Ministerie van Sociale Zaken en
Werkgelegenheid

> Retouradres PO Box 90801 NL-2509 LV The Hague The Netherlands

International Labour Office
Mrs. C. D
Director of Standards
4, Route des Morillons
CH-1211 Genève 22
Zwitserland

Directie
Inkomensverzekeringen en -voorzieningen
Afdeling Inkomenswaarborg tijdens Werk

PO Box 90801
2509 LV The Hague
The Netherlands
Anna van Hannoverstraat 4
The Hague
T +31 (0)70 333 44 44
F +31 (0)70 333 40 33
www.rijksoverheid.nl

Contactpersoon

Datum 18 OKT 2011
Betreft ILO Convention 121 and WIA Act

Onze referentie
IVV/I/2011/18146

Uw referentie
ACD 19-2-1-42

Bijlagen
1. English version autumn agreement 2003
2. English version autumn agreement 2004

Dear Mrs. D

On 19 September 2011, a delegation of civil servants of the Dutch Ministry of Social Affairs and Employment and the Dutch Ministry of Health, Welfare and Sport held consultations with the ILO staff members about the point of view of the ILO's Committee of Experts on the compatibility of the WIA Act (Work and Income according to Labour Capacity Act) with ILO Convention 121.

During this consultation, the two ministries gave an explanation of the scope and effects of the WIA Act. Furthermore, the substantiation of the Dutch viewpoint that the WIA Act is compatible with ILO Convention 121 was discussed for each item that required the attention of the ILO's Committee of Experts.

During the consultation, the ILO staff members pointed out that after the report by the Dutch government was sent in, they received another joint report from the Federation of Netherlands Trade Unions (FNV) and National Federation of Christian Trade Unions (CNV). The ILO staff members asked for a written response from the Dutch government to this report. This was confirmed in your letter dated 19 September 2011, in which you also state that the Dutch report and the reports by the social partners on the WIA Act and ILO Convention 121 will be put up for discussion during the next meeting of the Committee of Experts, later this year.

Below, I will meet your request. I will limit myself to a response to each individual topic brought forward by the FNV and CNV. Please refer to the report of 29 August 2011 for the government's general response.

General topics
Three points raised by the FNV and CNV concern general comments to the WIA Act, not establishing a direct link with the provisions of the ILO Convention 121. As the FNV and CNV have put forward these points, I want to avail myself of the opportunity to briefly respond to them.

The first point raised by the FNV and CNV is the question whether it was necessary to reform the WAO (Invalidity Insurance Act). In response to this point,

Directie
Inkomensverzekeringen en -voorzieningen
Afdeling Inkomenswaarborg tijdens Werk

Datum

Onze referentie
IVV/I/2011/18146

I am referring to the evaluation of the WIA Act and the policy concerning incapacity for work in general (Parliamentary Papers II, 2010 – 2011, 32716, no. 1). This evaluation, which was published at the beginning of this year, clearly shows that this policy has been successful. Between 1999 and 2009, the chance of people starting to claim WAO/WIA benefits was reduced by 71%. About half of this decrease can be attributed to the introduction of the Invalidity Insurance (Differentiation in Contributions and Market Forces) Act (1998) and the Improved Gatekeeper Act (2002), while the other half of the decrease is the result of the three measures that are connected with the introduction of the WIA Act: the tightening of the Assessment Decree (2004), the prolongation of the obligation to pay salary during sickness (2004) and the introduction of the WIA Act (2006). In the period that the inflow in WAO/WIA was reduced, there was no increase visible in inflow in social assistance and unemployment benefit.

Apart from the contribution of the WIA Act to this reduction, the WIA Act has, in various ways, improved the income position of employees who are incapacitated for work. First of all, the duration of the wage-related WGA benefit (wage-related benefit under the Return to Work (Partially Disabled) Regulations) for persons who are partially incapacitated for work is, as a rule, one year longer than the loss of income benefit under the WAO. This is a result of the WW benefit (unemployment benefit) being incorporated into the wage-related WGA benefit. Secondly, other than under the WAO, it is always profitable for an employee who is incapacitated for work to start working. Under the WAO, the total income of the employee who was incapacitated for work could go down if he/she started earning income from work. This situation is impossible under the WIA Act. Thirdly, the wage supplement received after the wage-related WGA benefit by persons who are fully, but not permanently incapacitated for work and persons who are partially incapacitated for work and work enough hours, is higher than the subsequent benefit received by these groups after the loss of income benefit under the WAO. In jargon: they have overcome the WAO shortfall. On the other hand, for persons who are partially incapacitated for work and who do not work or do not work enough hours, the WGA subsequent benefit is generally lower than the former WAO subsequent benefit. The level of the subsequent benefit as such meets the requirements of the convention. Due to the difference in benefit level, working or working more hours is always profitable. Fourthly, the WIA Act provides for the fact that benefit claimants who continue to be fully incapacitated for work remain entitled to a benefit of 75% of their final wage until they retire. Under the WAO, this group also received the aforementioned lower subsequent benefit after the loss of income benefit. The level of this benefit was based on the continuation daily wage, which was between the statutory minimum wage and the final wage.

A second point raised by the FNV and CNV is the manner in which the residual earning capacity is determined. The FNV and CNV describe how the residual earning capacity has been determined through time. They speak of an assessment that is highly theoretical and fictitious. Subsequently, they argue that the assessment based on residual earning capacity discriminates people with low-paid work. In response to this, I would first of all like to note that, when determining the degree of incapacity for work, one does not look at existing vacancies, but at work that a person is able to perform using his strengths or skills. This is understandable in view of the nature and scope of the Invalidity Insurance Act, namely offering protection in case of *incapacity for work*, which is when someone is *unable* to perform (suitable) work due to his functional limitations. If, instead of this, the (suitable) work a person actually performs would be taken as a basis,

Directie
Inkomensverzekeringen en -voorzieningen
Afdeling Inkomenswaarborg tijdens Werk

