

# Social security in the Netherlands in times of corona

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## 1. Introduction

Just like other countries, the coronavirus has hit the Netherlands hard. Measures were introduced in March 2020 in an effort to avoid overburdening the health care system, and includes business and store closures, cancelations of cultural events, etc. The suppliers of businesses no longer had any work. The export of goods and services to other countries came to a halt as well. The impacts of the crisis are unprecedented and devastating. The measures were partially lifted in June 2020, but by October 2020, in response to the second wave of COVID-19, large parts of the economy were again scaled back or shut down.

Soon after the initial measures were introduced in March 2020, the government acknowledged that the existing social security regulations were inadequate to cope with the effects of the lockdown. Since it was the government that decided to 'close down' the economy, and considering that compliance with the rules was crucial to beat the virus, and that without support, the impact of this shock on the economy would be amplified even further, the government presented a far-reaching financial package to support companies. It has been extended and revised over time.

The schemes were developed following intense consultations with the social partners; modifications to the schemes were discussed with them as well; however, the government took the final decision and ultimately bears responsibility for the schemes.

Because of the temporary nature of the schemes, it is not necessary or useful to discuss the details of each scheme. Some of the schemes are presented here to detail how the economic challenges have been dealt with up to 1 January 2021. The schemes also shed light on why the use of social security benefits was not as prevalent as one might expect, given

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the gravity of the crisis, and why the existing Dutch social security schemes have not yet been revised.

Section 2 discusses the job support scheme supporting companies in retaining their employees and preventing unemployment; Section 3 reviews the support scheme for the self-employed, and Section 4 presents the scheme for flexible workers. Section 5 deals with the position of frontier workers, and Section 6 concludes.

## **2. Job support scheme to help businesses retain their workers (NOW)**

### ***2.1. Overview***

Under the *Tijdelijke Noodmaatregel Overbrugging voor Werkgelegenheid* (NOW – Temporary emergency scheme to retain employment), extensive wage subsidies have been paid out to companies to offset some of their revenue losses. The aims to help companies bridge the crisis without having to dismiss workers. This scheme replaced other previously existing schemes, such as the short-time work scheme.

As a consequence of this scheme, unemployment has risen less than expected (it increased from 2.9 per cent in February 2020 to 4.6 per cent in July 2020). The number of bankruptcies has also remained low, in fact, it is considerably lower than usual. However, once these measures are scaled back or expire, and when companies have to adjust to the new circumstances, a considerable increase in unemployment can be expected.

NOW was introduced in March 2020 as a swift and large-scale scheme. It has been revised several times, with conditions being modified and gradually tightening over time. The scheme is expected to remain in place until 1 July 2021.

### ***2.2. Eligibility criteria for employers***

Within the scope of the first NOW scheme, NOW1, which was in force until 1 June 2020, a maximum of 90 per cent of employers' total wage costs were subsidised, if they expected their revenue to decrease by at least 20 per cent over a 3-month period (employers could choose which three months) as a result of the coronavirus crisis.

All employers, including industrial and commercial enterprises, sports clubs, churches, etc., which had earned a revenue for at least one month

prior to March 2020, were eligible for the scheme.<sup>1</sup> There were no additional requirements as regards the causes for the reduction in revenue, i.e. it could be attributable to several causes, including business closings to mitigate the spread of the virus and inability to implement the required measures (such as keeping a 1.5 meter distance). Businesses that remained open, but experienced revenue losses, were also eligible. Foreign employers qualified as well if they employed workers who are covered by social insurance in the Netherlands.

One important condition for eligibility to the first NOW scheme was that beneficiary employers were prohibited from dismissing workers for economic reasons.

Following the expiry of the initial subsidy period, employers were required to provide information on their actual revenue losses and support this information with financial statements. If the necessary conditions of eligibility were not fulfilled, the administrative authority, UWV, could reduce, suspend or reclaim the subsidy paid out. This was the case, for instance, if the employer had requested authorisation to dismiss employees for economic reasons. If this request was granted, the subsidy was reduced accordingly: the wages of the dismissed worker(s) were deducted from the sum of the subsidy.

Moreover, if a lower total sum of wages was paid compared to those paid in January 2020, the amount of the subsidy was also reduced accordingly.

