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## SOCIAL ASSISTANCE BENEFITS IN THE NETHERLANDS

### Abstract

The right to a minimum subsistence level in the Netherlands is covered by a comprehensive network of schemes. All schemes are part of a rights-based system: if the conditions are fulfilled, this creates a right to social assistance benefit. The most important Act is the Participation Act, the main features of which are described in this paper. Attention will be paid to conditions for benefits and the increasingly strict obligations and sanctions. This paper provides insight into some of the consequences of the recently implemented decentralization policy in the Netherlands.

**Słowa kluczowe:** pomoc, warunki, decentralizacja, holenderska ustawa o uczestnictwie, świadczenia pomocy społecznej, zasiłek socjalny

**Keywords:** assistance, conditions, decentralisation, Participation Act, social assistance benefits, subsistence

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### 1. Introduction

Social assistance to persons who cannot provide for their own livelihood is a fundamental social right referred to in the Dutch Constitution (Pennings 2016, p. 194). This fundamental right has been regulated in the Participation Act since 1 January 2015. The Participation Act has its footprints in poor relief. The first Poor Act (*Armenwet*) came into force in 1854. In 1912 the first major overhaul followed, after which it took until 1965 before a new Social Assistance Act (*Algemene Bijstandswet*) was published. The predecessors of the Participation Act are the Work and Social Assistance Act 2004 (*Wet werk en bijstand – Wwb 2004*, hereinafter referred to as: Wwb), the Social Assistance Act 1996 (*Algemene Bijstandswet – Abw 1996*) and another Act with the same name (*Algemene Bijstandswet – ABW 1965*).

The Participation Act (*Participatiewet*, hereinafter referred to as: PW) is the last resort in the Dutch system of social security. Only those who are unable to provide for their own livelihood by means of work, who cannot rely on any social insurance law or social

provision and who pass the means test are entitled to social assistance benefits. Access is given to people legally residing in the Netherlands. The law is financed through taxes.

In addition to provision of an income, the Participation Act provides support for the integration into work. This activation instrument of the Participation Act is presented as considered to be the most important element of the Participation Act. The Participation Act emphasizes personal responsibility. It puts into practice the idea that every individual must make a contribution to society, respectively must participate as much as possible in society, even people who find it hard to work due to a disability. This is indicated by the term “participation” in the title of the Act. The slogan is: “work first” or “work before benefits”. This view on activation is consistent with the principle that people should primarily ensure adequate means of living themselves. Therefore, if necessary, intensive guidance towards work is offered by the municipality (Mayor and Aldermen) or by a reintegration company. For that purpose, the Participation Act includes reintegration instruments, such as wage-cost subsidy, job coaches, and test placement, which facilitate employers in helping people who have reduced work capacity or opportunities, e.g. people with an occupational disability and people who have suffered a disease or a disability before their 18<sup>th</sup> birthday or during their studies.

The Participation Act contains general rules for social assistance benefits, reintegration, sanctions and facilities for employers. Specific rules on reintegration, sanctions and extra allowances however have been delegated to the municipal level as part of a major decentralization operation in 2015. The objectives of this operation were multiple: bringing decision-making closer to the citizen, efficiency of policy, better democratic control, and cutbacks, with the final element being the most important. Policy and rules are now largely at the discretion of the municipality, meaning that they may differ according to local circumstances and insights. The municipality must lay down its policy in municipal regulations which must be published on the municipal website and/or on [www.overheid.nl](http://www.overheid.nl).

The following sections deal with some general aspects of the Participation Act. The emphasis is on income, i.e. the access to social assistance benefits and the system of rights and obligations. Activation facilities are briefly addressed. Attention is paid to the implications following from the recently completed decentralization operation, an operation which might not be limited to the Netherlands. The component “working with an occupational disability” is not considered.

This paper is organised as follows. Section 2 briefly describes the forms of social assistance and its conditions for entitlement. Sections 3 and 4 deal with two types of assistance: general and special assistance. Obligations and sanctions in section 5 are followed in section 6 by regulations for two special groups: young people and self-employed persons. Section 7, finally, is dedicated to a concluding debate. It outlines some topics that are currently under debate in science and society.

## 2. Social assistance benefits

Social assistance benefits provided under the Participation Act can be assistance in cash or in kind. Social assistance almost always means financial assistance (in cash). Assistance is usually provided *à fonds perdu*, which means that recipients do not have to reimburse the benefit, even if they are able to do so later (Art. 48 PW). However, if the benefit has been wrongly paid, the municipality might reclaim it (see section 5). Sometimes, assistance can be provided in the form of a loan. This applies if a person applying for social assistance owns a house with excess equity. In such cases, assistance has to be repaid, with or without interest, depending on the local rules (Klosse 2012, p. 489).

Assistance in kind is an exception. As this form limits the autonomy of the individual, there must be good reason to offer this type of assistance. This could be a situation in which the person concerned finds him- or herself in or on the brink of a problematic debt situation, but also situations where the recipient is not able to use the benefits in a responsible way and must therefore be protected against slipping further and further away, may give rise to assistance in kind (Art. 57 PW). Examples in which a person might not be able to take good care of him- or herself are homelessness, psychosocial problems, addiction, and debts (Eiselin 2010, p. 351).

### 2.1. Conditions for entitlement

The following elements play a role in determining whether there is a right to benefits: legal residence in the Netherlands, level and sufficiency of current resources, necessary costs of living, passing the means test, and absence of grounds for exclusion.

