

## **Recommendations from the study of June 2016:**

### **Social infrastructure for vulnerable groups covered by the Participation Act**

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The Netherlands is facing a major challenge with regard to the bottom end of the labour market: how to create 125 thousand jobs for people with an occupational disability and how to provide 30 thousand new workplaces as part of the new sheltered work facility. In addition, about 100 thousand people are employed in the sheltered employment sector who must also be kept in employment despite the closure of the scheme to new entrants under the Dutch Sheltered Employment Act [*Wet sociale werkvoorziening*].

The SER conducted a brief review of current and evolving practice in the social infrastructure. Based on this review, the Council would like to draw attention to a number of issues. A few recommendations are then made that could be addressed in the short term. Finally, priority areas are set for the longer term.

### **Background to the study**

The State Secretary of Social Affairs and Employment asked the Social and Economic Council of the Netherlands (SER) to conduct a study to ascertain "what forms of social infrastructure are emerging". She also asked "what is the minimum requirement for an adequate social infrastructure in the labour market regions that will provide the vulnerable groups on the labour market with the best possible support under the Dutch Participation Act [*Participatiewet*]?" The State Secretary had previously stated that she was worried about the position of the most vulnerable people covered by the Participation Act. She referred to the transformation of work integration social enterprise (WISE) firms [*sociale werkvoorzieningsbedrijven*] and the need to retain their expertise, as well as the importance of cooperating with the education sector at regional level. She also drew attention to the actual implementation of the sheltered work facility.

## **1. Short-term priorities and recommendations**

### **1.1 Utilisation and conversion of WISE firm infrastructure**

The Council notices that the desired regional social infrastructure is still at the development stage. There are major differences between regions or sometimes subregions, involving diverse functionalities and implementation organisations. In some labour market regions or subregions, one or more functionalities are not (or no longer) available, e.g. the secondment facility or the sheltered work facility.<sup>1</sup> There are also signs that functionalities are being provided by different implementation organisations, some of which collaborate better than others. Their efforts should be concentrated on creating a comprehensive social infrastructure for each labour market region and in all the regions combined. The Council has the impression that this is not yet the case.

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<sup>1</sup> Cedris, 2016, *Stand van zaken implementatie Participatiewet*.

Moreover, there is, or is likely to be, a fragmentation of functionalities and implementation. Certain developments, such as the exodus from WISE firms described below, could cause parts of the current infrastructure to erode, without equivalent functionalities emerging. This could leave gaps in the safety net in future. Existing structures are now being dismantled, although there is as yet no guarantee that a new, effective infrastructure will replace them.

If nothing is done, the inevitable result will be a decrease in WISE firms. This is due to the reduction in government funding, the steep decline in the number of those eligible for sheltered employment (accompanied by the non-admittance of people to the new sheltered work facility). The productivity of those working in WISE firms will also decline as a result of the ageing population and the fact the more productive employees will leave, etc.<sup>2</sup> The decrease in WISE firms will eventually mean that it is no longer possible to maintain knowledge, experience and networks, which are essential to a good social infrastructure for vulnerable groups.

It is the Council's view that it is essential to prevent a situation in which existing knowledge of and expertise in supervising the most vulnerable target group specified in the Participation Act are lost. It will not involve itself in the considerations of specific municipalities whether to end or radically alter their collaboration with a WISE firm. As the Council has heard differing opinions on this matter, it would be appropriate to commission more specific research on the subject. It is important that the research should include the extent to which the decision of an individual municipality within a labour market region results in a suboptimal regional situation and/or leads to a situation where certain functionalities are no longer provided within a region. Moreover, it should be borne in mind that the knowledge and expertise of the WISE firms have been built up with public funds and that the expertise of and experience with the WISE firms are highly valued by the business community. However, it is not necessary for all the required functionalities to be provided by a single party. It is up to municipalities to give the matter due consideration. The Council assumes that proven quality is a factor in considering which parties can provide the required infrastructure.