### *2.3. Wage subsidy for eligible employees*

Subsidies under the NOW scheme are payable to workers with either a permanent or a flexible contract; employers are required to continue paying –to the extent possible– their workers' full wages. The NOW subsidy can only be used for the payment of wages.

The subsidy can also be requested for employees for whom there is no obligation to provide a minimum number of working hours and to pay wages, e.g. for workers with zero-hour contracts. Temporary work agencies can also apply for a subsidy for the workers they employ. If the employer to whom a temporary agency worker has been posted no longer requires that worker's services, the temporary work agency has the possi-

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1. A special calculation applies to the calculation of revenue of a company that was established after 1 January 2019.

bility to continue employing him or her and apply for the wage subsidy. The same applies to pay-roll companies. The wages for trainees as well as for platform workers are covered by the scheme as well, if the individuals are employed by the platform.

Since the scheme on short-time working has been repealed, workers have the right to their full wage, as long as they are employed, also if they only work partially. That is, even if the employer does not receive the NOW subsidy, the employees' wages may not be reduced, despite no work being available.

The employment relationship continues under such conditions and consequently, no unemployment benefits are paid, although the worker continues to acquire unemployment benefit rights.

#### ***2.4. Amount of subsidy***

The amount of the subsidy depends on the scale of the employer's revenue losses. For instance, if the employer's revenues declined by 100 per cent, the subsidy amounts to 90 per cent of total wage costs. If the loss is 50 per cent, the subsidy covers 45 per cent of total wage costs; if the reduction in revenue is 25 per cent, the subsidy amounts to 90 per cent of that figure, i.e. 22.5 per cent of the total costs of all employees' wages. The sum of all wages is usually calculated on the basis of the first month of the respective year, i.e. January 2020 (for each employee, not more than EUR 9,538 of that month is included in the calculation of his or her total wages). The subsidy is not increased even if the sum of total wages is higher during the corona period than in the reference period.

If the revenue losses are lower than initially estimated after the subsidy period ends, the amount is increased in accordance with the employer's actual revenue.

#### ***2.5. NOW2 and NOW3***

NOW2 was introduced in July 2020, followed by NOW3 in October 2020. The latter requires higher revenue losses for employers to qualify for the subsidy. Initially, the reduction in revenue to be eligible for NOW3 was 30 per cent. However, when the lockdown measures were tightened in December 2020, the threshold was set at 20 per cent for the period up to 1 April 2021. Thereafter, only employers who experience revenue losses of at

least 30 per cent will qualify for the subsidy, unless the rules are modified again at a later stage.

Under NOW3, the ban on dismissals of employees on economic grounds no longer applies. It is now anticipated that the crisis will require companies to restructure, and terminations will therefore no longer be prohibited. Meanwhile, the general rules on collective dismissals (the implementation of EC Directive on collective redundancies) remain applicable.

Connected with this new approach of consenting to corporate restructurings is the requirement that employers must encourage and support employees in upgrading their skills, e.g. by participating in trainings, to remain employable. Employers should allow employees to participate in such activities during working hours and/or reimburse the costs for these activities. Employers also have the obligation to help workers at risk of unemployment to find new work. If they fail to do so, the subsidy amount will be reduced by 5 per cent. That is, if an employer plans to dismiss a worker on economic grounds, the administrative authority (UWV) will have to be notified about the measures implemented to support the employee(s), otherwise, the subsidy will be reduced.

Employers are also eligible for the subsidy even if they already received support under the previous schemes NOW1 and NOW2. Employers who have not yet applied for wage subsidies under the earlier NOW schemes are eligible to apply for NOW3.

The subsidy rate under NOW3 gradually decreases every three months: from 80 per cent, to 70 per cent, and ultimately 60 per cent of all wage costs.

## **2.6 Data**

In the first three months following the outbreak of COVID-19, NOW covered 2.6 million workers (in total, there are about 8.3 million employees in the Netherlands). It was primarily used in the hospitality industry, retail and the commercial service sector. Of the businesses that received wage subsidies, 67 per cent had fewer than ten workers, 27 per cent had 10 to 50 workers and 6 per cent had at least 50 workers. The scheme was thus particularly relevant for small and medium sized businesses.<sup>2</sup>

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2. Parliamentary Papers 2019–2020, 35 420, No. 40.