#### a) Residence

Access to social assistance is given to persons legally residing in the Netherlands (Art. 11 PW; the Participation Act has a strictly territorial scope that makes export of benefits to other countries impossible). Legal residence means being registered in the Municipal Personal Records Database. Certain foreign nationals have the same rights as Dutch nationals (Art. 11, 2 PW). Whether they fall under the scope of the Participation Act must be examined on the basis of the facts and circumstances of the case, especially the *de facto* place of residence of their family and the centre of their social life. Generally speaking, persons are excluded from social assistance if they are allowed to stay in the Netherlands for only a definite period of time for a temporary goal, e.g. studies, apprenticeship, medical treatment, or au-pair employment, while still having their place of residence in the land of origin. Access to social assistance for foreigners is regulated by the so-called Benefit Entitlement (Residence Status) Act (*Koppelingswet*) that links up immigration law and social welfare law.

This linking principle has various implications. It is obvious that foreigners not staying legally in the Netherlands (popularly known as “illegals”) are fully or almost

fully deprived of social assistance benefits (allowances and benefits at the expense of public means). In practice, this often means that local communities or charities take over the role of providing some form of social welfare.

#### b) Level and sufficiency of current resources: necessary costs of living

The starting point is that the Participation Act covers the necessary costs of living. This means that being unable to cover these costs is a condition for social assistance benefit. Necessary costs of living are costs of provisions that are necessary to lead a decent life.

The cost of living is divided into (i) generally necessary costs of existence; and (ii) special costs of living. The generally necessary costs of living are costs that everyone can face. They are usually recurring costs (rent, energy, clothing, transport, food, participation in society, medical care, etc.). Examples of special costs of living are costs of certain medically indicated facilities (for example glasses and a special diet), premiums for a private health insurance, personal contributions for certain provisions (for example legal aid and home care), removal and refurbishment costs and costs of durable consumer goods, at least to the extent that the applicant has not been able to save up for this. In most of these cases, reimbursements can also be obtained under other schemes, such as the Healthcare Insurance Act (*Zorgverzekeringswet*) or the Long-Term Care Act (*Wet langdurige zorg*). If the reimbursement is not sufficient, the shortcoming need not be compensated by the municipality. However, if the municipality does provide assistance in such situations, it is done in the context of a so-called “extra-legal policy”. Such policy is approved by the court, provided that its implementation is consistent (ECLI:NL:CRVB:2013:BY9838).

Social assistance is not intended for so-called unnecessary costs, such as compliance with maintenance obligations, payment of a fine, costs of suffered or inflicted damage, costs of voluntary contribution payments under a public insurance policy, costs of a medical treatment in the Netherlands or abroad that can be regarded as an experimental medical treatment (Art. 14 PW).

Finally, what is meant by “necessary costs”, is ultimately a political issue. It is clear however that it concerns an existence at the level of the social minimum, a sober existence without luxury or frills.

#### c) Passing the means test

Social assistance is of a complementary nature: a person only becomes entitled to social assistance if his or her own means (income and capital) and other provisions – for instance benefits from private and social insurances – are insufficient to meet the basic living expenses. For the provision of assistance, the income and capital position of the person in need of assistance is therefore important (Art. 19, 1 j° 31 PW).

The means test is crucial and passing this test is a further condition for entitlement to assistance. “Means” is defined in the Participation Act. Until 2012 the means test took

into account all income and capital<sup>1</sup> of the applicant and of his or her partner. In order to reinforce the activating nature and the safety function of assistance, in 2012 the means test was extended to include the family of the applicant (parents, and minor and adult children) (Art. 31 PW; Parliamentary Papers 32815, no. 3). The test is comprehensive and not only includes the means someone actually has, but also means to which a person may reasonably have access. The term “reasonable access” for instance refers to a debt which is immediately payable. Other examples come from court judgments, e.g. work that can be valued in money, such as babysitting, even if this activity is performed in a family relationship (ECLI:NL:CRVB:2011:BQ2056, Babysitting activities being valued financially) or activities related to the breeding of dogs, regardless of whether these activities are performed as a hobby (ECLI:NL:CRVB:2010:BM3466; ECLI:NL:CRVB:2017:1111) or based on medical advice (ECLI:NL:CRVB:2015:1758). If such work is carried out without receiving any payment, the municipality may fictionally set the income at the statutory minimum wage level that could have been negotiated.

Not all means are taken into account for the means test (Art. 31, 2 PW). Examples are child allowances, housing benefits, partial reimbursement of expenses for voluntary work, and wages of the recipient’s dependent children. Also exempted is a modest amount of savings. Leaving a certain amount of savings untouched rewards the willingness to put something aside. Rights in real estate are also partly excluded from the means test. If an applicant owns a private house the municipality looks at its excess equity value. This is the current value of the house minus the mortgage outstanding. If the excess equity is lower than a certain amount, there is a right to social assistance benefit provided two conditions are met: (i) the applicant lives in the house (with a family) and (ii) the applicant cannot be expected to sell the house or to take out an (extra) mortgage, because the living costs are about the same as the rent of a suitable home. Those who do not meet these conditions can be obliged by the municipality to sell the house before accessing assistance.