Datum

Onze referentie
IVV/I/2011/18146

unemployment would implicitly be involved in determining the degree of incapacity for work. For if a person does not work, he would, by definition, be fully incapacitated for work. However, this could also be the result of the fact that he is unemployed. That is why it is assessed which functions a person is still able to perform using his strengths and skills. These are functions that are actually established by employers and that are described by staff members of the UWV (Employee Insurance Agency) based on aspects such as the required strengths, skills, training and work experience. These actually existing functions are only used in the assessment of claims if they have a sufficient regional distribution. In that sense, the assessment of claims is far from theoretical and fictitious.
More important is the statement made by the FNV and CNV that the assessment on the basis of residual earning capacity discriminates people. This is not the case with the assessment of the loss of residual earning capacity. Any person who files a WIA application is assessed in the same way and according to the same criteria. However, the degree of incapacity for work is expressed as a partial of full loss of income from work. This implies that a person who earned the minimum wage and can still earn the minimum wage by working is not incapacitated for work, while a person who used to earn twice the minimum wage and can still earn the minimum wage by working is 50% incapacitated for work. This is, however, completely logical because the former employee does not suffer a loss of income due to sickness or limitation, while the latter employee suffers a loss of income of 50% due to sickness or limitation. Formally expressed: loss of income due to sickness or limitation forms the insured risk. The degree of incapacity for work has been determined this way since the introduction of the WAO in 1967.

Thirdly, the FNC and CNV say that the fact that fewer people start to claim benefits under the WIA Act is the result of stricter criteria and because much fewer benefit applications are granted when compared to the WAO. In response to this, I would like to point out the development of the percentage of benefit applications that is rejected. The development identified by the FNV and CNV does not become apparent from the rejection percentage. In 2003, 36% of WAO applications were rejected. This percentage is currently slightly higher, namely 42%. In absolute numbers, much fewer benefits are rejected now than used to be the case (analogous to the decrease in the number of applications granted). In 2009, 16,690 WIA applications were rejected. In 2002, 71,000 WAO applications were rejected.
In addition to this, the FNV and CNV argue that legislation should be an instrument that contributes to the formation of an inclusive labour market. I fully agree to this. I am of the opinion that the policy concerning incapacity for work is an important step towards an inclusive labour market. Without the policy conducted, the number of persons incapacitated for work would have increased to 1.2 million benefit claimants in the long run. Now we expect that there will be less than 500,000 benefit claimants in the long run.

The OECD, too, has expressed a positive opinion on the policy conducted in the Netherlands (see OECD (2008), Sickness, disability and work. Breaking the barriers, vol. 3: Denmark, Finland, Ireland and The Netherlands). The FNV and CNV argue that the origin of the positive findings of the OECD is suspicious, as the former Minister of Social Affairs and Employment works for the OECD. In response to this, I would only like to point out that the facts and figures mentioned by the OECD in its report clearly speak for themselves.

Directie
Inkomensverzekeringen en -voorzieningen
Afdeling Inkomenswaarborg tijdens Werk

Datum

Onze referentie
IVV/I/2011/18146

Lower limit of 35% and degree of return to work

The FNV and CNV deal with the lower limit of 35% in more detail. Regarding this point, reference is made to the report by the Dutch government of 29 August 2011. In addition to this, I am sending you the English version of the 2004 Autumn Agreement, in which the social partners say that "For employees with minor occupational disability (35% or less disabled), it is up to the employing organisation to produce tailor-made solutions."
Of the employees who became ill during permanent employment but who are less than 35% incapacitated for work, 62% were working in 2009. In 2007, this percentage amounted to 46%. I consider this to be a positive development. Recently, the Labour Foundation expressed its ambition of continuing this positive trend.

With regard to the degree of return to work, the FNV and CNV also deal with the position of *vangnetters* ('safety netters' or persons entitled to sick pay). The FNV and CNV note that only a small part of this group has a job. This is correct. Of the persons who are less than 35% incapacitated for work and who used to be entitled to sickness benefits, around 35% have a job, compared to 27% of the persons who are partially entitled to WGA benefits and who used to be entitled sickness benefits. Apart from the relatively low degree of return to work, this group is also overrepresented when it comes to the number of people starting to claim WIA benefits. Currently, over 50% of the number of people starting to claim WGA benefits used to be entitled to sickness benefits. The Dutch government considers this to be one of the most important concerns of the WIA evaluation carried out in 2010 and 2011. That is why the Minister of Social Affairs and Employment is currently working on a set of measures that will address former employers, benefit claimants involved and the implementation more with the aim of reducing long-term sickness absence and the number of people of this group starting to claim WIA benefits. This set of measures is expected to be introduced on 1 January 2013.

The FNV and CNV also argue that the employee who is incapacitated for work bears the burden of an insufficient labour market, pointing out, among other things, the reintegration obligations of the WIA Act. I have already discussed this issue in the Dutch report of 29 August 2011. In addition to this, I would like to emphasise that, during the implementation, tailor-made work is delivered when imposing these obligations. Employees who are partially incapacitated for work are, of course, not obliged to accept work that cannot be asked of them due to its physical, mental or social nature. Moreover, no reintegration obligations are imposed which, in view of the situation in the labour market, are unfeasible. Testing for compliance with these obligations is also tailor-made work.

Level of the subsequent WGA benefit

With regard to the level of the subsequent benefit, the FNV and CNV state that 'many workers who are partially disabled because of work-related illness or injury, fall back on a minimum benefit that is unrelated to their formerly gained wages'. The FNV and CNV are correct in stating that the level of the subsequent WGA benefit is linked to the minimum wage. However, the FNV and CNV are not correct in stating that many employees fall back on this. At the end of April 2011, there were around 120,000 current WIA benefits, of which around 88,000 WGA benefits. At that time, less than 5,000 people entitled to WGA benefits received a subsequent WGA benefit. At that time, around 42,000 persons entitled to WGA benefits received a wage-related WGA benefit and a group of the same size received a WGA wage supplement at that time. Both of these benefits are related

Directie
Inkomensverzekeringen en -voorzieningen
Afdeling Inkomenswaarborg tijdens Werk

Datum

Onze referentie
IVV/I/2011/18146

to the final wage, so slightly under 6% of the WGA benefits concerned subsequent WGA benefits. For the sake of completeness, it should be noted here that the duration of the wage-related WGA benefit is limited through time and that benefit claimants in this category still move on to the WGA wage supplement or subsequent WGA benefit in due course. With regard to the level of the subsequent WGA benefit, I am sending you, for the sake of completeness, the English version of the 2003 Autumn Agreement. In this autumn agreement, the design of the subsequent WGA benefit, as we now know it, was agreed upon with the social partners.

