

Solo self-employed in the Netherlands, still in the middle of a storm.

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SOLO SELF-EMPLOYED IN THE NETHERLANDS: STILL IN THE MIDDLE OF A STORM

Still, after many years and efforts, the solo self-employed workers in the Netherlands are lacking adequate social protection. However, the topic has been high on the political agenda for quite some time. This contribution sheds more light on both the *current* legislative *plans* and *obstacles*, more specifically on the (intention of the) introduction of a compulsory disability insurance for solo self-employed.

To set the framework, this contribution starts with some facts and figures about the solo self-employed in the Netherlands since they constitute a considerable large group in the labour market **(I)**. After analyzing the main problem(s) **(II)**, the attention shifts to the concrete, latest plans of the legislator and the political actions and atmosphere **(III)**.

I - FACTS AND FIGURES

In 2023, one topic aimed at improving the social security position of the solo self-employed received extra attention. That is, namely, the creation of a compulsory disability insurance for the solo self-employed. Although some progress was made this spring semester in discussing and creating that insurance, by the end of August 2023 it is again uncertain if, when and how it will be established.

Today the share of solo self-employed (SSE) in the Netherlands is large and, in addition, is still increasing: from 1.1 million (2021) to more than 1.2 million (2022) solo self-employed in their main job, out of a working population of 9.6 million people¹. In addition, the share of solo self-employed workers and the increase is considerably higher than in other OECD countries where the percentage of solo self-employed workers is actually decreasing².

Besides the workers who are SSE in their main job, an increasing part of the Dutch working population decides to combine their existing job in employment with a job as SSE. The motivation of this « hybrid » group of workers to do so is the

1 See CBS: <https://www.cbs.nl/nl-nl/nieuws/2022/50/aantal-zzp-ers-gegroeid-naar-1-2-miljoen-in-derde-kwartaal-van-2022> and <https://www.cbs.nl/nl-nl/cijfers/detail/85278NED?d=74413>

2 See EC, « Access to social protection for all forms of employment. Assessing the options for a possible EU initiative », 2018, Brussels, p. 11. See also: OECD, « Input to the Netherlands Independent Commission on the Regulation of Work », 2019.

combination of a good social security protection as an employee with the freedom as a self-employed worker.

II - MAIN PROBLEM(S)

One of the main problems linked to the solo self-employed is their *poor social security position*. Compared to workers at home and abroad and compared to self-employed workers abroad, they are undoubtedly a lot less well protected against social risks such as illness, disability, retirement, unemployment or training. Their statutory social security is very limited and basically regulates only a first pillar pension (minimum old age pension) and the health insurance. For other risk insurances, the SSE's must turn to the private market, which they often do not do for various reasons like limited availability, too expensive insurances, overestimation of their health situation, age, profession, household safety net...

A recent multidisciplinary European study concluded also that amongst solo self-employed the risk of poverty is quite high³. Therefore, a decent social protection is not only in the interest of the solo self-employed, but also in the interest of society.

A second problem associated with the self-employed is the phenomenon of *false self-employment*. A series of court decisions in the past years proves that this phenomenon is widespread and that legislation lags behind the reality of the labour market. Many workers in the Netherlands get hired as solo self-employed workers, thus avoiding social security contributions in exchange for higher income and less statutory social security.

In the Deliveroo ruling of March 24, 2023, the Supreme Court (finally) ruled that Deliveroo drivers are employees and not self-employed. This judgment is a landmark case since it has major consequences for the design of the labour market as well as for the organization of social security⁴.

The consequences of false self-employment - this is the misclassification of a worker as a SSE rather than an employee - are multiple. For the worker it means that he cannot rely on the elaborated social protection of employees. For the principal on the other hand, it means that he is not considered to be the employer and therefore has far less obligations when hiring the worker as a SSE instead of as an employee (e.g no dismissal law, no payment by sickness for maximum 104 weeks, no social security contributions, no second pillar pension contributions, less safety rules and law concerning working hours). For the Dutch tax authorities/government, bogus self-employment means no or less income.