Other exceptions are benefits and compensations for material and immaterial damage. They are not included in the means test if they are designated by a ministerial regulation which contains a list that is updated when the need arises (Art. 7 Regeling Participatiewet, IOAW en IOAZ). Examples are compensation for non-salaried victims of mesothelioma and of DES use during pregnancy<sup>2</sup> (both added in the regulation in 2007), compensation for victims of sexual abuse in the Roman Catholic Church (added in 2012), compensation for victims of sexual abuse or minors in institutions and foster families (added in 2013), the one-off special payment in recognition of war trauma and also as a way to (partially) compensate for damage and injury (added in 2014). For this

<sup>1</sup> Capital is the value of all assets minus all debts. However, not all assets are included. Certain conditions apply to the taking into account of debts and separate rules also apply to assets in an owner-occupied home.

<sup>2</sup> DES preparations – “diethylstilbestrol” – were prescribed to pregnant women by doctors to prevent premature births and miscarriages. From the mid-1970s it became acknowledged that the use of these preparations during pregnancy causes physical disorders of different kinds and severity, both for women and men born from mothers who used DES and for the mothers themselves.

reason, compensations for (im)material damage for victims who are entitled under one of these schemes determined by the Minister are completely exempted from the means test implying that receiving compensation does not affect the right to assistance. A different assessment framework applies to all other injury victims that are eligible for compensation. The recipient's municipality of residence determines whether payments related wholly or partially to material damage or injury received by the social assistance recipient are to be taken into account as means or not. According to the legislator, the municipality must base its decision on the special aim of the compensation and the level of the payments (Parliamentary Papers 2002/2003, 28870, no. 3). Research among several municipalities shows that the criteria for taking into account a benefit or compensation for material damage vary considerably (Hergelink, Vermaat 2015).

#### d) Absence of grounds for exclusion

There is no entitlement to social assistance on the basis of the Participation Act in the event of imprisonment, stays abroad longer than four weeks, unpaid leave, being younger than 27, and receiving student finance (Art. 13 PW). Nor is there any entitlement if other adequate and appropriate provisions exist. In that case costs can be reimbursed in a different way, e.g. by unemployment benefit, student finance, or old-age pension (Art. 15 j° 5 under d PW). This follows from the legal system. There is a hardship clause however (Art. 16 PW) for very urgent reasons, municipalities are authorized to grant assistance to someone who does not meet the legal requirements. This only occurs in emergency situations which must be so acute that provision of assistance is completely inevitable. An example in which the court assumed a very urgent reason was for drug and alcohol addicts who spent more than the legally permitted four weeks in a rehab clinic in Scotland (ECLI:NL:CRVB:2008:BD8764).

### 3. General assistance

General assistance is the assistance that must provide for the generally necessary costs of living (Art. 5 under b PW). The amount of general assistance is linked to the statutory minimum wage. The Participation Act itself does not contain benefit rates, but includes a system of national social assistance standards. These standards include distinctions with respect to the age of the applicant (Art. 20–23 PW). The Act includes standards for people between 18 and 21, 21 and the age that gives entitlement to an old-age pension, and for people of that age and older (see the General Old-Age Pensions Act (*AOW*) for the last group) and to the type of household he or she is living in. The amount of the benefit is the difference between the income of the recipient and the national social assistance standard that applies. (Art. 19, 2 PW). If the recipient, for instance, receives alimony, a benefit or an income from work, that income is supplemented to the national social assistance standard. If there is no income, the benefit is equal to the national social assistance standard that applies to him or her.

The starting point for providing assistance is that assistance is tailored to the circumstances, possibilities and resources of the person concerned (Art. 18, 1 PW). This individualization principle suggests that only circumstances, possibilities and resources of the person applying for assistance are considered. This is not the case however, since the Participation Act stipulates that “person concerned” also means “the family” (Art. 18, 12 PW). A family in the Participation Act comprises both spouses (and their dependent children) or a single parent with his or her dependent children. (Art. 4, 1 under c PW). This means that when assessing the needs of the applicant, the family situation (income of his or her spouse) is also taken into account, not only when determining the entitlement to, but also when determining the amount of the social assistance benefit.

The law distinguishes national assistance standards, with different levels, for the following three types of households: (i) singles, and (ii) married couples, registered partners and people living together in cohabitation, and (iii) persons who reside in a household with several other persons. The latter is the so-called cost-share standard (*kostendelersnorm*), intended for persons who have their main residence in the same house, without being considered as married (Art. 22a PW). The different standards are related to assumed differences in need level. For persons under the age of 21 the social assistance benefit is lower (Art. 20 PW). In contrast, higher standards apply to pensioners (Art. 22 PW).

An explanation of the three standard rates follows below.

### 3.1. General assistance standard

For singles the standard is 70% of the net minimum wage (Art. 21 under a PW). A single person is an unmarried person who does not have a shared household with another unmarried person and does not care for a child under the age of eighteen. Married persons and registered partners can be regarded as single if they are separated, provided they live their own lives and the separation is considered as permanent by at least one of them (CRvB 28 June 2011, USZ 2011/236; in this case two former spouses had remarried, for reasons of better inheritance arrangements).