Subsequently, the FNV and CNV point out the importance of proportionality between the types of benefit. I have already discussed this point in great detail in my report to the ILO.

Employer's liability under the Dutch Civil Code

The FNV and CNV note that a reference to employer's liability for occupational accidents and work-related illnesses is not in conformity with ILO convention no. 121. They believe that the opposite is the case: under the convention, insurance is necessary because a legal route is inadequate. This route does not provide for income security, takes up a long time, requires a lot of expensive legal knowledge, entails high medical costs for medical experts and the outcome is uncertain. For instance, the employee should argue convincingly that there is a causal connection between the loss and the employer failing to meet his obligation to ensure healthy and safe working conditions (duty of care). Research has shown that there is a large difference between the number of occupational accidents and cases of work-related illnesses, the number of potential claims, the number of claims submitted and the number of claims handled. The FNV and CNV therefore contest that employer's liability tends towards strict liability.

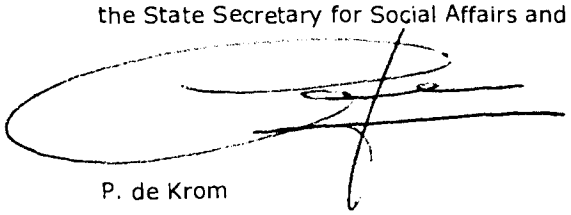
In response to this, I would first of all like to note that the Dutch government did not argue that employer's liability is in conformity with ILO convention no. 121, but argued that the lower limit of 35% in the WIA Act is in conformity with Article 14 of that convention as employees who are incapacitated for work for less than 35% will not fall into hardship. In order to support this, the income regulations on which this group can rely, such as the WW (Sickness Benefits Act) and WWB (Work and Social Assistance Act), were pointed out. These income regulations ensure that all employees, so including employees who are incapacitated for work for less than 35%, have an income which they can use to pay for *at least* the necessary cost of living. In addition, an employee who has become incapacitated for work due to an occupational accident or work-related illness can hold his employer liable for the loss if the latter has failed to fulfil his duty of care. In that case, the employer should demonstrate that he has taken sufficient and adequate safety measures in order to avoid occupational accidents and work-related illnesses. Moreover, the civil court sets high requirements on the employer's duty of care. Among other things, he should ensure a safe working environment, sound machines and tools, protection against hazardous substances, the necessary training and instructions, supervision of compliance with these instructions and responsible working methods. Furthermore, the civil court rather quickly assumes that there is indeed a causal connection: if the employer has failed to fulfil his duty of care, the loss is deemed to have been the result of that, unless the employer demonstrates that compliance with his duty of care would also have resulted in such loss. Furthermore, there is an ongoing development in civil justice that, based on "good employment practices", the employer is deemed to take out adequate insurance for his employees if the employer cannot be held liable, for example

because the accident took place on the public road. Partly based on these developments, the Dutch government established that employer's liability tends towards strict liability.

Moreover, legal proceedings do not always have to be initiated, for example if the employer recognises his liability. The research quoted by the FNV and CNV shows that matters are only taken to court in four percent of cases, a settlement still being concluded in half of these cases. No firm conclusions can be drawn based on the observed differences between the number of occupational accidents and cases of work-related illnesses, the number of potential claims, the number of claims submitted and the number of claims handled. For instance, recent research (Hugo Sinzheimer Institute, University of Amsterdam, *Werkgeverskosten in verband met arbeidsgerelateerde schade: bestuurlijke boetes en civiele aansprakelijkheid* [Employer's costs in connection with work-related loss: administrative penalties and civil liability], January 2011) shows that in most cases, the financial loss is limited. This explains the fact that, in these cases, no claims will be submitted, because in case of sickness, the employee is at least entitled to continued payment of wages of 70% and he usually receives more under the collective agreement applicable to him. Finally, the aforesaid research shows that in only nine percent of cases, the absence due to an occupational accident or a work-related illness lasts for six months or longer. Upon the application for a WIA benefit, this percentage will be even lower, because this benefit will only be paid after 104 weeks of sickness. The share of these persons that is incapacitated for work for less than 35% due to an occupational accident or work-related illness will again be even lower. Moreover, it is usually possible in these cases to claim unemployment benefits, as already stated. This may also explain the fact that employees will, in addition, not rely on liability law.

I will send a copy of this letter to the House of Representatives of the States General.

Yours sincerely
the State Secretary for Social Affairs and Employment,



P. de Krom

Directie
Inkomensverzekeringen en -voorzieningen
Afdeling Inkomenswaarborg tijdens Werk

Datum
18 OKT 2011

Onze referentie
IVV/I/2011/18146

STATEMENT REGARDING THE 2004-2005 NEGOTIATIONS ON TERMS AND CONDITIONS OF EMPLOYMENT

The central organisations of employers and employees represented in the Labour Foundation (Stichting van de Arbeid):

- noting that the Netherlands finds itself in a continuing negative economic situation, as is shown by its deteriorating international competitiveness and employment levels, disappointing innovative capacity and productivity, and a continuing major increase in unemployment;

- considering that, in order to ensure renewed economic growth and employment in the long-term, it is necessary to strengthen the country's competitiveness and that to do so requires all parties to make efforts to increase productivity and innovation;

- having noted the Cabinet Statement of 18 November 2003 (see Annex 1);

1. urgently call on the parties involved in collective bargaining not to include any contractual pay increases in the collective agreements which are to be revised for 2004 and to agree on a contractual pay increase for 2005 which is virtually zero.[1] One-off, performance-related forms of reward should, however, remain possible. The latter may be paid in the form of a percentage payment or a nominal payment or some combination of the two;

2. agree that the implementation of the above recommendation for wage increases in 2005 will only apply if the Cabinet and the two sides of industry reach agreement by no later than April 2004 on the overall fiscal facilitation of early retirement/pre-pension and the proposed lifecourse scheme, with such measures taking effect on 1 January 2006, together with any transitional measures;

3. recommend that similar restraint should also apply to pay that is not covered by a collective agreement;

4. implement, in the light of the Cabinet Statement of 17 October 2003 with respect to disability benefit, points 1 to 4 and the following concluding paragraphs of the Statement issued by the Labour Foundation on 22 March 2002 (see Annex 2).

