Netherlands

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) *(ratification: 1966)*

The Committee notes the Government's detailed report received on 29 August 2011, which contains a reply to the Committee's previous observation concerning the compatibility with the Convention of the main aspects of the Work and Income (Employment Capacity) Act of 2006 (WIA). It also notes the comments on the report, dated 31 August 2011, submitted by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV), to which the Government replied in a letter of 18 October 2011. The Committee further notes that various meetings were held between the Dutch Government and senior officials of the Office concerning ongoing compliance issues involving the WIA.

The Committee would like to thank the Dutch Government for the additional efforts it undertook to clarify its

position and legislation, as well as to maintain the social dialogue with the trade unions, which provided the Committee with in-depth information on the application of the Convention both in law and in practice. The Committee recalls that its previous observation was entirely directed to an analysis of the WIA, including WIA coverage of the contingency of Total or partial loss of earning capacity likely to be permanent, as defined in *Article 6(c) of the Convention*. As indicated in its previous observation, the Committee has decided to examine in its present comments the protection accorded by other Dutch implementing legislation, specifically legislation addressing the contingency of a morbid condition due to an employment injury (*Article 6(a)* of the Convention), which is provided by the health insurance scheme. For that purpose, the Committee has taken note also of the information contained in the Government's detailed report on the *Medical Care and Sickness Benefits Convention, 1969 (No. 130)*, both of which were ratified by the Government in view of the linkages between these two Conventions, and of the dialogue it has with the abovementioned trade union organizations. The Committee will examine at its next sessions the protection offered by the Dutch legislation against the contingency of temporary or initial incapacity for work (*Article 6(b)* of Convention No. 121), which is provided by the mixed private/public system based on employers' civil liability to maintain wages during the first two years of sickness underpinned by the public safety net established by the Sickness Benefit Act (ZW), as well as the contingency of loss of support due to the death of the breadwinner *(Article 6(d))* covered by the General Surviving Relatives Act (ANW).

Articles 7 and 8 of the Convention in conjunction with Article 26. Definition of industrial accident and occupational disease. With respect to these provisions of the Convention, the Government limits itself to stating that there is no special scheme concerning industrial accidents or occupational diseases and employees are compensated regardless of the cause of the disability. ***The Committee requests the Government to indicate whether the national labour or occupational safety and health legislation contains definitions of industrial accident and occupational disease, as well as a list of such diseases, established for the purpose of reporting and monitoring industrial accidents and occupational diseases. The Committee also requests that the Government provide information on accident and disease investigations by the labour inspectorate on the imposition of appropriate sanctions, and on the elaboration of measures for preventing industrial hazards, developing occupational health services, and determining employer liability for damages to workers' health. Please indicate whether the Netherlands collects statistical data on the frequency and severity of industrial accidents and, if so, supply this data with the Government's next report.***

Medical care and allied benefits

The Committee notes that the Netherlands health insurance system has undergone a radical reform after the entry

into force on 1 January 2006 of the Health Insurance Act, under which health insurance was fully privatized. ***The***

Committee requests the Government to explain whether there remain any type of public health services or medical institutions in the area of occupational health and rehabilitation and, if so, whether health-care insurers are encouraged to use these services and institutions for the treatment of employment injuries.

Articles 4 and 9. Coverage by the health insurance scheme and conditions of entitlement to benefits. The Committee notes that, in its comments under Convention No. 130, the FNV states that the Health Insurance Act is not a general public scheme in the sense that all citizens are compulsory insured, but a private insurance scheme under which all citizens are obliged to take out health-care insurance from private companies. The FNV further states that, given the private nature of the scheme, the Government cannot guarantee that all employees are protected and that in 2011 at least 150 000

persons of all classes and ages are not insured. In reply, the Government's report on Convention No. 130 states that, while full coverage is not guaranteed, the essential factor is that there is a governmental measure that offers the protection desired. Whether the persons to be protected wish to accept such protection or not is up to them, but if they do not conclude a health insurance contract, they may end up being unable to pay the costs of the required care in case of serious illness or accident. In general, this outcome is not acceptable and the Government acts to urge such persons to take out health insurance. Furthermore, if, having concluded an insurance contract, a person for some reason does not pay the normal insurance premiums, the care insurer is entitled to terminate the health insurance. "After all", says the Government's report, "it is an agreement under private law". This situation too can lead to highly undesirable consequences if the insured person ends up needing care, and the Government reports that it is being taken care of through additional legislative measures.