### 3. Support scheme for the self-employed (Tozo)

#### 3.1. Overview

The *Tijdelijke overbruggingsregeling zelfstandig ondernemers (Tozo - Temporary bridging scheme for the self-employed)* is one of the measures introduced to support entrepreneurs during the coronavirus crisis.<sup>3</sup> The scheme is targeted at self-employed persons, including solo self-employed individuals.

It consists of two components. - A cost-of-living benefit to supplement the income of self-employed persons whose earnings fall below the social minimum.

- A loan for the self-employed person's enterprise in case of insufficient cash flow to settle invoices.

The scheme is administered by the municipality the self-employed person resides in.

It is designed in such a way to be easily administered, which was crucial in view of the large number of applications. Its purpose is to help the self-employed bridge the crisis. The benefits are therefore paid out quickly, without prior testing of the self-employed person's actual income conditions. If the eligibility criteria for this benefit are not met (see section 3.2.1), the funds received will have to be reimbursed. The government has acknowledged that some persons or companies will not be able to return the undue benefits or loans received, which will have a negative impact on public finance, a risk the government has accepted as part of the crisis measures.

The scheme is based on the already existing *Besluit bijstandverlening zelfstandigen* (Regulation on public assistance for the self-employed). The eligibility conditions for support under the temporary scheme have been relaxed considerably compared to the regular public assistance scheme, e.g. no means test on assets applies. It was initially envisaged that, as of 1 October 2020, a means test on assets (in this case restricted to available assets) would apply. Due to the additional measures introduced in view of the second wave of corona, this test has been postponed until 1 July 2021, i.e. to when the termination of the scheme is envisaged. Once the special scheme expires, the self-employed will have to resort to *Besluit Bijstandsverlening zelfstandigen* (general public assistance scheme).

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3. *Staatsblad* (Official Journal 2020, 118).

## ***3.2. The cost of living benefit***

### *3.2.1. Eligibility criteria*

#### *Financial eligibility*

To be eligible for the Tozo benefit, the household income must have fallen below the social minimum as a consequence of the coronavirus crisis. The income support benefit for cost-of-living does not have to be returned, unless the self-employed person earns an income above the social minimum at a later point. The applicable social minimum depends on the individual's age and household income, the same criteria that apply to the general Dutch minimum income support scheme. There are different levels of social minimum. On 1 July 2020:

- the social minimum for a single person over the age of 21 years is EUR 1,059 per month;
- for married (or cohabiting) persons, the social minimum is EUR 1,512 per month. These are net amounts.

Different rates apply to those under the age of 21 years and for persons above retirement age. The Tozo benefit supplements the household income up to the established minimum income level.

Applicants for the cost-of-living benefit must be between 18 years and retirement age. The applicant must be Dutch or married to/ cohabiting with a Dutch national.

When applying for the cost-of-living benefit, an estimate of the household income in the coming months must be made. It may, of course, be difficult to give an accurate estimate. If the estimate provided was incorrect, the applicant must inform the municipality as soon as possible.

Students who are also entrepreneurs are not eligible if they are under 27 years of age and are entitled to apply for study grants.

If both partners of a household work in the same company, only one of them can apply for the Tozo benefit.

#### *Living in the Netherlands*

One eligibility criteria for the cost-of-living benefit is that the claimant must reside in the Netherlands. Following discussions in Parliament, individuals who reside in the Netherlands<sup>4</sup>, but whose company is located in

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4. Letter of 18 November 2020 to the President of the First Chamber (Senate) of the Netherlands.

another EU or EEA Member State or Switzerland, are also eligible. Parliament remained critical of the residence requirement, as it excludes self-employed persons whose company is located in the Netherlands, but who do not live there. However, the government refused to extend the scheme to this group. The Secretary of State argued that Tozo is a public assistance benefit, and consequently, Regulation 883/2004 is not applicable and this benefit therefore does not have to be exported. It is not an unemployment benefit, either, as it is payable regardless of the cause of the applicant's adverse financial situation.<sup>5</sup>

Initially, the European Commission considered this benefit to be an unemployment benefit, since it provides coverage against the risk of involuntary unemployment and provides a cost-of-living benefit.<sup>6</sup> From a letter of the Dutch Minister of Social Affairs, it appears that the Commission considered this benefit to be a form of social assistance. The letter itself was not attached, hence the arguments for this position are unclear.