It is the Council's view that the decrease in WISE firms can be compensated by giving them new contracts to provide services to new target groups, such as the target groups for the jobs agreement [*banenafpraak*] and the Participation Act, as well as organising the new sheltered work facility provision. Building up the desired number of new sheltered jobs is in all cases a major precondition for the viability of WISE firms.

The continued use of the existing, high-quality infrastructure of WISE firms should, in the Council's view, be accompanied by a dynamic development of WISE firms into "new-style sheltered employment". It is essential to develop products and services which are consistent with the opportunities and needs of employers and the vulnerable target group. The changes currently being made in most WISE firms are a step in the right direction. As a result of people leaving the sheltered employment sector, it is unavoidable that WISE firms will have to adapt their organisations accordingly, both in terms of size and in terms of products and services. The plans developed for the sheltered employment sector plan that focuses on transforming sheltered employment can offer a solution provided that there is a real focus on modernisation, including regional secondment facilities for the sheltered employment target group and the new sheltered work system, joint employer services and collaboration with special needs education in conjunction with existing initiatives.

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<sup>2</sup> The Dutch government forecasts an annual (natural) decrease of 5,000 people eligible for sheltered employment while government funding per individual is also being cut. The funding for municipalities allows for an increase (by a factor of one third) in new sheltered work.

## 1.2 Sheltered work facility an essential part of the infrastructure

The sheltered work facility is an integral part of a wider package of provisions (functionalities) for vulnerable groups covered by the Participation Act. The Council establishes that practice is developing in quite different ways in connection with this provision.

When it introduced the Participation Act, the Dutch government stated that it assumed that 30 thousand sheltered workplaces should become available in the longer term. This estimate was based on historical figures. The government used these historical figures as a basis for providing municipalities with the relevant funding. The Council wishes to point out that the current legal definition of sheltered work is more restrictive than under the Sheltered Employment Act. The new sheltered work facility is intended for people whose only option for participating in the labour market is to work in a sheltered environment. Other people who are capable of working can find work with mainstream employers. People who qualify for sheltered work require so much supervision and so many adaptations that mainstream employers cannot be expected to provide sheltered work.

Based on the previous report from the Social Affairs and Employment Inspectorate [*Inspectie SZW*]<sup>3</sup>, official letters addressed to Parliament and information from social partners, it is clear that a severe backlog has developed in creating the number of new sheltered workplaces since 1 January 2015 and that these numbers fall well short of expectations.<sup>4</sup> A limited number of municipalities actually provide sheltered work. Places designated by municipalities as sheltered work facilities are usually places which do not involve an employment relationship. Apparently, municipalities choose not to offer sheltered work or to offer an alternative in which paid employment or work in an employment relationship is not involved. There are indications from the field that municipalities want to base their practice on people's prospects of development and prevent people from using this facility for longer than necessary. The Council has also heard that municipalities do not wish to enter into long-term obligations due to uncertainty with regard to budget trends and that they believe that an undesirable inequality before the law is emerging between groups who are far removed from the labour market.

### Recommendations

The Council considers the backlog in the number of new sheltered workplaces to be an undesirable situation and trend. In view of the reasoning of and choices made by municipalities, it believes that there is little prospect, if any, of improvement and that action is required. To this end, the Council recommends the following:

- The State Secretary for Social Affairs and Employment (SZW) has announced that she would instruct the SZW Inspectorate to conduct a detailed study to ascertain how municipalities deal with the development of new sheltered workplaces. The results are expected shortly. The State Secretary previously announced that she would take action, if necessary, arising from this study. The Council strongly recommends that a dynamic approach should be adopted.
- It should quickly become clear whether it is actually possible, using the current system (special needs assessment, target group specification), to eventually create the 30 thousand places based on the new sheltered work facility. The number of places to be created must be sufficient to meet demand. If this proves to be impossible, the Council believes that the system should be reconsidered.
- The Council agrees that it is necessary to provide options for advancement for vulnerable groups. It is also important to provide tailored solutions. But to deny these people sheltered jobs, in an employment relationship, is to deny the reality

<sup>3</sup> Inspectie SZW, 2015, *Beschut werk nota van bevindingen, onderzoek naar beschut werken*.

