefit administration).

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10. I. Borghouts-van de Pas & F. Pennings, *Arbeidsparticipatie van jonggehandicapten: Een onderzoek naar Europese systemen en praktijken* (Tilburg: OSA, 2008).

The *medical assessment* is done by a medical expert (a doctor), also called an insurance doctor, who works for the benefit administration and who has to assess whether the claimant suffers from illness or infirmity.

The insurance doctor has to list the effects of the illness or infirmity on the claimant. For this, the so-called *Claim Beoordelings- en Borgingssysteem* (CBBS – Claim Assessment and Control System) is used. This is a computer system which is meant to standardize the practice of assessing claimants and to reduce differences in outcomes resulting from the assessment procedures themselves. In this system, it is not the limitations of claimants to do work which are relevant, but their ability to work. For the CBBS system, the following aspects are relevant: social functioning, adaptation to the environment's requirements, dynamic activities, stationary attitudes, and working times. The first two categories are mainly meant to assess the abilities of people with psychological problems. They concern concentration of attention, ability to show one's feelings, and ability to cope with conflicts and to cooperate.

In the CBBS system, the claimants' abilities to perform different activities are assessed and given standard values. For example, the weight of an object they can carry is compared to that which a healthy person over the age of 16 could carry. Values are illustrated by means of examples from daily life. For instance, where the aspect of carrying is assessed, the following possibilities are given: normal: the person can carry 15 kg (equivalent to a pre-school child); slightly limited: he can carry approximately 10 kg (such as a toddler); restricted: he can carry approximately 5 kg (a bag of potatoes); strongly limited: he can carry approximately 1 kg (a litre of milk). The findings are laid out in a list showing the capabilities of the claimant and presented to the so-called jobs expert.

If the limitations are so serious that the person concerned is not able to work at all (e.g. he or she is fully paralysed) no investigation by the jobs expert is required. In the view of the legislature, the lack of such an investigation is acceptable only in exceptional circumstances, such as in a case where a person has to remain permanently in bed, or always needs help with general daily tasks, such as bathing and dressing.

Except for these cases, based on the outcome of the CBBS procedure, the *job expert* then investigates which types of work the person in question can still do despite his or her medically indicated limitations. It does not matter in this respect whether the person in question has a real chance of being employed in this work; in other words, whether there are any vacancies. This is because the law explicitly stipulates that whether the person in question can actually obtain the labour in question should not be considered. We already saw in the introduction how sensitive this issue of considering labour market factors had become.

The claimant's earning capacity is assessed by determining the 'generally accepted work' he or she can still do. In other words, all work can be taken into account for this purpose, not only suitable work (the work the person did before). From among the jobs the person can do which match these criteria, the job expert has to choose those in which the claimant would earn the highest wage.

The concept of generally accepted work is fairly broad and covers many more types of work than the concept of suitable work. The *Schattingsbesluit*

(Assessment Decree), a decree which is based on the WIA, gives some further rules about which types of work fall within this concept. Following this decree, only minor exceptions apply to the work that can be taken into account. An example of such an exception is jobs which hardly exist on the labour market. An exception also applies if work can only be done by the person in question after changes to the workplace which the employer concerned could not, in all fairness, be expected to make. If there is a functional age limit for specific work on account of the law or a collective labour agreement, this work may also not be considered where a person has already reached that age. Work is also excluded from consideration if the person in question possesses particular characteristics such that an employer could not, in all fairness, be expected to employ him or her for a specific task. This may be the case, for instance, if excessive absenteeism due to illness is to be expected.

For the selection of jobs relevant to this assessment, the job expert uses the CBBS. This system contains a – non-exhaustive – survey of existing jobs (about 10,000) and indicates which skills (education and experience) are required to hold such a position, and what mental or physical requirements the job has. These jobs were selected and analysed from actual enterprises, and the information added to the CBBS. The CBBS furthermore mentions the wages which are paid for these jobs.

The person's remaining earning capacity is determined by taking three different job types from the CBBS which the claimant can do. A job type is considered only if it represents at least three jobs in the CBBS. For instance, the job type of 'word processor' is relevant only if in the enterprises analysed for the CBBS there were three jobs falling within this category. This condition is meant to ensure that only realistic job types are selected to determine earning capacity. Again, it has to be stressed that there need not be actual vacancies in this type of work.