When evaluating the situation, it seems that the *Cuyper* judgment<sup>7</sup> is particularly relevant. In this judgment, the European Court of Justice asserted that the purpose and object, as well as the basis on which a benefit is calculated and the applicable eligibility requirements are relevant to qualify a benefit. Since the allowance dealt with in *Cuyper* provided financial assistance to the workers concerned following an involuntary loss of employment despite still having the capacity for work, it was considered to be an unemployment benefit. A benefit provided to an individual following loss of employment, which he or she is no longer eligible for once his or her situation of unemployment ceases as a result of him or her engaging in paid employment, must be regarded as constituting an unemployment benefit. The fact that an unemployed person in a situation such as that of Mr De Cuyper is exempt from the requirement to register as a job-seeker, and consequently from the requirement of being available for work, in no way influenced the allowance's fundamental characteristics.

Tozo is intended as compensation for involuntary loss of work. The fact that individuals who fall ill, particularly as a result of corona, are also eligible does not seem to be relevant; the purpose of this scheme is to provide unemployment assistance. Since there is an enforceable right to this bene-

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5. Answers to Parliamentary questions, No. 2020Z14956.

6. Answers of Commissioner Schmit, P-004040-2020.

7. ECJ, C-406/04, ECLI:EU:C:2006:491.



fit, and the benefit is not listed as a special non-contributory benefit in Annex X, it should qualify as an unemployment benefit. In this case, Article 65 of Regulation 883/2004 applies, which states that a person, who is partially or intermittently unemployed and who resided in a Member State other than the competent Member State during his or her last activity as an employed or self-employed person, shall make him- or herself available to the employer or to the employment services in the competent Member State. The Dutch government did not, however, follow this argument.

According to the Dutch Minister of Social Affairs, there are about 2,500 self-employed living in Belgium, who have a company in the Netherlands. There are around 1,000 self-employed living in Germany with a business in the Netherlands. These individuals seem to be most affected by the exclusion, but the Minister realised that if he decides to 'export' the Tozo benefit, it cannot be limited exclusively to these two countries.

The applicable Belgian scheme for the self-employed (*Overbruggingsrecht voor zelfstandigen* - Bridging measure for the self-employed) does not entail any residence requirements. Claimants must be socially insured in Belgium. Since persons who work in the Netherlands are not insured in Belgium, they are excluded on the basis of this criterion. There is a traditional reason why coordination is necessary: conflicting rules in different countries means that people will fall through the gaps.

Such self-employed persons can claim social assistance in Belgium; whether they qualify, however, depends on whether they meet the test on household income and available assets.

Self-employed persons who live in Germany and who have established a business in the Netherlands can apply for social assistance (*Arbeitslosengeld II*) in case of revenue losses. Individuals who resided in Germany for a short period only (i.e. less than five years) may be excluded from social assistance. Whether this is the case or not seems to vary from municipality to municipality.

#### *Minimum number of working hours in 2019*

Furthermore, the so-called 'working hours condition' must be satisfied for the year 2019. The applicant must have worked at least 1,225 hours in his or her enterprise.

If the self-employed person applies for the cost-of-living benefit, the income of his or her partner is taken into account to calculate the amount of the supplement. If the household income lies above the social minimum, the self-employed person is not entitled to this benefit.

### *Reimbursement*

If the benefit amount received exceeds the applicable threshold, the self-employed person must return the excess amount; in case the claimant's income is lower, the benefit amount will be supplemented. If incorrect information was knowingly submitted, the benefit amount will be reclaimed and a fine imposed.

### *3.2.2. Business loan*

Several of the conditions that apply to the cost-of-living benefit also apply to business loans which are meant to resolve short-term cash flow problems due to the coronavirus crisis.

The applicant must be Dutch or must be married to/cohabiting with a Dutch national, and at least 18 years of age. Different from the cost-of-living benefit, individuals who are above retirement age are also eligible for this benefit. The business loan cannot be applied for if the company is located abroad. If the company is based in the Netherlands, the business loan is payable, even if the applicant lives abroad, i.e. in another EU or EEA Member State or Switzerland.

Another requirement is that the company was established before 17 March 2020 (the date the lockdown was announced) and was registered with the Chamber of Commerce and is still economically active, unless the coronavirus crisis is preventing the continuation of activity.

The maximum business loan amount is EUR 10,157. A higher loan amount can be applied for under the regular *Besluit bijstandverlening zelfstandigen*. Self-employed entrepreneurs can apply for this loan even if their household income is above the social minimum.