With regard to the evasion of concluding health insurance contracts, the Government indicates in its report on Convention No. 121 that a new law took effect on 15 March 2011 designed to identify uninsured persons by means of database comparisons and obliging them to take out health-care insurance under the threat of two successive penalties equal to three times the standard premium. After two penalties have been imposed, the Health Insurance Board will take out insurance on behalf of anyone who is still uninsured, summoning this person to pay an administrative premium for 12 months, which, where possible, will be withheld at source. With the introduction of this measure the Government can guarantee that all persons legally residing in the Netherlands are protected. With respect to the evasion of paying health insurance premiums, the Government indicates that, starting on 1 September 2009, measures have been taken to reduce the number of people who do not pay premiums on time or do not pay at all. According to the Health Insurance Act, when the insured person is in arrears for an amount equivalent to six months' premiums, the obligation to pay the nominal premium to the care insurer is converted to an obligation to pay the Health Insurance Board an administrative premium equal to 130 per cent of the standard premium. The Board imposes this levy on the defaulter, bears responsibility for its collection and pays a compensation for the loss of premium to the care insurer. The Committee notes the measures taken by the Government to ensure coverage of persons who would otherwise be left unprotected by the private health insurance scheme functioning with a view to profit.

It requests the Government to indicate how many employees were found by the Health Insurance Board to lack health insurance coverage and whether the employer has any obligation to check that its employees have the proper health insurance coverage.

The Committee further notes that all the measures to improve coverage are based on the imposition of substantial fines on those persons whom the Convention seeks to protect automatically and free of charge. The Committee points out that if, for example, a partially disabled employee has no money to pay health insurance premiums, imposing additional fines on that person would only aggravate the situation of hardship, which the Convention prescribes the Government to avoid.

The Committee wishes the Government to explain in this respect to what extent the improvement of coverage has been achieved through the social assistance mechanism established by the Health Care Allowance Act (Wet op de zorgtoeslag), under which persons for whom the nominal premium is too high in relation to their income may receive an allowance paid by the tax authorities.

With respect to the right of private insurance companies under private law to desist themselves from the obligation to provide care in case of non-payment of premiums, the Committee points out that, according to the Convention, the national legislation concerning employment injury benefits shall protect all employees and ensure that benefits are provided without any supplementary conditions not mentioned in the Convention. *Article 9* of the Convention guarantees eligibility for benefits on the basis of the employment relation alone and forbids subjecting eligibility to the payment of insurance contributions or premiums. In the Netherlands' case, this would mean that employees suffering employment injury shall be given prescribed medical care and allied benefits even in the absence of a duly concluded individual health insurance contract or the required premium payment. ***The Government is invited to explain how and by virtue of which provisions of the national legislation the necessary emergency and follow-up medical treatment are provided to an employed person who at the moment of an industrial accident or manifestation of an occupational disease did not possess a health insurance contract or whose contract was terminated due to non-payment of premiums.***

Article 10(1). Types of care to be provided. The Government report states that all persons legally residing in the Netherlands, or non-residents who work and pay income tax in the Netherlands, are obliged to take out health-care insurance under the Health Insurance Act and the Exceptional Medical Expenses Act

and that they then become entitled to benefits in kind or to reimbursement of the costs of the medical care they receive. The types of benefits to be covered by the insurance package are statutorily defined under the two Acts and are provided irrespective of the cause for the need of care.

The Committee would like the Government to explain under which legal provisions and practical arrangements emergency and follow-up treatment in case of employment accident stipulated in Article 10(1)(g) would be provided free of charge at the place of work. Please also indicate under which provisions of the Health Insurance Act care provided by general practitioners and specialists includes domiciliary visiting, as stipulated in Article 10(1)(a) of the Convention.

The report states that dental care for insured persons aged 18 and over is limited to specialized surgical dentistry
(oral surgery), the associated X-rays, and dentures. People with an exceptional dental disorder, physical/mental disability or special dental problems resulting from medical treatment are entitled to complete dental care (subject to special conditions). The Committee recalls that *Article 10(1)(b)* and *(e)* of the Convention requires provision free of charge of complete dental care, not limited to surgery and including fillings, root-canal treatment, extractions, dental supplies, etc., in case such care is necessary as a result of occupational accident or disease.

Please state what additional measures are foreseen under the Dutch health insurance scheme to provide such care to victims of employment injuries.

Article 10(2). Effectiveness of medical care. The Government states in its report on Convention No. 130 that the
care system in the Netherlands has been organized in a way that will reduce direct government involvement. This is achieved through the "functional description" of care covered by the insurance package. The Government lays down legal requirements only for the content and extent of coverage and the medical indications that trigger coverage. It is the responsibility of the care provider to decide who provides the care and where. According to the Government, the choice for having private insurance that assigns greater responsibilities to insurers who are allowed to make a profit makes it inappropriate for the Government to supervise the effectiveness of the way health insurance is operated. Therefore, the Government continues, the main objective in overseeing lawful performance of health insurance is for the Government to ascertain whether the care insurer is fulfilling its obligation to provide insured persons with the services they are entitled to under the Health Insurance Act.