---

[1] In the context of this Statement, any agreements that may be made regarding contributions to medical expenses are not included in the determination of the contractually agreed pay.

The Hague, 18 November 2003,

Confederation of Netherlands Industry and Employers (Vereniging VNO – NCW)

mr. J.H. Schraven

Netherlands Federation of Trade Unions (Federatie Nederlandse Vakbeweging)

L.J. de Waal

Royal Dutch Association of Small and Medium-Sized Enterprises (Koninklijke Vereniging MKB-Nederland)

drs. L.M.L.H.A. Hermans

Netherlands Federation of Christian Trade Unions (Christelijk Nationaal Vakverbond)

D. Terpstra

Dutch Organisation for Agriculture and Horticulture (Land- en Tuinbouw Organisatie Nederland)

G.J. Doornbos

Trade Union Federation for Intermediate and Higher Employees (MHP Vakcentrale voor middengroepen en hoger personeel)

A.H. Verhoeven

ANNEX 1

Cabinet Statement 18 November 2003

1. In view of the difficult economic situation the Cabinet believes that long-term wage moderation is of great importance. Employers' associations and trade unions have a responsibility in this regard. The Cabinet therefore attaches great importance to the declaration by the Labour Foundation dated 18 November 2003 with regard to wage developments.

2. In the light of this important development, the Cabinet is willing to make a number of concessions to meet the wishes of employers and employees regarding adjustments to the Cabinet policy as previously announced. These concessions are as follows.

3. Early retirement (VUT)/pre-pension/lifecourse
   The measures incorporated in the 2004 Tax Plan abolishing the fiscal facilitation of early retirement (VUT)/pre-pension and introducing the proposed lifecourse scheme will be delayed.
   The Cabinet and the Labour Foundation will enter into further consultations on the entire system of fiscal facilitation of VUT/pre-pension and lifecourse schemes with a view to achieving a consensus in April 2004 on the system to be introduced on 1 January 2006, as well as any transitional arrangements.
   The Cabinet is working on the basis of a financial envelope of EUR 510 million in 2006, EUR 410 million in 2007 and a structural sum of EUR 250 million to finance the new system to be introduced on 1 January 2006. The resources currently being budgeted for the lifecourse facility and for the existing leave savings scheme may also be addressed for this purpose. The Cabinet realises that there are no guarantees that this budgetary framework will be endorsed by employers' and employees' representatives .

   Available funds (x EUR million)

	2006	2007	Struct
Envelope	510	410	250
Lifecourse	200	200	200
Leave savings	160	150	150
Total	870	760	600

   The definitive structure of the package may be set out in the 2005 Tax Plan to be adopted in 2004.

4. Linkage between pay and social benefits
   a. With effect from 1 January 2006 the link between pay and benefits will be restored. On the basis of the original grounds for exceptions from this linkage as set out in the Wage-Benefit Linkage and Exceptions Act (WKA), benefits will be frozen in 2004 and 2005.
   b. In 2004 and 2005 the Cabinet will take a zero contractual pay increase as a starting point for contractual pay increases for the public sector. With effect from 1 January 2006 the usual reference model will be applied for pay negotiations in the public sector.

5. Unemployment benefits

a. The measures announced to prevent 'cumulative unemployment benefit', under which redundancy payments by employers were to be deducted from the unemployment benefit received by laid-off employees, will be scrapped completely. The possibility will remain of topping up unemployment benefit with redundancy payments by the employer (individually and collectively).

b. The Cabinet will not table any new bills concerning the referral requirement and short-term unemployment benefits before the Social and Economic Council (SER) has been given an opportunity to publish its advisory report on unemployment benefit before 1 March 2004, of which the Cabinet will take careful note.

6. Invalidity Insurance Act

a. Contrary to the Cabinet plans, people with a partial incapacity for work who are not in employment will continue to receive benefit after expiry of the period of pay linkage, which will not be tested against any income received by the claimant's partner. This benefit will amount to 70 percent of the statutory minimum wage, multiplied by the percentage incapacity for work.

b. The two following measures will be achieved provided two conditions are met:
   1. The number of people moving on to the new scheme for people with a full long-term incapacity for work has actually been kept to the currently budgeted figure of 25,000 on a 12-month basis since 1 January 2006[1]. This will be determined in August 2007 on the basis of the figures that are available in July 2007.
   2. The intention of the Labour Foundation not to agree any supplements to the continued payment of wages at 70% in the second year of the employee's illness has actually been implemented by the bargaining parties.

c. Under the new system, the benefit for people with a full long-term incapacity for work will be increased with retroactive effect from 1 January 2006 by 5 percentage points, calculated on the basis for the statutory benefit.

d. The Disability Insurance (Premium Differentiation and Market Forces) Act (PEMBA) will also be repealed with retroactive effect from 1 January 2006.

e. The Cabinet will not introduce any regulations to ensure that continued payment of wages in the second year of illness does not exceed 70 percent of previous salary. The Cabinet is confident that the Labour Foundation will realise its own intentions on this point, namely no continued payment of wages above 70 percent.

f. The cost associated with benefits payable under the Partially Fit for Work (Resumption of Work) scheme will be borne by both employers and employees.

g. The Cabinet will seek the advice of the Social and Economic Council (SER) on a number of specific themes, namely the Employment Disability (AO) criterion, the proposed Occupational Risks Additional Guarantee Scheme (EGB), the position of employees with a flexible employment contract and the position of military personnel. The SER will publish its advisory report in January 2004. If it seems feasible that the Employment Disability criterion proposed by the SER can be made operational and offers the prospect of achieving the budgeted fall in the number of people moving on to disability benefit to 25,000 on a permanent basis, the Cabinet will seek to adopt that criterion.

[1] In assessing the figures for the number of people moving on to the scheme, allowance will be made for any startup problems in implementing it.