<sup>4</sup> Letter from State Secretary of Social Affairs and Employment (29 April 2016) *Progress on simplifying the Participation Act and Jobs Agreement Act*. Up to and including February 2016, municipalities submitted 397 requests for advice to the Employee Insurance Agency [UWV] on providing sheltered work, of which 162 were approved. The State Secretary assumed that municipalities would create 1,600 new sheltered workplaces in 2015, rising to 3,200 by the end of 2016.

that a large number of vulnerable people covered by the Participation Act will in the final analysis be permanently dependent on sheltered work. Only a few sheltered workplaces will be created and the majority of places do not have the characteristics of sheltered work as defined in law and previously agreed by social partners and government. As far as the Council is concerned, the closure of the system under the Sheltered Employment Act should not result in the new sheltered work facility degenerating into some kind of (unpaid) day-care system. For those people who have capacity for work but who are only able to participate in the labour market in a sheltered environment, it has been determined that this must always be organised in the form of an employment relationship.<sup>5</sup> These most vulnerable employees require certainty. If an employee's abilities decline due to an increase in limitations, he or she must also be able to fall back on the sheltered work facility. This does not appear to be guaranteed at the present time. In the Council's view, the fact that a large number of the employees concerned will be using the sheltered work facility on a permanent basis, and that municipalities believe that this involves financial risks for the future, or that focusing on sheltered work could mean that other job seekers could no longer be helped, should not be a reason for not providing sheltered work.

- Uncertainty with regard to the financial consequences, such as lack of clarity on future budget trends, must be removed. It should also be ascertained whether there is an objective shortfall of government funding for re-integration and, if so, by how much. It should likewise be considered whether the current funding of sheltered workplaces for people on unemployment benefit is sufficient. The creation of the new sheltered work system can be speeded up by removing municipalities' financial objections.
- Experience shows that in many labour market regions no sheltered workplaces are being provided. The Council proposes that new cooperation agreements should be drawn up for each labour market region, with agreed targets for nominating people for the new sheltered work facility. However, account should also be taken of the region's actual demand for sheltered work. Implementation should be outsourced to 35 WISE firms, with options for branch offices, etc. A working group could be set up to work out the details.
- The Council recommends contracting or continuing to contract the old and new sheltered work systems, under the direction of the regional Job Centres and for each labour market region, to WISE firms wherever possible, as WISE firms have the requisite knowledge and infrastructure: several types of suitable work, specially adapted workplaces and close supervision. Moreover, contracting new sheltered work to WISE firms also makes it easier to guarantee jobs for the part of the sheltered employment population that is currently eligible for sheltered work. The ability to organise sheltered work is a necessary precondition for the continued existence of WISE firms. However, the number of 30 thousand new sheltered workplaces, i.e. about one third of the old sheltered employment population, is probably too few to keep the expertise and knowledge of the target group up to date and maintain the diversity of pathways and types of work. Focusing on a wider target group is necessary to keep WISE firms going. At present, experience shows that most sheltered work is provided in WISE firms, but the numbers involved are extremely small. This means that, when this is combined with the cutback in sheltered work under the Sheltered Employment Act, there is a risk that the existing infrastructure of WISE firms will no longer be sustainable.
- Sheltered work is one of the necessary functionalities and is part of the key safety net for vulnerable groups. Contracting the provision of sheltered work to a single party avoids a scenario where people end up in a kind of revolving door situation. The use of other parties, e.g. social enterprises, municipalities, institutions providing day care with work activities, is possible where these parties can provide sheltered work under similar conditions. However, it is the WISE firms that have the knowledge and infrastructure to help the most vulnerable group into (paid) work. Outside the WISE firms, this would first have to be developed and built on. In practice, therefore, the WISE firms are the most obvious contractors.