For married people and people living together the standard is 100% of the net minimum wage (Art. 21 under b PW). The concept of “married” in all social security legislation is not that simple: people are not only considered to be married if they are civilly married or registered as partners. Also ranked on a par with couples are two unmarried people who share a household (Art. 3, 2 PW). The Participation Act stipulates that a shared household is a household with another person if (i) the unmarried persons have their main residence in the same house and (ii) take care of each other. “Take care of each other” is assumed if one or both provide a financial contribution to the costs of the household (“financial entanglement”). Of no importance is the reason for cohabitation, whether there is an affective relationship, or of which sex the unmarried cohabitants are. The only relevant aspect is whether two people live at the same address and share the costs of the household. For this reason, two brothers, two sisters, or a grandparent

and a grandchild who live together are regarded as married. An exception applies for first-degree relatives (mother/father – daughter/son; a foster child that is of age). They are not regarded as married, but as single. The same applies for second-degree relatives, but only if one of these relatives is in need of care. (However, according to the Supreme Court, this situation is to be seen as an unjustified privilege for second-degree relatives. There is no justification for different treatment of cohabiting second-degree relatives and other unmarried cohabitants. Restoration of this right is left to the legislator; ECLI:NL:HR:2017:3081).

As a single person receives a higher benefit (20% more than half the benefit of the married), in the system of the Participation Act it is attractive to present oneself as a single person and keep silent about living with another person (Vonk 2013, p. 136). In order to avoid problems of lack of sufficient evidence to prove cohabitation fraud, the Act includes irrefutable assumptions of a shared household. Examples are cohabitants who were previously married to each other (cohabiting ex-spouses) if the divorce has not taken place more than two years earlier and cohabitants that are registered as married for another legal scheme, for instance the Law on Income Tax (Art. 3, 4 PW). The rules regarding the type of household (cohabitation or not) are not fully detailed in the text of the Participation Act. Some of them have been developed in case law over the years. An example is the commercial relationship: if, for instance, there is a rental agreement or a boarder agreement, no financial entanglement is assumed, provided that the amount of the rent or the boarder costs is not symbolic but corresponds with usual prices (ECLI:NL:CRVB:2015:1437; Parliamentary Papers, 2013/2014, 33 801, no. 19, p. 13–14). The question of whether someone is single or not, has lost its importance with the introduction of the cost-share standard.

### **3.2. The cost-share standard**

The cost-share standard (hereinafter referred to as: the CSS) is a separate standard for cost-sharers that was introduced in the Participation Act in 2015 as the result of reforms and harsh cuts to make the Participation Act future-proof.<sup>3</sup> A lower assistance benefit is provided if the costs of the household can be shared with someone else. The CSS aims to prevent accumulation of social assistance benefits in one household so that a total household income does not cover more than just the necessary costs of living. It takes into account the economies of scale that arise when two or more people live together in a home.

The cost-share standard for two persons corresponds to 50% per person of the standard for married couples (100%). From the third person, the norm of married couples (100%)

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<sup>3</sup> The CSS was introduced into the Participation Act in 2015 for various reasons. First, to keep social assistance affordable and sustainable. Second, for reasons of fairness and justice. The CSS aims to prevent that a total household income covers more than just the necessary costs of living in one household. It ensures that the Participation Act keeps its safety-net function, which is to provide not more than only the means for the necessary costs of living.

is increased by 30% for each extra resident and the individual standard is determined by dividing the total percentage by the number of residents (Art. 22a, 1 PW).

The table shows the impact of the CSS in different household compositions. The standard before implementation of the CSS is in brackets. It is obvious that for single households and married people the CSS does not affect their benefit. From a triple household on the assistance benefit is lower for the individual recipient as more people live in the same home.

Household type	Individual standard (%)	Overall standard if all residents receive social assistance benefits (before 2015) (%)
	70	70 (70)
	50	100 (100)
	43.33	130 (170)
	40	160 (240)
	38	190 (310)

Source: Based on Parliamentary Papers, 2013/2014, 33 801, no. 3, p. 5.

Cost-sharers are people from the age of 21 if they live in the same house with one or more persons aged 21 or older, irrespective of their relationship. The CSS also applies to first-degree and second-degree relatives (i.e. parents and children who live together or two cohabitating brothers or sisters) and to recipients who provide informal care, e.g. to a family member or to someone else residing with them.

Only a few legally determined situations are excluded from the application of the CSS. These regard assistance recipients sharing the house with (i) housemates that are students who are eligible for student finance, (ii) a person who lives in the house on the basis of a commercial tenant agreement or on the basis of a boarder agreement (*kostgangersovereenkomst*), and (iii) a person who has reached the statutory retirement age. A specific provision applies to the second group (commercial tenant agreements and boarder agreements): agreements concluded between blood relatives and relatives by marriage do not lead to exclusion of the CSS (Art. 19a, 1 under b PW). This is to prevent fraud and sham constructions, as purely commercial relationships between these relatives is impossible, according to the legislator (Parliamentary Papers 33 801, 2013/2014, no. 3, p. 60). The CSS is not undisputed and sparked court cases immediately after coming into force. One question was, for example, whether it is relevant that the cohabitants actually share the costs of the household. This is not the case, even in the situation where the costs cannot be shared because a resident son has no income (ECLI:NL:CRVB:2016:3870; ECLI:NL:CRVB:2018:2165). They are cost-sharers.

Another case shows that the CSS also applies if informal care is the reason for cohabitation: care was given by a mother to her physically and mentally handicapped son. As the legislator deliberately opted to have the CSS also applied to people who

share a home with a first-degree or second-degree relative in which there is a need for care, the law is mandatory in nature and leaves no room for judges to deviate (ECLI:NL:CRVB:2016:3869).