7. Youth unemployment
   The creation of additional jobs and work experience placements for young people is a crucial element in tackling youth unemployment. Employers' associations have stated that they require support in creating these additional jobs and work experience places. A study is under way to determine whether the Centres for Work and Income (CWI) would be able to provide the envisaged support for all industries and sectors. Each CWI is given a budget averaging EUR 1,000 per client to smooth the path to work by funding short-term projects intended to lead to rapid placement in employment or a work experience place.

   The Cabinet takes the view that young people will be able to take up trainee placements without sacrificing their benefit, provided such work is temporary and is conditioned by training, or else offers the prospect of appointment at the end of the traineeship. The Cabinet will consult further on this with the Labour Foundation.

8. Regularisation of subsidised employment
   The Cabinet will begin urgent discussions with the Association of Netherlands Municipalities (VNG) and employers' and employees' representatives on achieving the aims of the covenant, including the risk of compulsory redundancies.

9. Work and Welfare
   As the Cabinet was requested in motions tabled during the passage through Parliament of the Work and Welfare Act (*Wet werk en bijstand*), the Cabinet, in conjunction with employers' and employees' representatives, will review ways in which extra attention can be given to integrating national assistance benefit claimants, the disabled and the chronically ill into the employment process.

10. Medical expenses
    A one-off government contribution of EUR 200 million will be paid to the Compulsory Health Insurance Act (ZFW) in order to limit the nominal compulsory health insurance contribution for 2004.

ANNEX 2

STATEMENT BY THE CENTRAL ORGANISATIONS OF EMPLOYERS AND EMPLOYEES REPRESENTED IN THE LABOUR FOUNDATION

The following central organisations of employers and employees, represented in the Labour Foundation (Stichting van de Arbeid)

* assuming:

  - that the main points in the Social and Economic Council's advisory report of 22 March 2002 on the restriction of absenteeism due to illness and of the number of persons receiving disability benefit will be implemented;

  - that this Statement only applies if that is the case;

* emphasise that the Council's advisory document is based on the following considerations:

  - that social and economic reasons require that absenteeism due to illness be prevented, that participation in employment by persons who have work-related limitations caused by health problems be encouraged, and that a substantial reduction be made in the number of persons making use of the facilities applying to industrial disability;

  - that employers and employees jointly bear the primary responsibility, at local level, for making optimum use of the work capacity of employees with work-related limitations;

  - that the government is responsible for protecting the incomes of persons with a full long-term incapacity for work;

  - that the structure of the various relevant systems should be such that, on the one hand, it encourages employees – in accordance with their ability and taking account of their work-related limitations – to work or continue to work and, on the other hand, encourages employers to keep on employees with work-related limitations or to take on such employees;

  - that in general an effective reintegration policy is necessary in this respect, one which creates the necessary conditions and provides the necessary facilities;

* in the light of this, agree on behalf of their membership that:

1. it is desirable that, in the course of local negotiations between employers and employees, additional initiatives should be taken and facilities provided with a view to preventing absenteeism due to illness or industrial disability and to reintegrating employees with work-related limitations caused by health problems. This might involve a system of terms and conditions of employment aimed at encouraging reintegration that relate to both the first and second year of illness. Prevention and a timely approach during the initial period of absence due to illness demand, in particular, the attention, quality and coordination of the services provided by health and safety organisations and reintegration companies;

2. the continued payment of wages during the sick employee's second year of illness should be restricted to the statutory 70% of the employee's pay, with the existing provisions relating to terms and conditions of employment being amended to that effect where necessary;

3. it should be in the context of the local negotiations between employers and employees that decisions are taken – or existing decisions amended to take account of the new system – on the following matters:

   A. the possible provision of supplements over and above the statutory requirement with respect to the statutory obligation to continue to pay wages during the first year of illness (in this case 70% of the employee's pay from the third day of illness);

   B. the possible temporary provision of supplements over and above the statutory requirement with respect to:

      - disability benefit from the point that the employee begins to receive it;
      - the benefit that unemployed persons with work-related limitations or full temporary incapacity for work receive under the terms of the Unemployment Insurance Act (*WW*) or the scheme at minimum level without a means test or test of the partner's income;

   C. surplus schemes;

   D. the accrual of a supplementary pension in the event of industrial disability;

   E. sector-specific schemes to insure against occupational hazards;

4. where employees are concerned with minor work-related limitations (35% or less), it should be the employing organisation concerned that should produce tailor-made solutions, including deciding on the employee's pay in relation to his/her work capacity. It should be the parties at local level which determine whether or not to reach agreement regarding the provision (perhaps temporary) of a level of income amounting to at least 70% of such employees' last-earned pay.

The Labour Foundation intends to keep track of the implementation of the above agreements.

Finally, the Foundation considers it necessary that any insurance arrangements with respect to the second year of illness (see point 2 above) should be restricted to the statutory continued payment of 70% of the employee's wages. It intends discussing this matter with the insurance organisations.

The Hague, 22 March 2002

Confederation of Netherlands Industry and Employers (Vereniging VNO – NCW)

J.H. Schraven

Netherlands Federation of Trade Unions (Federatie Nederlandse Vakbeweging)

L.J. de Waal

Royal Dutch Association of Small and Medium-SeizedEnterprises (Koninklijke Vereniging MKB-Nederland)

drs. J. de Boer

Federation of Christian Trade Unions (Christelijk Nationaal Vakverbond)

D. Terpstra

Dutch Organisation for Agriculture and Horticulture (Land- en Tuinbouw Organisatie Nederland)

G.J. Doornbos

Trade Union Federation for Intermediate and Higher Employees (Unie MHP Vakcentrale voor middengroepen en hoger personeel)

A.H. Verhoeven

STATEMENT BY THE CENTRAL EMPLOYERS' ASSOCIATIONS AND TRADE UNIONS REPRESENTED IN THE LABOUR FOUNDATION

The central employers' associations and trade unions represented in the Labour Foundation [*Stichting van de Arbeid*] named hereafter;

* *having taken cognisance* of the changes in the Cabinet's policy in the area of the Dutch Occupational Disability Insurance Act [*Wet op de arbeidsongeschiktheid, "WAO"*] as set forth in the Government Policy Statement dated 5 November 2004;