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<sup>5</sup> Ministry of Social Affairs and Employment, 2016, *Knowledge document on sheltered work - frequently asked questions and answers*.

- It is currently assumed that there will be a very long transition period of reducing numbers from 100 thousand sheltered workplaces under the previous Sheltered Employment Act and increasing numbers to 30 thousand new sheltered workplaces. The Council wishes to continue to respect current sheltered workplace employees' rights and duties but recommends giving further consideration to ways of speeding up the creation of new sheltered work and transforming the WISE firms. It is not desirable for people to leave the current sheltered employment system (exodus) much more quickly than estimated without people entering the new system. This increases the risk of the existing WISE firm network disappearing. Only if regions and municipalities organise the new sheltered work system in the form of WISE firms, these firms will be able to make up for the people leaving as a result of the ageing population and for the lack of new entrants. Thus the further fragmentation of infrastructure can be avoided.
- Consideration could also be given to ways of creating incentives (positive stimuli) to achieve the desired objective. These could include detailed regulations in which the receipt of funding for a new sheltered work facility is linked to the actual creation of new sheltered workplaces. Although there is no intention to establish a quota for each municipality, consideration could be given to rewarding municipalities that provide sheltered work.

It is the Council's view that it is still possible to make adjustments to create the agreed 30 thousand new sheltered workplaces. To achieve this, it will be necessary to devote a period of a few years to creating the social infrastructure described above, including the sheltered work facility in accordance with the prescribed statutory framework and the proposed numbers.

The Council advises the government to undertake suitable initiatives in this regard. This requires a combination of continued pressure, pointing out to the parties concerned (including municipalities) their statutory obligations and meeting the obligations already announced, but also removing the obstacles experienced by municipalities. In addition, a fresh impetus can be given at regional level with social partners (see also Section 4.4).

### **1.3 Businesses in the social infrastructure**

Businesses have to make their own contribution to solving social problems. After all, entrepreneurship is the engine for turning ideas into solutions that create value for entrepreneurs, employees and society. Mainstream businesses and, for example, social enterprises have a natural role to play in a social infrastructure, as well as WISE firms. The SER used the following definition of social enterprises in its exploratory report on the subject (2015):

*Social enterprises have in common that they are independent enterprises providing a product or rendering a service primarily and explicitly in pursuit of a social objective – in other words, with a view to solving a social problem.*<sup>6</sup>

Social entrepreneurship is one of the elements in a wider continuum of entrepreneurship and initiatives from within society. With regard to this continuum, it is important that the Council believes that Corporate Social Responsibility (CSR) is part of the core business of every enterprise.

Embedding this cooperation with businesses in a social infrastructure makes it possible to provide a suitable facility or place depending on the situation and abilities of the vulnerable person. People should be able to move easily between these facilities as they

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<sup>6</sup> SER, 2015, Advisory Report *Sociale ondernemingen, een verkennend advies*, Publication No. 15/03, The Hague.

develop and sometimes regress. This requires agreements between the municipality, the implementing organisation, the client and the employer for the eventuality that the employment relationship is discontinued or the employee regresses in terms of labour productivity. It could involve reassignment to another workplace or another employer or falling back on sheltered work. A main concern is to ensure that people acquire experience of sheltered work and that stability and support are given to the people who need it. From an employer's perspective, it is important that legal obstacles to vulnerable groups participating in the social infrastructure should be removed. It is also relevant that additional jobs from sheltered employment secondments only count for the jobs agreement if new sheltered workplaces are provided by way of compensation.