## **4. Special assistance, individual income supplement and individual student allowance**

Special assistance, individual income supplement and individual student allowance provide targeted additional income support. In essence, this means that the support is given to a specific individual, who actually has to deal with costs that arise from special circumstances, that are not compensated by other schemes, and that cannot be reimbursed by him- or herself either. These types of support are carried out by the municipality. The three facilities are outstanding examples of customization, tailoring the provision to the individual situation.

### **4.1. Special assistance**

While general assistance is the assistance that must be provided for the generally necessary costs of living, special assistance deals with the situation that a single person or a family does not have the means to cover the necessary costs of living that result from special circumstances and if, according to the municipality, these costs cannot be met from general assistance, from individual income supplement or individual student allowance (Art. 5 under b and Art. 35 PW). Municipalities themselves determine for which costs and under which conditions special assistance is granted. Being eligible or not depends on the individual circumstances. Special assistance is not limited to special types of costs. These costs may include, for instance, moving house, study expenses, costs of childcare, housing expenses, and the examples of special costs of living mentioned above (see under “Level and sufficiency of current resources: necessary costs of living”). In order to be eligible, it is not required to receive general assistance benefit. A person can apply for it if he or she has an income from other sources. So-called “crumb benefits” do not have to be paid out because of the high implementation costs and administrative costs that go with it. For this reason, the municipality may refuse special assistance if the costs stay below a threshold (Art. 35, 2 PW).

There are no standard amounts for special assistance, as it always concerns specific costs.

### **4.2. Individual income supplement**

The individual income supplement (*individuele inkomenstoelage*) is meant for households with a long-term low income, who generally cannot save up any money for unexpected extra expenses (Art. 36 PW). On 1 January 2015, the individual income supplement

replaced the annual invalidity supplement (*langdurigheidstoelage*). Eligible are people between 21 and the retirement age, provided they have a low income during a long period, with little or no capital and without prospect of income improvement (Art. 36 PW). The minimum of 21 is derived from the legal parental maintenance obligation laid down in the Dutch Civil Code which expires at this age. The stipulation regarding the lack of prospect of income improvement prevents that the individual income supplement is granted to students and to people who intentionally work part-time. A person can qualify for an individual income supplement once in a 12-month period.

It is up to the municipality to determine what constitutes a “low income”. This may be an income at the national social assistance standard, but it can also be at a different level, e.g. 110% or 120% of that standard. The advantage of setting the standard at 110% or 120% of the national social assistance standard is that makes it less difficult for people to escape from poverty. After all, if people start working from the situation in which they receive a benefit and their income from work is below 110% or 120% they retain the right to the individual income supplement. This prevents people from being disadvantaged when accepting work. However, the higher income norm has negative consequences for the municipality’s finances in the short term as more people meet this condition. If, however, the low-income norm is set at the national social assistance standard, the effect is that people who start to work no longer meet the conditions of the individual income supplement, which may discourage them from entering the labour market. It is up to the municipality to make the right assessment (de Boer, Heesen, Ros 2017, p. 168).

### 4.3. Individual student allowance

In 2015 a new student finance system was introduced. The basic grant (*basisbeurs*) was abolished and replaced by a loan that must always be repaid. The threshold for borrowing money is much higher for persons with a work disability than for those with no work disability. The chance of finding a job later is smaller for the first group, since employers are often reluctant to hire them. For this reason, since 2015 the Participation Act has included a study arrangement specifically for students with a work disability (Art. 36a PW). This study arrangement encourages them to go to school or to start a study programme. The idea is that a successfully completed study will help them to lower barriers for employers. As knowledge and a certificate can be seen as proof of being motivated and having something to offer, employers are probably more likely to hire them (Parliamentary Papers 33 161, 2013/2014, no. 125). Finally, the individual student finance also provides financial compensation for the fact that it is quite difficult for this group to combine a study programme with a part-time job.

In order to qualify for the individual student allowance a student must meet the following requirements: he or she is at least 18 years old, receives student grants or a reimbursement of school costs for students, has no capital above the limit of the Participation Act, and is unable to earn the statutory minimum wage.

## 5. Obligations and sanctions

The right to social assistance is linked to fairly strict obligations. Two types of obligations can be distinguished: “information obligations” and “cooperation obligations” (Art. 17, 1 and 2 PW). Not or not fully complying with the obligations leads to sanctions as laid down in the rules set out by the Participation Act and, in case of reduction of benefits, by regulations of the municipal council. The legislator has thus entrusted the implementation of this part of the Participation Act fully to the municipalities.

### 5.1. Information obligations and sanctions

Information obligations are aimed at the control and feasibility of the law. Social assistance recipients must spontaneously or on request provide all information that is relevant for integration into the workforce or for the right to assistance (Art. 17 PW). For instance, they must report a change in earnings, a change in the household situation, in volunteering and/or in providing friendly favours more often than incidentally (ECLI:NL:CRVB:2015:800).

Violation of the information obligations, i.e. giving false information in order to gain a financial advantage, or withholding information that is relevant for determining the level of benefit, must be sanctioned (fines) (Art. 18a PW). If the amount that has been wrongly charged to the municipality (the “disadvantage”) stays below a certain amount, enforcement is of an administrative nature and carried out by the municipality. The starting point is that fraud must not pay off. This means that recipients must always repay any assistance that has been wrongly received (Art. 58, 1 PW). The fines are at least as high as the amount of benefit that has to be recovered; in case of recidivism, the fines are higher (150% of the benefit) (Art. 18a PW). If there is diminished culpability, the municipality may reduce the fine. In case of urgent compelling reasons, it may refrain from imposing a fine (Art. 18a Wwb). In 2017, an average of 6.7% of social assistance recipients was found to have violated the information obligation. Municipalities with more than 100,000 inhabitants are more likely to observe such violations than smaller municipalities (Divosa Benchmark... 2017).