If a self-employed person decides to close down his or her business, another specific scheme applies on the basis of *Besluit bijstandverlening zelfstandigen*.

If both partners of a household work in the same company, only one of them can apply for the business loan. If each has his or her own company, both can apply for a business loan for their company.

This scheme excludes freelancers who are not registered with the Chamber of Commerce. They can claim a benefit under the regular *Besluit bijstandverlening zelfstandigen*, but if registration with the Chamber is a precondition for working for the established company, the claim will be rejected.

### 3.2.3. Data

It is estimated that 374,000 self-employed persons claimed Tozo; over 90 per cent are small and medium businesses.

## 4. The Temporary Bridging Scheme for Flexible Workers (TOFA)

### 4.1. Overview

At the onset of the coronavirus crisis (March/April 2020), Parliament acknowledged that flexible workers who had just started working faced an unexpected gap in protection.<sup>8</sup> Consequently, a temporary scheme was introduced, *Tijdelijke Overbruggingsregeling voor Flexibele Arbeidskrachten* (TOFA - Temporary bridging scheme for flexible workers). This scheme covered those who had started working shortly before the start of the lockdown, and were therefore unable to meet the eligibility criteria<sup>9</sup> for unemployment benefits, but might also be excluded from social assistance, for instance, based on total household income. Because of this specific reason, the scheme was short-lived; at the end of June 2020, no further applications for this benefit were accepted.

### 4.2. Personal scope

The objective of this benefit was to provide a general scheme that could be easily administered and thus quickly paid out, considering that the applicants had no other source of income. On account of this objective, the government tolerated the disadvantages of this approach, namely that each applicant received the same amount, regardless of his or her prior income, and that the benefit amount might even be higher than the individual's actual income loss. It was acknowledged that abuse could not be excluded and was therefore accepted in order to provide a solution for flexible workers.

In 2019, 545,000 persons in the Netherlands worked as on-call workers and there were 266,000 temporary agency workers.<sup>10</sup> It was assumed that a maximum of one-third of this group of 545,000 did not qualify for unemployment benefits. Of those not eligible for unemployment benefits, 53

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8. Parliamentary Papers II 2019/2020 35 430, No. 15.

9. Namely, having worked for 26 weeks during the period immediately preceding the first day of unemployment.

10. CBS Statline for 2019.

per cent were students who still lived at home, 9 per cent were students living on their own, and 38 per cent belonged to other categories. This latter group comprises about 133,000 persons.

Individuals who are not entitled to unemployment benefits can claim public assistance, which is only awarded if specific conditions are fulfilled (with regard to total household income and available assets). According to data provided by the government, a considerable share of flexible workers do not have any savings and/or a partner preventing them from claiming social assistance.

This group, according to the Ministry's estimates, includes migrant workers, who have lost their jobs and returned to their country of origin. The scheme is aimed at workers with an on-call or temporary work agency contract, who do not meet the eligibility conditions for unemployment benefits and whose total assets or total household income (based on their partner's income) disqualifies them from eligibility for social assistance.

### *4.3. Eligibility criteria*

Due to the necessity to develop a simple scheme, the personal scope of flexible workers was not defined. Instead, the scheme targets workers whose income has been cut by at least half and who are not eligible for any other benefit. This group includes workers with a zero-hour contract, temporary agency workers and students with a part-time job. Persons who just started working and who, for instance, were dismissed during the probation period, are also eligible.

The scheme's eligibility requirements were that the applicant had to be at least 18 years of age on 1 April 2020 and that he or she had not yet reached retirement age. The applicant's wage in February 2020 must have been at least EUR 400,<sup>11</sup> at least EUR 1 in March, and maximum EUR 550 in April. In addition, the wages earned in April must have been at least 50 per cent of those earned in February, and no other benefit may have been received in April. One final condition was that the applicant depended on TOFA for his or her cost of living.

The benefit was payable to persons registered as employees under the social security scheme. Consequently, platform workers who were not registered as employees were not eligible for this benefit. The main reason for

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11. The scheme is limited to persons working a substantial amount of time (calculated on the basis of 12 hours a week at minimum wage level).

this was an administrative one – they were not registered with the administrative authority UWV.

In this context, the reason for unemployment is irrelevant. For instance, on-call workers who have been ordered to quarantine because a person in their household has contracted COVID could apply for TOFA.