The job expert has to select those job types which have the highest income, as this will lead to a higher earning capacity and thus a lower benefit. The wage of the middle position of the three best paid job types is then used to determine the level of the individual's remaining earning capacity. For example, if a person is deemed able to do the work of a telephone operator (at EUR 11 per hour), coffee machine repairer (at EUR 12) and secretary (at EUR 13), the relevant wage is EUR 12 per hour.

2.2.3.1. The Calculation of the Degree of Disability

The residual earning capacity has to be compared with the previous earnings of the claimant[11] in order to be able to calculate the level of incapacity of the person concerned.

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11. In the Dutch system, this is called the measurement income, since the previous income can be corrected for our purpose if a person would not be able to earn this income anymore for labour market reasons, for instance in case his income would lower after a certain age (e.g. in the case of professional football players). These are exceptions only.

In order to determine the level of incapacity, the following formula is used:

$$\frac{\text{Previous Earnings} - \text{Remaining Earning Capacity} \times 100\,\%}{\text{Previous Earnings}} = \text{Incapacity Rate}$$

Example: A person earned EUR 30 per hour and his earning capacity is now EUR 10 per hour. The incapacity rate is calculated as follows:

$$\frac{\text{Previous Earnings (€ 30)} - \text{Remaining Earning Capacity (€ 10)} \times 100\,\%}{\text{Previous earnings (€ 30)}} = \frac{20 \times 100\,\%}{30} = 66.6\%$$

The incapacity rate of 66.6% in this example is not the same as the benefit rate; we will discuss the benefits system below.

2.2.4. The Benefits Available Under the Disability Benefits Act

Now we know how the level of incapacity is calculated, we can understand the conditions for benefit entitlement better.

Those who are permanently disabled to at least the level of 80% (the incapacity rate) are entitled to the benefit for the permanently disabled (called IVA).[12] Article 4 of the WIA defines the term fully and permanently incapacitated to work: an employee is fully and permanently disabled if he or she can, as a result of sickness, infirmity, pregnancy or confinement, earn no more than 20% of his or her previous earnings per hour. Permanent refers to a situation that is medically stable or deteriorating. If there is a slight chance of improvement, claimants are reassessed yearly during the first five years after they become entitled to the benefit to see whether they are still considered fully disabled.

If they are still disabled after five years they will be considered permanently disabled, unless there are still reasons to assume that they are not permanently disabled.

In addition, if a person actually earns, despite his or her permanent and full disability, 20% or more of his or her previous wage, he or she will be reassessed, and this may mean a lower benefit or a loss of benefit.

Note that under this system for calculating the disability rate, those who previously earned a high income will more easily be classed as fully disabled than those who earned a low income. For example, even if a previously high income earner can still work full time, but at only the minimum wage rate, his percentage of loss of earning capacity is high, and it is thus possible that he still be classed as fully disabled. This is one of the aspects of the system which is criticized.

The level of the IVA benefit is 75% of the monthly wage of the person concerned (up to a ceiling, which is currently EUR 186 per working day, for 21 days per month). The benefit is payable until the claimant reaches 65.

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12. *Inkomensvoorziening volledig arbeidsongeschikten* (IVA – Income Provision for the Fully Disabled).

If the recipient of IVA benefit has an income from work, 70% of this income is deducted from the benefit received.

2.2.4.1. The WGA Benefit[13]

Persons who are disabled by more than 35% but less than 80%, and also persons who are fully but not permanently disabled, are eligible for another type of benefit payable under the WIA, called WGA benefit.

WGA recipients receive a wage-related benefit if they satisfy conditions relating to their employment history, with the duration also depending on their employment history. The rules for entitlement and duration of this benefit follow those of the Unemployment Benefits Act.

The WGA wage-related benefit is 70% of the previous wage (again up to the ceiling mentioned above). The qualifying condition for entitlement is the same as that for unemployment benefits, i.e. that the claimant worked in 26 weeks out of the last 36 weeks before the start of the disability (sickness). If this condition is satisfied, the duration of benefit entitlement is three months. This period is prolonged if, in at least four out of the five calendar years preceding the first day of unemployment, the claimant received wages on at least 52 days.

If this condition for prolongation is satisfied, the duration of the claimant's benefit is prolonged by one month for each year that counts towards his or her employment history, as long as the number of years exceeds three. In other, simpler words, since the minimum duration is three months, if the individual has an employment history spanning eight years in total, the total duration of benefit entitlement is eight months. The maximum duration is 38 months.