The Committee points out that such limited supervision of the quality and effectiveness of the medical care provided by private insurers seeking to make a profit, and therefore perhaps interested in reducing the volume and cost of care, might not be sufficient in view of the obligation imposed on the Government by *Article 10(2)* of the Convention to ensure that the medical care afforded to employment injury victims conforms to the highest practicable standard, using all suitable means.

The Committee therefore asks the Government to explain what procedures exist to include among reimbursable care new technologically advanced treatments, which might help to restore health in particularly serious cases and whether there exist medical centres specializing in treatment of industrial accidents and occupational diseases that possess state-of-the-art knowledge in this area. Please indicate whether the Health Care Inspectorate (IGZ) which is entrusted with overseeing the quality of public health, or the occupational health services, possess any system of indicators measuring effectiveness of medical and professional rehabilitation of employment injury victims.

Article 11(1). Participation in the cost of medical care. In its previous observation, the Committee asked the
Government to examine whether persons in need of prolonged care or particularly expensive treatment may find
themselves in a situation of hardship in view of the fact that victims of employment injuries are required to share costs for certain types of medical care, and are subject to limitations in duration and number of treatments. In this respect the Committee notes from the Government's reports on Conventions Nos 121 and 130 that victims of employment injuries are subjected to the same limitations on the quantity of care as other persons insured under the Health Insurance Act. Types of care typically offered by medical specialists may be excluded by the insurance companies from reimbursement; physiotherapy and remedial therapy are confined to the treatment of chronic disorders, excluding the first 12 treatments for each disorder; occupational therapy, which is particularly important in case of employment injuries, is provided up to a maximum of ten treatment hours per year; dental care is limited to specialized oral surgery, the associated X-rays and dentures. The cost of treatment in excess of these limitations would have to be assumed by the persons concerned, who are also required to pay fixed contribution amounts to the cost of various types of medical care included in the basic health insurance package up to a maximum of €170 per year for

2011 (so-called “compulsory deductible”). Persons who incur structural care expenses due to chronic illness or disability receive financial compensation so that they do not pay more in terms of compulsory deductible than an average insured person who receives no compensation. For most types of care under the Exceptional Medical Expenses Act, a personal contribution is also required, the amount of which depends on the taxable income, age, marital status and the living situation of the person concerned. In 2011, the cost sharing in case of residential care in an institution amounted to a maximum of €764.40 per month during the first six months of stay and to a maximum of €2,097.40 per month thereafter. As of 1 January 2009, the Chronically Ill and Disabled Persons (Allowances) Act (Wtcg) has introduced a number of measures to offset extra care expenses incurred by these categories of persons. The Government emphasizes that these measures together with the establishment of the maximum for the compulsory deductible are taken to ensure that cost sharing does not involve hardship for insured persons. The Committee observes that the rules on cost sharing and limitations of certain types of medical care laid down in the Dutch legislation are designed for the general population and do not take into account the special needs and the financial situation of the persons suffering employment injuries, particularly those requiring prolonged and expensive care. The Committee further notes, from the Government’s report on Convention No. 102, that in order to receive a discount on the insurance premium, persons with good health as a rule choose a health insurance policy with a high level of personal contribution to the cost of care (personal excess). At the meetings with ILO officials referred to above, the Government confirmed that the present cost-sharing requirements and limitations in duration and number of treatments paid by the insurance did not exclude the possibility of some employment injury victims finding themselves in a situation of hardship and compelled to refuse further necessary treatment due to lack of money. Situations where victims of employment injuries are compelled to stop medical treatment because of the inability to pay for it would contradict the very purpose of the Convention, which makes the Government responsible for the due provision of medical and allied benefits with a view to maintaining, restoring or improving the health of the injured person (*Articles 10(2) and 25* of the Convention).

The Committee would therefore ask the Government to conduct a thorough study of the existing limitations and cost-sharing arrangements with respect to the statutory medical benefits, so as to identify and prevent possible situations of hardship that may affect the standard beneficiary (man with wife and two children) who has fallen victim of a serious employment accident or a chronic occupational disease.

The Committee notes in this respect that insurance covering the costs of the medically necessary transport of patients includes a hardship clause, which provides for reimbursement of additional transport costs encountered by persons following a prolonged treatment.

The Committee would ask the Government to consider incorporating similar hardship clauses into the insurance rules covering other types of costly medical care and allied benefits, which may be identified by the study mentioned above.