TOFA, according to the Ministry, was exportable to EU Member States.

#### **4.4. Benefit amount**

The gross amount of the TOFA benefit was EUR 1,650 (i.e. EUR 550 per month, for March, April and May). The scheme was temporary (three months in total) and was not extended. The duration of this benefit was the same as the minimum duration of unemployment benefits. Since the minimum period for unemployment benefits was not extended, neither was TOFA.<sup>12</sup>

The benefit amount was based on the average wage of an on-call worker, who usually earns an average of EUR 825 gross per month; TOFA provided compensation of (roughly) 70 per cent of such a worker's monthly wages.

#### **4.5. Data**

UWV received around 17,000 applications, of which 7,500 were approved. About 9,000 applications were rejected, predominantly because the applicants' income had been higher than EUR 550 in April 2020 or because their income in February 2020 was below EUR 400.<sup>13</sup>

### **5. Effects on Frontier Workers**

For persons not residing in the country in which they work, the social security coordination rules are relevant for determining in which country contributions must be paid. As the share of income earned and/or the number of hours worked in the country of residence plays a relevant role, these workers could be affected by coronavirus measures in case they are required to, or want to work in their home country for more than one day a week.

The conflict of laws rules are covered in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the

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12. Parliamentary Papers 2019–2020, 35 420, No. 40.

13. These figures are not yet final.

coordination of social security systems.<sup>14</sup> This is sometimes referred to as the 'Basis Regulation'. In addition, the so-called Implementing Regulation is also of relevance, i.e. Regulation 987/2009 of the European Parliament and of the Council specifying the procedure to implement Regulation (EC) No. 883/2004 on the coordination of social security systems.<sup>15</sup> Article 13(1) of the Basis Regulation provides that a person who usually performs an activity as an employed person in two or more Member States shall be subject to the legislation of the Member State of residence, if he or she carries out a substantial part of his or her activity in that Member State. Due to the coronavirus measures, a frontier worker may have to work from home and would then be considered to be simultaneously working in two countries (the reference period for assessing these particular shares is the prospective 12 months). The Implementing Regulation stipulates criteria on how to interpret the term 'substantial'. Article 14 provides that the share of activity performed in a Member State is in no event 'substantial' if it is less than 25 per cent of all of the activities carried out by the worker in terms of turnover, working time, remuneration or income from work.

Note that the criterion of substantial work applies to the country of residence. The provision on substantial work does not provide detailed rules and only outlines when work is *not* substantial; moreover, it mentions alternative methods for defining 'substantial' work.

Since the Council apparently could not reach consensus on precise criteria, it leaves this issue up to the Member States to define when an activity is to be considered substantial and when it is not based on the mentioned criteria.

If the worker does not perform a substantial part of his or her activity in the Member State of residence and is employed by a single undertaking, the social security laws of the Member State in which the registered office or place of business of the undertaking or employer is located, apply.

Suppose that a frontier worker works at his or her employer's premises full time, or in any case, does not work at home for more than one day a week. The work performed in his or her country of residence is thus not substantial, and the social security legislation of the state in which his or her employer is registered applies. However, if this worker is required to

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14. Regulation 883/2004 was published in [2004] *OJ L* 166/1.

15. Regulation 987/2009 was published in [2009] *OJ L* 284.

work from home as a result of lockdown measures, the applicable legislation might change.

Such an adjustment was deemed undesirable, as a change in applicable legislation is associated with a great deal of administrative work, and may result in a mismatch of the applicable tax or social security law and collective labour agreement. Therefore, the administrative authorities in the Netherlands, Belgium and Germany agreed that working from home during the lockdown did not affect the applicable legislation. As seen above, Article 14 of the Implementing Regulation gives the power to the competent authorities to define 'substantial work', and they have apparently interpreted this article as allowing them to disregard working at home. This measure was introduced very soon after the lockdown was announced in March 2020.<sup>16</sup>

Any changes in work patterns is relevant for the applicable tax law as well. According to the respective bilateral tax treaties between the Netherlands and Belgium and Germany, tax is levied proportionally by the countries in which the work is performed. This means the applicable tax legislation is divided. If the worker, for instance, works in the Netherlands three days a week and in Germany two days a week, 60 per cent of his or her income is subject to Dutch taxation and 40 per cent to German taxation.