In cases where the municipality’s disadvantage exceeds a certain amount, the violation is an offence under criminal law. Civil servants who become aware of such a situation in the course of their work are obliged to immediately report this to the public prosecutor. Enforcement takes place on the basis of criminal law: i.e. in the form of a fine, obligatory community service, or a prison sentence. In this case, Art. 6 ECHR provides the individual certain protection (Vonk 2014, p. 190).

### 5.2. Co-operation obligations and sanctions

Obligations to cooperate are aimed at becoming financially independent. The starting point of the Participation Act is that everyone is primarily responsible for earning their

own income in employment. With this in mind, social assistance recipients are first of all obliged to find and accept generally accepted work. The concept of “generally accepted work” was introduced in 2004. Before that time, the less strict “concept of suitable employment” applied, which took into account the nature of a person’s previous employment. Furthermore, social assistance benefits must cooperate with the measures that the municipalities take to support them. This obligation requires participation in an employment programme for a maximum of two years. The aim of these so-called participation jobs (*participatieplaatsen*) is to gain work experience. This two-year period can be extended to a maximum of four years, if certain conditions are met. Finally, recipients can be obliged to carry out unpaid, socially useful activities commissioned by the municipality (Art. 9 and 10 PW).

The obligation to perform socially useful activities regards a community job (*tegenprestatie naar vermogen*). This was introduced in 2012 in the predecessor of the Participation Act (the Work and Public Assistance Act). The community job is not a reintegration instrument into a regular job, but purely an activation instrument (Parliamentary Papers 32 815, 2010/2011, no. 3, p. 9). The underlying idea was that community jobs entail a “civic requirement in return for the solidarity people receive from the community” (Parliamentary Papers 32 815, 2010/2011, no. 3, p. 14–15). The activities in the unpaid community job must not, however, be an obstacle to acceptance of generally accepted work or to reintegration aimed at employment. After all, the principle of work before benefit is paramount. It is up to the municipal council to adopt a regulation laying down the rules governing the conditions regarding the requirement to perform community jobs. It must determine the nature (normal civil obligations, small community services), duration (activities of a short duration; e.g. 32 hours per week is too long for such jobs; ECLI:NL:RBZWB:2013:BZ5171) and scope of the community job. Examples of such activities are: clearing public spaces from snow, cleaning forest paths, clearing away autumn leaves, cleaning traffic signs, counting birds, reading to children in schools, and managing a parking area or bicycle park.

An exemption, only temporary, may be granted from the obligation to work, if there are urgent reasons. One legally recognized urgent reason is informal care, but only if such care cannot be provided in other ways, such as home care and a personal budget (Art. 9, 2 PW). A second example regards single parents with children under 12. Temporary exemption from the work obligation is possible if the working hours and travel times cannot reasonably be combined with the care for their children and if there is a lack of suitable childcare, in-between school care and out-of-school care (Art. 9, 4 PW). Exemptions only apply in individual cases. It is not possible to exempt groups of recipients from co-operation duties. At the end of 2017, municipalities had registered exemptions from the obligation to work for an average of 10% of the social assistance recipients (*De belangrijkste...* 2017).

The social assistance recipient is expected to be as flexible and attractive as reasonably possible in order to increase his or her chances of employment. The legislator has formulated co-operation obligations that are related to this requirement (Art. 18,

4 PW). They range from simple, such as registering with an employment agency, to fairly extensive: making sure that clothing, personal care or behaviour do not hinder finding work; willingness to travel for up to three hours a day and willingness to move if necessary in order to find work.

In 2016, the language requirement was introduced as a new obligation for social assistance recipients (Art. 18b PW). The legislator believes that access to the Dutch labour market is difficult for people who do not speak Dutch or have only a limited command of the Dutch language. Even simple work often requires a basic knowledge of the Dutch language. The language requirement is not intended as a high threshold for the entitlement to assistance. It is sufficient for the person to be able to make him- or herself understood at work and in daily life. The regulation works in such a way that a language test must be held for persons who have not followed Dutch-language education for eight years, have not taken an integration examination, or cannot demonstrate in another way that they have a sufficient command of the Dutch language (reference level 1F).

The last obligations of co-operation are the duty to appear at an office to provide information and to grant access to bank statements. In the context of fraud investigation, persons must cooperate in a viewing of their house. Such viewings, which are somewhat euphemistically referred to as “home visits”, are becoming increasingly common (Klosse, Vonk 2016, p. 253).