The employment history is calculated as follows: from 1998 until 1 January of the year in which the person becomes ill, every year counts in which the person concerned received wages on at least 52 days.

In addition, all years count between the 18th birthday of the claimant and 1998, regardless of the kinds of activities (or non-activity) performed during this period.

Because of the reference to 1998 in the law, the relevance of this 'fictitious past' between age 18 and the year 1998 is gradually decreasing.

Example: An employee, born on 1 August 1957, worked in a job from 2000 for 20 hours a week. On 1 August 2005 she became ill. Between 1998 and 1 January 2005 there are four years during which she received wages on at least 52 days; days in 2005 do not count, as only calendar years before the first day she became ill (and so became entitled to sick pay or sickness benefit) count. The fictitious past is from 1975, when she became 18, to 1998: 23 years. The total period is thus 27 years, and the duration of wage-related benefit thus 27 months.

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13. *Werkhervattingsregeling gedeeltelijk arbeidsgeschikten* (WGA – Scheme on the Take-up of Work by Persons Who are Partially Able to Work).

The WGA covers both the disability and unemployment elements to which a claimant is entitled. Under the previous Disability Act, the WAO, a partially disabled person could receive both a partial disability benefit and a partial unemployment benefit. The new system has simplified the rules, but also means that the unemployment benefit approach is followed for calculating the right to and the duration of the wage-related benefit. If the Unemployment Benefit Act were to be amended, the amendments would also be followed by the Disability Benefits Act.

If a recipient of WGA benefit receives income from work, 70% of the income is deducted from his benefit. This means in effect that he retains 30% of his earned income.

2.2.4.2. Wage Supplement Benefit

After the right to wage-related benefit has expired (or if the claimant is not entitled to this benefit because of an insufficient work record), a so-called wage supplement benefit is payable, on condition that the claimant earns an income of at least half the residual earning capacity. Thus if a person is supposed to have an earning capacity of EUR 1,000 a month, he or she must have an income from work of at least EUR 500 a month in order to be eligible for the wage supplement. The idea behind this rule is that it must be made as attractive as possible for the person concerned to (re)start or remain in work.

The level of the wage supplement is 70% of the difference between the individual's previous earnings and his residual earning capacity. Thus, if a person earned EUR 2,000 a month and is now able to earn EUR 1,000, the wage supplement is EUR 700. This is payable regardless of whether he earns EUR 500, EUR 700 or EUR 1,000.

The wage supplement is thus a fixed amount for the person concerned, and does not depend on the income he or she earns. This makes attempting to increase the income from work more attractive. In other words, it is attractive to work as much as possible, since income is not deducted from the benefit received. Of course there is a limit to this, as otherwise a person could have an income higher than he had before he became disabled. If the person's income is higher than his remaining earning capacity, 70% of the difference between his actual income from work and his calculated earning capacity is deducted from the benefit.

The wage supplement is payable until the age of 65 if the person remains disabled. If, however, his income falls below 50% of his remaining earning capacity, the person becomes eligible for the follow-up benefit.

2.2.4.3. The Follow-Up Benefit

The WGA claimant who, upon expiry of his wage-related benefit, does not satisfy the condition that he earns at least 50% of his remaining earning capacity, is eligible instead for the follow-up benefit.

In the case of full disability, the level of this benefit is 70% of the statutory minimum wage (EUR 1,407 per month in 2010), or of the actual monthly wage he

earned before becoming ill, if this is lower. In cases of partial disability, the level depends on the incapacity rate.

For this benefit, 'classes' are relevant: it is relevant to determine to which class the calculated disability rate corresponds. The Act mentions five classes and for each class there is a corresponding benefit rate, as shown in Table 5.2.

This benefit rate has to be applied to the statutory minimum wage.

For instance, if a person earned EUR 30 per hour before he became disabled, and has a remaining earning capacity of EUR 10, his disability rate is 66.6%. This fits in the class of 65–80%. The benefit rate is thus 50.75%, to be applied to the statutory minimum wage.

As a result of this system, the benefits for partially disabled persons are low, and certainly below the relevant social minimum. This means that these persons have to apply for (means-tested) supplements to reach the social minimum.