Since countries' tax and social security systems may differ significantly, being subject to taxation in one country and to social security in another can have a considerable impact on the individual's income.<sup>17</sup>

A swift response was taken in this regard as well: the Dutch authorities agreed with the respective Belgian and German tax authorities (on the basis of the bilateral tax treaties between the countries) to continue applying the initially applicable taxation system.<sup>18</sup>

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16. <https://pers.svb.nl/coronavirus-en-wonen-of-werken-over-de-grens-de-sociale-verzekering-verandert-niet/>.

17. For example, Frans Pennings, 'Barriers to free movement due to mismatches of cross border tax and social security instruments', in: K. Barana (ed.), *Studia z Zakresu Prawa Pracy i Polityki Społecznej*. Krakow: Wydawnictwo Uniwersytetu Jagiellońskiego, Vol. 25, pp. 307-322; B. Spiegel (ed.), K. Daxkobler, G. Strban & A.P. van der Mei, *Analytical report 2014: The relationship between social security coordination and taxation law*, FreSsco, Brussels: European Commission, 2015.

18. Stcrt. [Official Journal Netherlands] 2020, 21381; Stcrt. 2020, 25956.

At the time of writing, these rules still applied. A debate is currently underway among frontier worker organisations whether working from home several days a week will become a permanent phenomenon, and whether tax and social security legislation will have to be adjusted accordingly.<sup>19</sup> Since the Coordination Regulation provides that substantial work 'is in no event substantial if it is less than 25 per cent', there is no obstacle to raising this threshold to, for instance, 40 per cent or 50 per cent.

## 6. Conclusions

The NOW scheme was a relatively generous one, and covered flexible workers as well, even though employers could have easily dismissed them. As the wage subsidy did not cover all expenses of companies, employers still had the possibility to dismiss these workers; indeed, the unemployment figures grew during the first eight months of 2020.

While regular employees enjoyed relative 'safety' during the first period of the crisis, the position of the self-employed attracted considerable attention, and the scheme for the self-employed was subject to discussions and criticism. The question arose why it was not possible for self-employed persons to cover a couple of months of their costs without public support. After all, they are entrepreneurs. This discussion became part of a much broader issue in the Netherlands, i.e. the distinction between employed and self-employed persons. Are persons who cannot fend for themselves really self-employed? It is uncertain where this discussion will lead; it may become part of the programme of the government that will enter office after the March 2021 elections.

### *Who is excluded from coverage?*

Employees are only indirectly covered by NOW. If they are covered by the scheme, their employment contract is retained, i.e. their working hours are not reduced to short-time working. The eligibility conditions did not exclude the wage costs of specific groups, i.e. the wage costs of temporary agency and on-call workers were subsidised as well. Any conditions related to dismissals only applied to persons for whom permission for dis-

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19. The Members of Parliament have published a proposal to give workers the right to work at home (*Voorstel van wet van de leden Van Weyenberg en Smeulders tot wijziging van de Wet flexibel werken in verband met het bevorderen van flexibel werken naar arbeidsplaats*). At the time of completion of this paper, it was still subject to debate.



missal was required, namely those whose contract could not be terminated without such prior permission. Persons on probation, on-call workers or temporary agency workers could still be dismissed or simply not called for work.

Migrant workers employed by firms in the Netherlands are not treated differently from Dutch workers. If they moved back home to another EU Member State, they were eligible for the special TOFA scheme.

Frontier workers were not subject to any changes in the applicable legislation. The flexibility exemplified in this regard is substantial. The lockdown measures may result in long-term changes to the places where work is performed, which may have an impact on the conflict of laws rules for persons who partly work at home.

Protection for the self-employed targeted those with a low or no income. Those excluded from the scheme were persons with small enterprises (working less than 1,225 hours annually), those who had only recently started working and those living outside the Netherlands.

Most of the measures introduced in the Netherlands targeted businesses and the self-employed, which is a unique aspect of the response to this crisis. Currently, no unemployment or short-time benefits are paid to employees of enterprises that receive the subsidy, and the schemes were not modified or adapted to the actual situation. Some groups have, nonetheless, been affected; the unemployment rate has risen and mostly includes persons with a short employment record. Employees with a permanent contract have mostly not been dismissed since dismissals were discouraged by NOW. This situation will change in 2021, however, when NOW is scaled back and eventually comes to an end.