A few rules apply to those home visits. The resident’s permission is required, for example. Refusal to give permission, however, may affect the benefit. Not or not fully complying with the co-operation obligations is regarded as a breach of an administrative obligation which will be sanctioned by the withholding of benefit rights, i.e. a reduction of the benefit in conformity with the rules set out by the Participation Act and by the regulations of the municipal council. The sanctions are not part of the criminal law system (Vonc 2014, p. 190). Nevertheless, they hit recipients hard. The Participation Act leaves it to the municipality to decide on the exact duration (a maximum period of three months) and level of the reduction (Art. 18, 6 PW). A measure will be applied if the recipient has an inadequate sense of responsibility (Art. 18, 2 and 5–8 PW). For every violation of obligations within twelve months after the previous violation, however, a measure of 100% reduction applies, each time for three months; this measure is regulated in the Participation Act (Art. 18, 7–8 PW). If the recipient is not culpable, no measure is imposed. This applies for instance in situations in which the recipient was not able to fully comply with one or more agreements due to force majeure. An evaluation of the Participation Act has shown that almost all municipalities actively apply the obligation to work. The same applies to the action plan to get back to work. The obligation to accept travelling time of a maximum of three hours is actively imposed only by a minority of municipalities. One third of the municipalities imposes a measure (reduction of the benefit or imposition of a fine) if people refuse to perform non-remunerated activities that benefit the community (*tegenprestatie*) (Cuelenaere 2017, p. 48).

A specific measure regime applies to the language obligation. Assistance may be reduced if, in the opinion of the municipality, there is a reasonable suspicion that the

recipient does not, or not sufficiently, master the Dutch language. The benefit will be reduced by 20% in the first six months, by 40% for the next six months and after one year the reduction can be 100%, unless there are certain circumstances (Art. 18b, 6, 9–11 PW). The implementation process concerning the language obligation is still under development. Municipalities do not check whether social assistance recipients have a command of the Dutch language. Plans to update the recipients' knowledge are hardly made, reductions of benefits are practically left un-imposed. Language tests appear to be "few in practice". More than 140 of the 388 municipalities have not yet organised a single language test, the other 248, in April 2017, an average of four tests. 35% of the municipalities have not drawn up any language plans. Reduction of the benefit due to failure to meet the language requirement is rare. In the first six months of 2017 a total of 80 reductions were imposed, on about 50 people, by about 20 municipalities (Braggaar 2018, p. 38).

## **6. Regulations for special groups**

Two special groups deserve extra attention: young people and self-employed people.

### **6.1. Young people**

Young people are expected to work or to study. Not everyone does, to the great regret of policy makers. For this reason, in 2009 the Act on investment in youths (*Wet Investeren Jongeren*, WIJ) was adopted. This law put an end to general assistance for young people under the age of 27. Instead, young people were subjected to a special regime in which an income provision was only an option if they performed work and/or participated in a training session. To this end, the municipalities had to provide the young people with a so-called work-study offer. Since then, with the introduction of assistance as family assistance and the obligation to perform a community job in return for assistance in 2012, the law has been withdrawn and young people between 18 and 27 have become eligible again for social assistance. However, that age group is covered by stricter rules.

For persons under 27, the application for benefit will only be dealt with after a waiting period of four weeks in which the applicant is expected to seek work (Art. 41 PW; there are also municipalities where this period applies to all ages). If no work is found during that period, the benefit must be paid retroactively (ECLI:NL:CRVB:2013:BZ6642). Only in case of insufficient efforts, may the municipality refuse social assistance on the ground that the attitude and behaviour of the applicant have shown that s/he does not comply with the obligations of the Participation Act (ECLI:NL:CRVB:2017:3654).

As parents are obliged to maintain their children until the age of 21, young people are only eligible for general social assistance from the age of 21. However, if they cannot rely on their parents because the parents are reasonably unable to perform this maintenance duty towards their children, the municipality can provide them with special assistance.

If special assistance has been awarded, the municipality can try to recover these costs from persons who have the civil liability to maintain the claimant but fail to act accordingly (Art. 62 PW; Bouwens 1996, p. 221).

Finally, for younger people fewer exemptions apply for the means test. For instance, payments for voluntary work are not exempted at all (Art. 31, 5 PW).

## 6.2. Self-employed persons

The Decree on assistance for the self-employed (Besluit bijstandsverlening zelfstandigen 2004, which is based on Art. 78f PW) was introduced as a safety net for entrepreneurs, including self-employed persons who temporarily do not have sufficient resources to provide for their existence and/or who need working capital, but cannot obtain the necessary funds. The scheme is implemented by municipalities and contributes directly to the continuity of more than half of the companies involved.

The Decree includes special rules to supplement the income of self-employed persons up to subsistence standard (the subsistence standard is that of the Participation Act). Different categories of self-employed persons are distinguished (Art. 2 Besluit bijstandsverlening zelfstandigen 2004): self-employed persons in temporary financial difficulties, the starter (the person or his partner receives an unemployment benefit and intends to establish himself as an entrepreneur on the labour market), the older self-employed person (a person is older if he or she is at least 55 and – at the time of applying for the benefit – has worked as a self-employed person for at least ten years and his or her income is too low to sustainably meet the necessary costs of living) and the self-employed persons who want to terminate the company due to its non-viability (the company must be terminated as soon as possible, and at least within 12 months). As social assistance is not meant to be a permanent facility for company activities, general assistance is not provided for longer than 12 months, unless special circumstances arise, such as an emergency. In that case the period can be extended with a maximum of 12 months.

Regarding the first category (self-employed persons in temporary financial difficulties), social assistance is usually provided as an interest-free loan. This is to take account of the fact that the income of a self-employed person can vary considerably. When the income in a particular year is known, the amount of general assistance will be established definitively. If it turns out that too little profit is made, the loan can fully or partially be converted into a non-redeemable sum.

Self-employed who are setting up their business (starters) can receive social assistance for a maximum of 36 months. An extension of this period is possible if there is a good reason (e.g. illness).