2.2.5. Persons Who Are Less Than 35% Incapacitated

Persons who are incapacitated at a level of less than 35% are not eligible for benefit. It was the view of the legislature that their incapacity rate is so low that they should in any case be able to remain in work. The employer thus remains responsible for this category. In some collective agreements, provisions have also been included to keep such individuals in work, and the ability to dismiss these workers because of their disability has been limited.[14] A public decree, the Decree on Dismissal (*Ontslagbesluit*),[15] also provides some protection for workers belonging to this category. A dismissal permit is granted (currently the benefit administration is responsible for this) only if reintegration into work is not deemed likely within 26 weeks. Whether attending training would allow the person concerned to reintegrate is also considered in these cases. If, despite such provisions, the person nevertheless becomes unemployed, he has to rely on unemployment benefit or public assistance.

Table 5.2. Table Showing the Classes Relevant to Benefit Rates

Incapacity Rate (%)	*Benefit Rate (%)*
35–45	28
45–55	35
55–65	42
65–80	50.75
80	70

14. B. Barentsen, *Wet werk en inkomen naar arbeidsvermogen* (Deventer: Kluwer, 2006).
15. During the first two years of illness there is a general prohibition of dismissal except, broadly speaking, if a person repeatedly refuses suitable work.

2.2.6. Obligations on Benefit Recipients

The WIA imposes quite a few obligations on employees. These are described below.

Recipients must inform the benefit administration (Uwv) of facts relevant to their case, and must cooperate if the Uwv wishes to check any facts.

They are also obliged to take measures to avoid having to claim a benefit in the first place, and to avoid continuing to have to claim one, insofar as this can reasonably be required. For instance, if recipients undertake activities which are hazardous to their health, this may affect their benefit entitlement.

Recipients are also obliged to cooperate to achieve their reintegration into work. This may mean that they have to cooperate in receiving medical treatment. It also means that they have to cooperate with reintegration activities, such as training and accepting trial jobs. They are also obliged to do suitable work. These provisions correspond with those of the Unemployment Benefits Act. As we saw earlier, the WGA incorporates both disability and unemployment benefits, and therefore the unemployment benefit rules regarding accepting suitable work were copied to the WIA.

The sanction for violating the general obligation to inform the Uwv of relevant facts is an *administrative fine*. If an employee does not comply with the obligation to attend training, or if he or she fails to observe any of the other obligations, this leads to an *administrative measure*. This means the total or partial, temporary or permanent, refusal of disability benefit.

2.2.7. Legal Protection

In cases in which a claimant is not satisfied with a decision taken by the benefit administration, he or she can ask for a review of it. The person can go to appeal in court, and to higher appeal in the Central Appeals Court.

2.3. Assessment of the Law

2.3.1. Activation

As we have seen, the former Disability Act (WAO) was replaced by a new act (WIA) which focuses on the activation of the disabled.

This activation involves both the employer and the employee during the first two years of sickness. The obligation of the employer to pay wages, the right of the employee (enforceable by law) to reintegration measures, and the sanctions on the employer and employee if they do not sufficiently undertake the activation efforts required of them, are important instruments used during this phase.

During disability it is mainly the employee upon whom measures are focused although, if he or she still has an employer, he or she can require it to offer suitable work, if available.

For claimants of disability benefit, the activation measures include receiving a more attractive benefit if they work or, one could also say, a low income if they do not work. Other instruments are the obligations to seek and accept work, and sanctions if these obligations are not fulfilled.

The WAO did not make benefit levels and rights dependent on the actual income from work; therefore it is obvious that the activation element has become much more important.

2.3.2. Specific Categories

Persons who are completely and permanently disabled are exempted from activation and are paid a higher benefit than others. As such their benefit position is not negatively affected by the introduction of the new Act, rather the opposite. We have seen that the system of calculating the incapacity rate implies that these persons need not necessarily be unable to work.

This aspect of the benefit system has so far not been changed. On the other hand, it also means that there are no reintegration instruments available to recipients.

So far the political discussion on the new Act has predominantly focused on persons who are less than 35% incapacitated, as in practice it appears that they often lost their jobs. Given the method of calculation of incapacity for work, it appears that these individuals were often incapacitated to such an extent that their own employer did not have other, suitable, work for them. It can also be said that the public discussion on disability benefits made potential claimants averse to claiming benefits. Therefore the influx of new entrants was much lower than expected. Favourable labour market conditions also most likely meant that these individuals were able to find solutions other than becoming dependent on disability benefit. However, in the long term it is unclear how the situation will develop. It seems that since 2009 claimant numbers have again been growing.