* *being of the opinion* that the broad outlines of the advisory reports issued by the Social and Economic Council [*Sociaal-Economische Raad*] on the amendment of the WAO dated 22 March 2002 and 20 February 2004 have been sufficiently adopted;

* *with due observance* of the policy documents prepared by the Labour Foundation on limiting the number of new cases of employees receiving WAO benefits dated October 1999 and preventing absence due to illness and new cases of employees receiving WAO benefits through the collective agreement policy dated 20 February 2004, as well as the Council's advisory report on occupational safety and health services provided under the Dutch Working Conditions Act [*Arbeidsomstandighedenwet*] dated 20 February 2004; and

* *recalling* that the Dutch Continued Payment of Salary (Sickness) Act [*Wet uitbreiding loondoorbetaling bij ziekte, "WULBZ"*] also started applying to the second year of illness on 1 January 2004;

emphasise that the Council's aforementioned advisory reports and policy documents prepared by the Labour Foundation are based on the considerations that:

- for social and economic reasons, absence due to illness must be prevented, participation in the labour market by persons with occupational disability owing to health problems must be promoted, and the reliance on occupational disability schemes must be curbed substantially;

- employers and employees jointly bear primary responsibility at the local level for making the best possible use of the work capacity of employees with occupational disability;

- the Government bears responsibility for protecting the incomes of employees who are fully and permanently disabled;

- a comprehensive approach to policies in the areas of prevention, working conditions, monitoring of absence, reintegration and income must be promoted;

- it is the employer's responsibility to pursue proper social policies in consultation with its employees, including a proper policy on working conditions, in order to recognise the signs of any future absence due to illness on time and to take preventive measures in response, while individual employees obviously also bear responsibility in this connection; and

- all the schemes taken together must be set up in such a way that they encourage employees to work and to continue working to the best of their ability and with due account being taken of their occupational disability, and that they encourage employers to continue employing or to hire employees with occupational disability; and

in that light, also on behalf of their members, agree as follows.

1. In so far as such is not yet the case, it is desirable that - during local negotiations between employers and employees - additional initiatives are taken and investments are made with a view to improving working conditions, converting existing occupational safety and health agreements into collective agreements, preventing occupational disability or absence due to illness, and reintegrating employees with occupational disability. Against the backdrop of the Council's advisory report dated February 2002, such initiatives and investments should involve contracting [*opdrachtgeverschap*], the quality and co-ordination of occupational safety and health services, reintegration companies, care providers and institutions implementing loss-of-income insurance policies.

2. Open negotiations will be held at the local level about supplementing the statutory payment of 70% of an employee's wages during his or her first and second years of illness, in conjunction with the statements made in section 1. These negotiations will be geared to the effects on prevention, reintegration, participation and income protection. The total sum of sick pay issued to an employee will not exceed 170% of his or her last-earned wages calculated for the two years of illness taken together, without prejudice to the option of agreeing on additional, specific employment conditions aimed at stimulating accelerated reintegration and participation effects. Where necessary, existing employment conditions will be revised accordingly.

3. Local bargaining structures will be required to arrive at arrangements or to adjust existing arrangements to the new system with respect to:

   A. any supplements, whether temporary or otherwise, to benefit payments pursuant to the Dutch Act on Work and Income Based on Work Capacity [*Wet werk en inkomen naar arbeidsvermogen, "WIA"*];

   B. excess-of-loss schemes;

   C. the accrual of supplementary pension in the event of occupational disability; and/or

   D. sector-specific schemes to insure against occupational hazards.

4. For employees with minor occupational disability (35% or less disabled), it is up to the employing organisation to produce tailor-made solutions.

The Labour Foundation intends to monitor the implementation of the aforementioned arrangements.

This Statement replaces the Statement by the Labour Foundation dated 22 March 2002.

The Hague, the Netherlands

5 November 2004

Confederation of Netherlands Industry and Employers
[Vereniging VNO – NCW]

Netherlands Federation of Trade Unions
[Federatie Nederlandse Vakbeweging]

J.H. Schraven

L.J. de Waal

Royal Dutch Association of Small and Medium-Sized Enterprises
[Koninklijke Vereniging MKB-Nederland]

Netherlands Federation of Christian Trade Unions
[Christelijk Nationaal Vakverbond]

L.M.L.H.A. Hermans

D. Terpstra

Dutch Organisation for Agriculture and Horticulture
[Land- en Tuinbouw Organisatie Nederland]

Trade Union Federation for Intermediate and Higher Employees
[MHP Vakcentrale voor Middengroepen en Hoger Personeel]

G.J. Doornbos

A.H. Verhoeven

STATEMENT BY THE CABINET dated 5 November 2004

Further to the negotiations conducted with the Labour Foundation [*Stichting van de Arbeid*] on 5 November 2004, and considering the Statement by the Labour Foundation dated 5 November 2004, the Cabinet will amend its intended policy as follows.

Preamble

In part in connection with the Lisbon Strategy, it is important for the Netherlands to boost economic growth, employment and the competitiveness of industry on a sustainable basis. In the light of demographic, international and technological changes, Dutch society faces important challenges. Long-term satisfactory results will be achieved only if these challenges are tackled together with the social partners and if their specific responsibilities are recognised. In this connection, the Cabinet will seek an advisory report from the Social and Economic Council [*Sociaal-Economische Raad*] covering the medium term, which will in any case include the following topics.

1. The knowledge economy: investing in the knowledge and skills of people as the key to increasing productivity and participation;
2. Social innovation: equipping the labour process (training, flexibility and job security) and social security arrangements to allow for such trends as the ageing of the population, the increasing prosperity, heterogeneity, solidarity and individuality of people, and new career patterns;
3. Bearing and sharing responsibilities: redesigning the labour market, industrial relations and institutional frameworks to make them flexible enough to meet the needs of the future.

A. Early retirement, prepension and life-span leave[1]

1. The "life-span leave" scheme [*levensloopregeling*] will be made more attractive by granting a tax credit when employees withdraw the balance of the scheme. This tax credit, which will be indexed annually by the table adjustment factor, will be related to the balance to be withdrawn and will be subject to a maximum of EUR 183 for each year of participation. The cap in respect of the life-span leave scheme will be fixed at 210% in lieu of 150%. The annual maximum accrual percentage will remain 12%.