Older self-employed persons until the legal retirement age (which is gradually increasing: in 2021 it will be 67 and as of 2022, it will be linked to life expectancy) can receive social assistance up to a certain amount if their income is at least a certain amount and lower than the social assistance level (Art. 25–26 Besluit bijstandsverlening zelfstandigen 2004).

In addition to social assistance for living costs, assistance in the form of an interest-bearing loan may also be granted to cover the need for business capital. The maximum depends on the category to which the self-employed person belongs (the self-employed person in temporary financial difficulties, the starter or the older self-employed person) (Art. 20, 24, 26 Besluit bijstandverlening zelfstandigen 2004).

The last category, the self-employed person who wants to terminate the company, can receive social assistance for 12 months in order to organize the activities necessary to terminate the company.

## 7. Conclusion

Since 1965 social assistance in the Netherlands is a legal right, and not a favour. The current legislation is the Participation Act. It dates from 2015 and is the safety net of the Dutch social security system. Only if a person is no longer eligible under other schemes of the social security system, do they have access to the Participation Act. This function is ensured by a comprehensive means test. With the introduction of the activation philosophy, more attention is now paid to re-integration. If no paid work can be found, benefit recipients are required to perform work without wage that benefits the community or to participate in re-integration activities – in return for the social assistance they receive. This may result in social assistance recipients performing unpaid work for a fairly long time (Eleveld 2014, p. 212). The obligations are accompanied by rather strict measures. The activation emphasis, so to speak, is characterized by greater personal responsibility. Activation is not only necessary in the interest of the person concerned (he or she can participate again in society and is no longer an outsider), but also in the interest of the sustainability of the assistance system. A good example of supporting personal responsibility is the safety net that is offered to self-employed persons. It allows older self-employed persons to continue their business and young people to set up a business, which are better options, both financially and socially, than ending up in social assistance.

However, several trends can be assessed critically.

First: the strict obligations and sanctions for those who receive social assistance disrupt the balance between rights and obligations. The obligations may be in conflict with the customized support municipalities would like to give their citizens, especially those with complex problems. Because the emphasis is on activation, obligations must be imposed immediately to facilitate the move towards the employment market. Municipalities consequently have little or no room to temporarily refrain from exerting pressure on citizens so that the citizens can first get their lives in order in other areas. Currently municipalities can experiment, among other things, with fewer obligations for social assistance recipients. This experiment is part of academic research into more effective and efficient implementation of the Participation Act from the perspective of trust, room for personal responsibility and incentives to acquire income. The experiment may take

two years in a period of up to three years. Municipalities have to apply to participate in the experiment (Besluit van 22 februari 2017, houdende vaststelling van het Tijdelijk besluit experimenten Participatiewet, *Stb.* 2017, 69).

Second: the choice for decentralization involves a paradigm shift with wider social implications. The new concept is that of tailor-made policy, which entails a switch from equal rights for everyone with no personal regard – i.e. without any regard to need, capabilities and commitment – to facilities that are granted with regard to persons: “to each his own” (Donner 2016). Hence, the basic concept of legal right in the interpretation of social and welfare care is no longer ‘equality’, but instead making a distinction according to need, possibilities and circumstances. A shift has taken place from public to private and from protection to activation. Citizens must become less dependent on social assistance benefits and other provisions and must contribute to the quality of life in their neighbourhood. This change is based on a specific social vision. The idea is that citizens should receive greater responsibility, which does not necessarily mean less government influence, but less government involvement (Putters 2018, p. 18). An example is the language requirement, which was not introduced by municipalities but imposed by the central government. It is barely verifiable and there is no adequate budget for specific training. At its introduction, it immediately met resistance from many municipalities. Many aldermen feared the bureaucracy and warned that they lacked the staff to check and enforce the requirement. Other aldermen had fundamental objections to the reduction of the assistance.

The high degree of decentralization creates the risk that similar cases are treated differently in different municipalities. A difference has been detected for instance between municipalities with respect to the policy of sanctions. Some municipalities take the freedom to impose fewer obligations in special situations, and other municipalities do not experience this room and the possibility to take this freedom. Another example regards the means test to check if victims of personal injury are eligible for compensation. It is at the discretion of the municipality whether those payments received by the social assistance recipient are included in the means test fully, partially or not at all. The criteria for taking into account a compensation vary considerably. The legislator may consciously have accepted and allowed inequality within the framework of the Participation Act. The last example regards the individual income supplement and the individual student allowance. Both have been delegated to the municipal level. Here, the far-reaching discretionary power of municipalities is visible: some municipalities have provisions stipulating that in special cases the municipality may deviate in favour of the applicant from that stipulated by or pursuant to the regulation, if strict application leads to unfairness of a predominant nature. Other municipalities do not.

Third: the introduction of the standard for cost-sharers has created difficulties. As a consequence of the application of the CSS, poverty is not only lurking but is a real risk despite the fact that, according to the legislator (Parliamentary Papers 2015/2016, 34273, no. 3, p. 27), the municipality can provide tailor-made solutions by adjusting social assistance in the individual situation to the circumstances, possibilities and

means of the interested party (Art. 18, 1 PW). Case law shows, after all, that this is only possible if there are very special circumstances (ECLI:NL:CRVB:2016:3869). This so-called fine-tuning is therefore just a mouse hole and given the formal thresholds for the application of this option, poverty remains a real risk.

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