Article 24. Participative management of the health insurance scheme. The Committee notes that in the Netherlands the administration of health insurance is not entrusted to an institution regulated by the public authorities, but is entirely in the hands of private insurance companies which run it for profit. For such schemes *Article 24(1)* of the Convention requires the national legislation to prescribe conditions for the participation of the representatives of the persons protected in the management of the scheme. To promote its management on a tripartite basis, the legislation may provide for the participation of representatives of employers and of the public authorities. The Convention also requires the Government to accept general responsibility for the proper administration of the health insurance institutions and providers of medical services. With respect to the application of these provisions of the Convention, the Government’s 2011 report indicates no changes and refers to the previous reports, whereas the previous report of 2009 simply states that *Article 24* is not applicable. In its report on Convention No. 130 under Article 31, which contains similar provisions concerning the participative management of the health insurance schemes, the Government states that the basic principle of health insurance in the Netherlands is that insured persons must be able to exert influence on the policy of the company that insures them. A care insurer’s articles of association must ensure that insured persons possess a reasonable degree of influence over the company’s policy. The Committee wishes to point out in this respect that reliance on the private care insurer’s articles of association is not sufficient to give effect to these provisions of the Convention, which require the right of the persons protected to be able to influence the company’s policy through participation of their representatives in the company’s management as directed under national law. The Committee also points out that *Article 24* of Convention No. 121 remains fully applicable to the Netherlands. Moreover, the Government carries the general responsibility for ensuring that the national health insurance scheme is managed in a democratic and transparent manner with the proper participation of the trade unions and other

organizations representing the persons protected together with the professional associations representing care providers and the medical profession.
The Committee therefore asks the Government to supply full information in its next report on the application of Article 24 of the Convention in Dutch law and in practice.

The Work and Income (Employment Capacity) Act of 2006 (WIA)
In its previous observation, the Committee had concluded that the WIA was incompatible with Convention No. 121 on the following points:
– that the WIA leaves victims of employment injuries with incapacity up to 35 per cent without any form of
compensatory benefit, contrary to *Article 14(4)* of the Convention;
– that the Income Provision Scheme for Fully Occupationally Disabled Persons (IVA) permits the benefit to be
reduced by 70 per cent of the income earned by the beneficiary from employment or self-employment, whereas the Convention does not authorize any reduction of the benefit in case a fully incapacitated person finds the force to earn additional income from any gainful occupation, permitting him to combine disability benefit with income from work;
– that under the Return to Work Scheme for the Partially Disabled (WGA) the qualification requirements for
entitlement to the wage-related WGA benefit and to the wage supplement impose restrictive conditions that are
contrary to the Convention;
– that the nature and the extent of the obligations and sanctions in case of non-compliance, to which the WIA subjects the recipients of the follow-up WGA benefit, go beyond limitations permissible under *Article 22* of the Convention and should be reviewed;
– that the disproportionately low level of the follow-up WGA benefit might result, contrary to the objective of *Article 14(5)* of the Convention, in hardship for many partially disabled persons, obliging them to apply for social assistance in case they do not find sufficiently paid employment.
The Committee has examined the Government's report on the Convention and its reply on the legal inconsistencies mentioned above in the context of the Government's stated objective to reduce by all means the number of claimants of disability benefits and the Committee has taken due note of the explanations provided by government officials during the consultations with the Office, which have permitted clarification of certain technical questions. The Committee nevertheless decides that there are no new elements that would cause it to change its previous conclusions on the WIA. It notes, however, that the Government has disagreed with these conclusions and has challenged the Committee's understanding of the content of related provisions of the Convention. In particular, the Government has considered that, although Convention No. 121 refrains from explicitly mentioning the possibility of imposing sanctions on an occupationally disabled person who fails to cooperate with his/her reintegration, the provisions of a Convention must not be interpreted statically, but in line with social developments; it is thereby appropriate to impose sanctions if the person concerned fails to cooperate with his/her reintegration.
The Committee also notes that the comments submitted by the trade union organizations contest the arguments
advanced by the Government, and describe the worsening employment and income situation of disabled workers as calling into question the effectiveness of the WIA and of the overall government policy concerning the invalidity benefit scheme.
The Committee observes that responding in full to the Government's position would require lengthy explanations of the scope and purpose of different provisions of the Convention in the context of the evolution of international social security law, and this would run into scores of pages, well beyond what can be reasonably accomplished during a single session of the Committee. The Committee further observes that certain questions raised by the trade unions in their disagreements with the Government take the discussion into policy areas and consideration of alternative solutions, well beyond the legal framework of the Convention.
In this situation, the Committee invites the Office to make contact with the Government in order to find the most suitable way of providing it with the necessary background information on the contested provisions of the Convention and thereafter identify the remaining issues on which the Government would then still like to solicit the explanations of the Committee. The Committee would like to be informed of these issues sufficiently in advance to be able to respond to them at its next session in November–December 2012, but in any case not later than 1 September 2012.