[1] Any reference in this section to pension schemes administered by pension funds will include direct schemes administered by insurers.

If the options referred to in sections A1 and A4 are used to their fullest extent, employees with 40 years of participation can retire at the age of 60 with 70% of their final pay.

2. The life-span leave scheme will be tax exempt on condition that: (1) in granting their contribution, employers will refrain from setting any further requirements as to the exact time that employees may make use of the scheme; and on condition that (2) employers' contributions in respect of employees not participating in the scheme will be payable to those employees. In the latter case, the employers' contributions will be taxed in the usual manner. The tax-exempt nature of life-span leave schemes will be achieved by applying the deferred taxation rule [*omkeerregel*] (and by granting parental leave [tax] credit and the tax credit included in this Statement). The tax-exempt nature of the scheme will be lifted by no longer declaring the deferred taxation rule applicable to the entire life-span leave scheme and by no longer being eligible for the parental leave [tax] credit and the said tax credit when withdrawing the balance available in the life-span leave scheme. The Cabinet realises that, on the basis of their freedom to contract, the social partners may make arrangements that will result in non-tax-exempt life-span leave schemes[2]. However, the employer's permission will continue to be required to take any leave other than on the basis of statutory leave entitlements or arrangements laid down in collective agreements.
3. The social partners may agree by collective agreement that a contract for a life-span leave scheme will be entered into with a provider. Subsidiaries of pension funds or pension administrators may also offer such contracts. These parties will be subject to the same statutory obligations as those applying to other providers (level playing field). Employees may authorise their pension fund to make their data available to third parties (including providers of life-span leave schemes).
4. The social partners may include a provision in pension schemes to the effect that employees of 63 or older who have accrued 40 years of participation with the pension fund may take up an old-age pension of 70% of their last-earned wages, even if an actuarial recalculation of their accrued old-age pension would result in a pension of less than 70% of their final pay as from the age of 63. Pension schemes containing such a provision will qualify for tax exemption.

---

[2] Contrary to the bill on early retirement, prepension and life-span leave, any non-tax-exempt supplementary arrangements will in any case be declared generally applicable in respect of employees who, despite sections A1 and A4, have not accrued sufficient pension entitlements to retire at the age of 60 with 70% of their final pay after 40 years of work.

5. Within the Witteveen framework, the Cabinet will offer pension funds two additional options with respect to the standard taxation criteria applying to pension schemes. The current provisions with respect to the allowance for pension purposes of EUR 11,400 and the accrual percentages of 2.0% and 2.25% for final-pay and average-pay schemes, respectively, will in any case be maintained. The following options will be added.
   - An allowance of EUR 10,400 with an accrual percentage for a final-pay scheme of 1.9%
   - An allowance of EUR 10,400 with an accrual percentage for an average-pay scheme of 2.15%
   - An allowance of EUR 9,400 with an accrual percentage for a final-pay scheme of 1.8%
   - An allowance of EUR 9,400 with an accrual percentage for an average-pay scheme of 2.05%
6. On the grounds of the existing tax rules and regulations, pension funds may offer participants the option of purchasing an additional old-age or dependant's pension in connection with tax-credit options not used in the past. This may either pertain to periods during which a pension was accrued, but the options were not fully used, or to periods during which the participant worked, but did not accrue any pension whatsoever. In addition, in rules and regulations based on the Dutch Pension and Savings Funds Act/Dutch Pension Act [*Pensioen- en spaarfondsenwet, "PSW"/Pensioenwet*], the Cabinet will provide for the option of setting up the relevant agreement between employers and employees in the form of a commitment which may be funded during a period of no more than 15 years, possibly on a time-proportionate basis. In this connection, only the actually funded years will subsequently qualify as an unconditional pension commitment. Such an agreement does not fall under the early retirement schemes referred to in the bill on early retirement, prepension and life-span leave, as this concerns the purchase of old-age pension entitlements.
7. The consequence of the foregoing for existing arrangements (including job-related early retirement [*Functioneel Leeftijdsontslag, "FLO"*]) is a matter of negotiation between the employers and employees in the various sectors of industry.

B. The Dutch Occupational Disability Insurance Act

1. Fully disabled employees with no or only a minor chance of recovery will receive benefits under the Income Provision (Fully Disabled Employees) Regulation [*regeling Inkomensvoorziening Volledig Arbeidsongeschikten, "IVA"*]. Employees with a minor chance of recovery will be reassessed every year during a 5-year period while they

receive IVA benefits. Should such employees, after a medical examination, be deemed partially fit for work, they will transfer to the Resumption of Work (Employees Partially Fit for Work) Regulation [*Werkhervattingsregeling gedeeltelijk arbeidsgeschikten, "WGA"*]. Should they not transfer to the WGA within the said five years, the regular IVA examination regime will apply. Lists, a final decision rendered by a separate body, as well as a milestone plan to determine whether the employee in question has a "minor chance" of recovery, will be used to assess an employee's full and permanent occupational disability, in line with the Council's advisory report. When transferring from the IVA to the WGA, a wage-related period will apply, from which the period during which IVA benefits were received will be deducted. Upon transferring to the WGA, the wage-related period will be at least one year.