And for society, false self-employment includes the risk there is no level playing field between workers in the labour market. Although the problem of bogus self-employment exists for many years now, the Dutch government still

3 <https://workingyetpoor.eu/>: in January 2023 the final results of this consortium were presented.

4 ECLI:NL:HR:2023:443. The consequence of this ruling is that all Deliveroo workers were deemed to be employees and therefore entitled to proper social protection, to be paid for by the employer Deliveroo. Meanwhile, Deliveroo no longer operates in the Netherlands.

did not enforce for various reasons. In spring 2023, the Minister of Social Affairs & Employment, however, promised that the Taxation Authorities will start enforcing from January 2025. It is uncertain if this intention will take place as the Dutch Government resigned abruptly in July 2023, after governing for less than a year.

III - LEGISLATIVE AND POLITICAL ACTIONS AND OBSTACLES FOR THE INABILITY-TO-WORK SCHEME FOR SELF-EMPLOYED

During the previous government coalition(s), several actions were launched to thoroughly analyze labour market problems, including certainly the position of the SSE. Also the last government coalition worked from November 2022 till July 2023 on several issues concerning inter alia the labour market position of the SSE and more specifically the intention to introduce a *compulsory insurance against sickness and/or inability to work*⁵.

For employees, the disability risk is well covered and distinguishes between short-term and long-term disability. The first period (short-term) is called the sickness period and is paid by the employer⁶. It covers a period up to 104 weeks at an average of 170 % of the previous income if the illness indeed lasts the full two years. In exchange for their salary during illness, employees are subject to strict reintegration requirements. Most employers pay 100 % for the first six months or year and then reduce the income replacement from 90 to 70 % thereafter. After the first 104 weeks, the disability scheme (long-term) can take effect if the employee meets the criteria for this particular scheme⁷.

For SSE, in contrast, there is currently no statutory disability scheme at all: be it short-term (illness) or long-term (disability). Due to the large variety within the group of SSE's, it took a long time to come up with an acceptable proposal. Nevertheless, early this year the Minister of Social Affairs & Employment announced the intention to further develop a particular proposal and to introduce it within one to two years.

This ministerial intention for a proposal is based on the proposal of March 2020 of the « Stichting van de Arbeid » (StAR), an advisory committee to the government⁸. The government's assignment to this committee was to work out a compulsory disability insurance for the self-employed that would be affordable, accessible and executable, counteracting false self-employment while still allowing genuine self-employed people the leeway for their entrepreneurship.

5 Letter from the Minister of Social Affairs & Employment to the Parliament: « Voortgangsbrief werken met en als zelfstandige », 16 December 2022, reference: 2022-0000292130. Also: Letter from the Minister of Social Affairs & Employment to the Parliament: « Voortgang uitwerking arbeidsmarktpakket » (*Progress in the development of the labour market package*), 3 April 2023, reference: 2023-0000216197.

6 Art. 7:629 BW (Civil Code).

7 Wet Werk en Inkomen naar Arbeidsvermogen (Wet WIA).

8 *Stichting van de Arbeid*, « Keuze voor zekerheid. Zelfstandigen verzekerd tegen langdurig inkomensverlies door arbeidsongeschiktheid », March 2020: <https://www.stvda.nl/-/media/stvda/downloads/publicaties/2020/aov-zelfstandigen-voorstel.pdf>

The main features of the intended ministerial proposal, which by the way did not adopt entirely the original proposal, are as follows:

1. It will be a separate arrangement for the SSE. Despite the plea to include the disability risk for the self-employed in a new general scheme for *all workers* (employees and self-employed), the government chooses to have a particular insurance for the self-employed.
2. SSE who encounter incapacity for work can rely on this schedule (only) after a waiting period. The government opts for a waiting period of one year. The 2020 proposal (StAR) specifies a standard waiting period of 52 weeks, but leaves room for adjustment to 26 or 104 weeks by the self-employed at a different premium. However, the Minister states that there will be no differentiation in the waiting period and that the default option of the earlier proposal will be the only one in the statutory new insurance. She emphasizes that a shorter waiting period can be an opt-out option, but only in the private market and with the condition that the private insurance company gives the SSE access to it.
3. Every SSE is insured for a standard benefit of 70 % of his or her last earned income but with a limit of €30,000 gross per year.
4. The benefit is maximum €1.650 gross per month.
5. The insurance premium is set at 8 % of the income and is deductible.
6. SSE's can of course choose for a complementary insurance on top of this basic insurance. This option implies, however, that the private insurance sector is open to discuss the high premiums they usually request from the SSE.
7. An opt-out of this mandatory insurance as the StAR-committee suggests, is under investigation, according to the Minister, and will only be implemented *if* there is a decent alternative in the private insurance market.
8. Execution of the new disability insurance is a problem. For various reasons, there are major problems at the implementing agencies such as the UWV⁹ and the Tax Office. These bodies seem the most appropriate for implementing the new insurance but both bodies have indicated that they are not prepared for this new task. However, the Minister of Social Affairs urges these two agencies to set up a backup scenario to implement the new insurance anyway in the short-term.
9. When determining incapacity for work, the criteria that also apply to employees are used. This takes into account *any* work that the insured could still perform, not just the insured's own work. The criticism on this issue is that solo self-employed usually are experts in one particular business which makes it difficult for the administrative body (UWV) to determine in which other sector the SSE could have been working in order to earn money.
10. A re-integration procedure has to be set up for the SSE. Although the ministerial proposal is silent on this, the StAR 2020-proposal emphasizes this

9 UWV stands for « Uitvoeringsinstituut Werknemersverzekeringen » and is the public agency that is involved in all employee schemes. The Tax Office is responsible for the collection of all employee insurance premiums.

issue. Re-integration during illness (short-term) and disability (long-term) is for employees a key process. Without proper reintegration efforts by employer and employee, financial penalties become effective. But how to organize this for SSE? Who will check their re-integration efforts and how? Also, which jobs are the SSE to be expected to do in case of incapacity? All these questions are still open.

11. Exempting the agricultural sector from the mandatory insurance, as proposed in the StAR proposal, is not an option for the Minister because it complicates the insurance implementation.

After all, this proposal for a compulsory disability scheme for SSE immediately provoked many reactions. Self-employed workers, academics, previous advisers to the government, unions and implementing agencies all expressed their dissatisfaction and criticism of this proposal.

2023 appeared to be the momentum for creating a decent insurance package for the self-employed while it was also directly linked to the European Agenda, the Minister pointed out. Indeed, in the « European Pillar of Social Rights Report 2023 Netherlands », some reforms concerning the position of SSE in the Netherlands were explained and have been launched¹⁰. They include for example more inclusion of the self-employed in the national social dialogue (§ 8). Also the compulsory disability insurance and a better social assistance scheme are mentioned (§ 12). Last remark, in that ESPR Report, concerning the SSE is about the second pillar pension extension (§ 15).

When the Minister of Social Affairs & Employment in April 2023 published her letter on the progress of the government's labour market package, including specifically the intended disability insurance for the self-employed in the Netherlands, she emphasized the complexity of the reform but was optimistic about the plans¹¹. She could not have foreseen that the job in which she had barely grown will likely be taken over by someone else in the next government term.

In July 2023 the Dutch government resigned abruptly and that makes it difficult to predict which plans of the labour market reform will be taken up. It is now uncertain what form this disability insurance will take, but moreover it is not certain whether a disability insurance for SSE will be designed.

It is awaiting the plans of the new government that will have to be put together after the November 2023 elections. The solo self-employed in the Netherlands are still in the middle of a storm. To be continued.

10 <https://open.overheid.nl/documenten/ronl-4fab82f8a355178425a098d99abd84a79e9ddf88/pdf>. This is an English report on the Dutch government site. See §8, 12 and 15 of this report.

11 Letter from the Minister of Social Affairs & Employment to the Parliament: « Voortgang uitwerking arbeidsmarktpakket », *op. cit.*