One main problem with the new Act is that claimants are not actually given much assistance in finding or remaining in work. There are some rules which assist employees in demanding assistance from their employers (which are relevant, of course, only as long as they actually have an employer), and there are some subsidy schemes, but for those not in work (anymore) it may be difficult to find a new job, as employers may be adverse to recruiting partially (dis)abled employees.

2.3.3. Relation to and Transition to Other Types of Benefits

As we saw in the previous sections, the WIA integrates both disability and unemployment benefits. Thus for the partially (dis)abled only one benefit is payable. If they happen to recover from their disability, then the days in which they received the wage-related benefit are deducted from their entitlement to unemployment benefit (this will often mean that they have used up their rights).

We have also seen that the assessment of the incapacity rate explicitly excludes labour market factors from the assessment of the incapacity level. Thus there is a clear difference between disability and unemployment.

If a person reaches pension age (65) he or she becomes entitled to old-age benefit. There are no pre-retirement pensions (on a statutory basis) in the Dutch system. This means that the elderly disabled have to continue to seek work and/or to remain in work in order to receive an appropriate benefit.

3. CONCLUSION

The Dutch social security system has the tendency to seek extremes, it seems. In the 1970s, the disability benefit scheme was a generous scheme, which provided an income and 'left the claimants alone'. Gradually it became less and less attractive due to cuts in the system.

The present system stresses the activation element to a large extent, and in official government and benefit administration documents and information activation has been given prime position.

The change has resulted in larger firms, in particular, having better policies for making adjustments to the workplace and/or providing suitable alternative work to ill employees. This is a desirable effect.

It must be added that there have also been other effects, such as on the selection of workers during the recruitment process (with those with a bad health condition being excluded)[16] and more dismissals of ill workers. It is difficult to obtain accurate figures on these effects.

With respect to the incidence of disability, it is too early to assess the effects of the new law. The government itself was satisfied with the mere decrease in claimant numbers, but this is too easy an approach. After all, it is very well possible that those disabled people who simply did not apply for disability benefit have also not found work. In other words, they might simply rely on others for an income instead of claiming benefit. Although one could regard this a positive outcome as well, this effect has nothing to do with activation. An assessment of the activation effects thus requires thorough and long-term empirical studies.

The instruments employed by the Dutch system are innovative, and were not found in the previous law. It must be kept in mind that, in principle, particularly during the sickness stage, the approach is (almost) comprehensive. This is very important: adverse effects on selection and dismissal, evasion of the obligation to pay wages, bankruptcy of employers, and so on, are all elements that needed to be taken into account when drafting the system.

The instruments used for activation in the Disability Benefits Act are closely linked to the Dutch system, in particular the calculation of residual earning capacity. This means that the instruments cannot easily be copied to other systems, even if there were an interest in doing so. The general underlying principle, that the partially disabled should not be totally excluded from the labour market, is

16. Something which is not allowed under the Act (the medical assessment of applicants at the time of recruitment is prohibited unless it is essential for the job), but practice is stronger than the rules.

however now gaining ground in other systems too, and where this is not the case it is still worthwhile giving it a serious thought.

BIBLIOGRAPHY

Auer, P. *Employment Revival in Europe: Labour Market Success in Austria, Denmark, Ireland and the Netherlands*. Geneva: ILO, 2000.

Borghouts-van de Pas, I. & F. Pennings. *Arbeidsparticipatie van jonggehandicapten: Een onderzoek naar Europese systemen en praktijken*. Tilburg: OSA, 2008.

Barentsen, B. *Wet werk en inkomen naar arbeidsvermogen*. Deventer: Kluwer, 2006.

den Uijl, S., et al. 'Reintegration of Partially Disabled Employees: From Market Efficiency vs Social Justice to Market Efficiency and Social Justice?'. In *Market Efficiency vs. Equity*, edited by B. Hessel, J. Schippers & J. Siegers. Amsterdam: Thesis Publishers, 1998.

Pennings, F. 'The Netherlands'. In *International Encyclopaedia of Laws, Encyclopaedia of Social Security Law*. Alphen aan den Rijn: Kluwer Law International, looseleaf.