



To the Director of the International
Labour Standards Department
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Your letter

Our reference
IZ/IA/2005/12355

Direct line

Subject
request for an informal opinion

Date
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Contact

Dear Mrs. Doumbia-Henry,

Kindly allow me to request an informal opinion from the International Labour Standards Department on the following issue.

Shortly, the legislative proposal concerning the Work and Income According to Work Capacity Act [*Wet werk en inkomen naar arbeidsvermogen – WIA*] will be submitted to the Dutch parliament. This legislative proposal is to replace the present Disablement Insurance Act [*Wet op de arbeidsongeschiktheidsverzekering – WAO*]. The intended date of implementation is 1 January 2006.

This legislative proposal is the preliminary final phase of a series of statutory measures aimed at reducing the vast number of disabled persons in the Netherlands. The joint starting point of these policy measures is the activating role of the sickness and disablement benefit system: the measures are aimed at keeping the link between the disabled person and the employment process alive, or to restore it, when such link has been severed. Like the current WAO, the WIA does not distinguish between disablement due to an industrial accident or an occupational disease and the “social risk”.

During the preparatory phase of the WIA, informal discussions with officers of the International Labour Organization (ILO) took place on several occasions. Without doubt, these meetings have contributed towards the quality of the legislative proposal and, due to these meetings, the legislative proposal meets, in the Dutch government’s opinion, the requirements concerning occupational disability insurance set in the international standard conventions.

Nevertheless, academic circles have called the legislative proposal into question on some points, as far as the relation with the Convention of the ILO concerning benefits in the case of employment injury (Convention No. 121, 1964) is concerned. In particular, these discussions revolve around the difference in benefits in case of full disablement on the one hand and partial disablement on the other. Although there are indeed various benefit regimes with respect to partially disabled persons on the one hand and fully

disabled persons on the other, the lower limit of the benefit remains, in all instances, above the standard of Article 20 of ILO Convention No. 121. The Dutch government therefore holds the view that such distinction is in compliance with this Convention.

Please consider the following in this respect. The stimulation of participation in employment is one of the attainment targets of the present Cabinet. Consequently, the title of the Cabinet's programme is: "Participate, more work, less rules". When granting a benefit, the WIA shall therefore start from the remaining potential to perform work instead of the percentage of disablement. The WIA's income-protecting role takes the lead only in case of full and permanent disablement. The distinction made by the WIA between fully and partially disabled persons must be seen in this light.

I would like to hear the ILO's view on the compatibility of the WIA and ILO Convention No. 121. The contents of the legislative proposal (Annex I) and a summary of the explanatory note (Annex II) are enclosed. Should the legislative proposal give cause for further comments on your part, I would obviously like to hear these as well.

I am, of course, willing to provide any further explanation you may require with regard to the legislative proposal.

Yours sincerely,

The Director for International Affairs,

Lauris C. Beets