2. The benefits paid to fully disabled employees (under the IVA) will amount to 70% of their last-earned wages. Accordingly, the "hiatus" under the Dutch Occupational Disability Insurance Act [*Wet op de arbeidsongeschiktheid, "WAO"*] will lapse. The extra costs will be covered by higher IVA contributions.
3. Once the wage-related benefits have ended, the supplement to the wages of employees partially fit for work will be made contingent upon their using a minimum of 50% of their remaining earning capacity. The supplement will amount to 70% of the difference between their old pay and the pay earned when fully using their remaining earning capacity. This structure does justice to the principle that it should be favourable for employees to work more.
4. The bill on limiting the wage supplement during the second year of illness [*wetsvoorstel Beperking loonaanvulling tweede ziektejaar, "BALTZ"*] will not be submitted, as the Cabinet has taken cognisance of the Statement on the WAO dated 5 November 2004 by the central employers' associations and trade unions represented in the Labour Foundation.
5. The benefits paid to fully and permanently disabled employees in the new system will be increased by five percentage points, calculated on the basis for the statutory benefit payment, with retroactive effect to 1 January 2006, and the Dutch Contribution Differentiation and Market Forces (Occupational Disability Insurances) Act [*Wet premiedifferentiatie en marktwerking bij arbeidsongeschiktheidsverzekeringen, "Pemba"*] will lapse with retroactive effect to 1 January 2006 in the event that:
    a. the number of new cases of employees receiving benefits under the new scheme for fully and permanently disabled employees has actually been

curtailed to 25,000 on a 12-month basis since 1 January 2006[3] (to be determined in August 2007 on the basis of the figures available in July 2007); and

b. the intention of the central employers' associations and trade unions represented in the Labour Foundation, as set forth in section 2 of the Statement dated 5 November 2004 referred to above, has actually been implemented by the parties to collective agreements.

6. In reassessing existing cases of employees receiving WAO benefits, the age limit will be lowered by reducing the age limit set forth in the Dutch Assessment Decree [*Schattingsbesluit*] from 55 to 50. If, upon a reassessment, an employee's occupational disability percentage is lowered and the employee in question has not yet found a new job, he or she will be entitled to participate in a reintegration programme. For existing cases above the age of 50, the old regime will continue to apply: if they are reassessed, the old Assessment Decree will apply. The outcome of the reassessment operation, including the resumption of work by those who have been reassessed, will be monitored together with the social partners. Within that framework, participation-stimulating measures, including specific reintegration means and no-risk schemes, may also be discussed. The Cabinet consented to the arrangement dated 5 November 2004 between the central employers' associations and trade unions represented in the Labour Foundation with respect to people who have been declared more fit for work in the reassessment operation; being that if these people have a formal employment relationship with an employer, they will, in principle, be reintegrated with that employer.
7. The Cabinet will take over an arrangement agreed within the Labour Foundation on the allocation of the WGA charges between employers and employees.

C. The Dutch Unemployment Insurance Act

1. The Cabinet will defer discussion of the bills on anti-cumulation under the Dutch Unemployment Insurance Act [*Werkloosheidswet, "WW"*] and Short-Term Benefits [*Kortdurende Uitkering*] until 1 April 2005[4]. The Council will issue its advisory report on the financial viability of the WW before 1 April. An advisory report that - according to estimates by the Netherlands Bureau for Economic Policy Analysis [*Centraal*

---

[3] In assessing the figures on the number of new cases of employees receiving benefits, any administrative start-up problems will be considered.

[4] The Parliamentary discussion of the changes proposed by the Cabinet to the WW reference requirements will be continued. Any definitive decision about their introduction will in part be made in the light of the Council's advisory report. The Council will be free to suggest any alternatives before 1 April 2005 in the same way as in respect of anti-cumulation and Short-Term Benefits.

Planbureau, "CPB"] - is based on the same reduction in WW volume as the Cabinet intends to implement will be of great influence on the Cabinet. During today's negotiations, the central employers' associations and trade unions represented in the Labour Foundation agreed that this advisory report on the WW should fit in with the future agenda set forth in the preamble.

D. Wage trends

1. On the grounds of the social partners' intentions, the Cabinet expects the increase in negotiated wages to be very restrained in 2005. Against this backdrop, the Cabinet is willing to withdraw its measure to declare only selected collective agreements providing for negotiated wages generally binding.
2. The same restraint is expected in respect of income rises not stipulated in collective agreements.

E. Childcare

1. In line with the Labour Foundation's advisory report dated 28 October 2004, the Cabinet calls upon businesses and the parties to collective agreements to create an employers' contribution scheme in respect of child care where such has not yet been introduced. The Cabinet will allow balances in salary savings schemes to be released to be spent on childcare, though up to no more than the employee's own contribution on the grounds of the Dutch Childcare Act [*Wet kinderopvang*].

***

The 2004 Autumn Agreement

The Statements by the Cabinet and the Labour Foundation [*Stichting van de Arbeid*] ensue from the Agreement concluded by the Cabinet with the central employers' associations and trade unions in the night of 5 November 2004. They agreed on early retirement, the "life-span leave" scheme [*levensloopregeling*], an overhaul of the occupational disability schemes ("WAO"), the Dutch Unemployment Insurance Act [*Werkloosheidswet, "WW"*], wage trends and child care.

The Agreement was concluded after months of labour unrest. After the breakdown of negotiations between the Cabinet and the social partners on 18 May, the trade unions organised demonstrations and strikes. At the time, the parties failed to agree on the pace and method of phasing out early retirement schemes and the introduction of a new life-span leave scheme.

Prior to 5 November, various parties representing the trade unions, the employers' associations and the Cabinet met for informal talks on many occasions. These talks eventually led to increased mutual trust. In addition, all parties involved turned out to be willing to compromise, laying a proper basis for the Agreement of 5 November.

The main points of the Agreement

- The Cabinet will persist in abolishing the tax deductibility of contributions for early retirement in 2006.
- The scope of the life-span leave scheme, pursuant to which employees can save for different types of leave, will be expanded considerably as compared to the Cabinet's initial plans, so that employees with an employment record of 40 years or more may retire at the age of 60.
- The Cabinet will adopt the advisory report on the WAO by the Social and Economic Council [*Sociaal-Economische Raad*] almost in its entirety.
- The Cabinet will defer discussion of the bills on deducting dismissal compensation from WW benefits (anti-cumulation) and abolishing short-term WW benefits until 1 April 2005. The Council will issue its advisory report on the financial viability of the WW before that same date. The advisory report will influence the Cabinet if it results in the same savings as the Cabinet's own WW plans.
- The Cabinet will seek an advisory report from the Council on social and economic policies covering the medium term. The topics of "the knowledge economy", "social innovation" and "bearing and sharing responsibilities" will in any case be addressed in the report.
- Wage movements will be very restrained in 2005.
- The Cabinet calls upon the parties to collective agreements to create an employers' contribution scheme in respect of child care where such has not yet been introduced. In this connection, the Cabinet refers to an advisory report on the subject by the Labour Foundation (dated 28 October 2004).