Employers will have an interest in ensuring that a sufficient number of places is made available under the sheltered work facility.<sup>7</sup>

The Council points to the importance of having a secondment facility available. Historically, many people from WISE firms have been seconded to mainstream businesses, e.g. in the form of group secondments. This is a tried and tested procedure. According to reports, no secondment facility has (yet) been provided in thirty to fifty percent of municipalities thus far. Where such a facility is provided, it is – according to information from Cedris – limited to a maximum of 23 months as required by the Work and Security Act [*Wet werk en zekerheid*] (WWZ). As a result, no permanent employment relationships are created for vulnerable groups. The absence of a permanent employment relationship is likely to cause unnecessary uncertainty among the target group.

The Council also points out that it is essential to avoid a situation where existing mainstream jobs with private companies are forced out of the market because the government itself will be acting as the employer for the target group for sheltered work. These are issues that can be discussed at the meeting of the regional Job Centres.

The Council recommends that the State Secretary should explore the extent to which there are legal obstacles preventing the creation of permanent placements and the provision of secondment facilities. The extent to which obstacles arise for employers in the contributions to wage costs can also be explored. For example, these schemes are based on the condition that substantial jobs are involved or that temporary rather than ongoing support is provided. It is precisely the vulnerable groups discussed above who will often need to make long-term use of support. Support for employers is often required on an ongoing basis.

#### **1.4 Cooperation for vulnerable groups in the 35 regional Job Centres**

In the Social Accord (2013), the government and the main employer and employee organisations stated that no-one can (continue to) stand aside and that, in particular, the sustainable participation of people with a limited capacity for work must increase. By assuming joint responsibility and making a joint commitment at regional level, municipal governments and social partners will be able to create a regional social infrastructure which is both effective and efficient.

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<sup>7</sup> New agreements have recently been made in this regard between social partners, the Association of Netherlands Municipalities, the Employee Insurance Agency and the State Secretary of Social Affairs and Employment; if sufficient sheltered workplaces do become available, the requirement to refill posts need no longer apply, Letter from State Secretary of Social Affairs and Employment (29 April 2016) *Progress on simplifying the Participation Act*.

In order to build the envisaged infrastructure with the appropriate facilities and functionalities it will be necessary, in the Council's view, for the parties concerned to increase cooperation among themselves and join the 35 labour market regions to assist their work-related activities. By combining the knowledge and experience of WISE firms more effectively at the level of the labour market region, it will eventually be possible to make better use of them and also create a more future-proof implementing organisation. This implementing organisation could be a good partner for businesses and social enterprises.

There is a need to work energetically towards creating a comprehensive implementation structure with suitable facilities in the 35 labour market regions. The Council notes and applauds the fact that 35 regional Job Centres have been established since 2015 in which municipalities, the Employee Insurance Agency and regional social partners, as well as educational institutions and client councils of benefit claimants, work together.<sup>8</sup> The current 35 regional Job Centres have developed into a regional administrative consultation platform, where parties discuss and arrange for the creation of the 125 thousand jobs (agreed in the Social Accord) for people with an occupational disability. This has been of great value in combining in a practical way the commitment of public parties and social partners. A review conducted by the Programme Council in 2015 found that not all regional Job Centres tackled their role in an equally ambitious way.<sup>9</sup> It also found that educational and other institutions that focus on vulnerable groups are not automatically involved in regional consultations on vulnerable groups.

In view of the major shortfall in new entrants to the new sheltered work facility and signs of fragmentation of functionalities in the labour market regions, the Council would remind the reader of the original objective of regional Job Centres. During the establishment of the Social Accord, the government proposed that: *new, regionally organised Job Centres will be responsible for the job market participation of people who are able to work and who receive a disabled young persons' benefit [Wajong] or a salary from sheltered employment [WSW].*

In the Council's view, the joint responsibility goes further than just coordination. Whereas, to date, it is mostly administrative coordination that takes place in the regional Job Centres (who does what?), the Council recommends organising this consultation more on the basis of a joint task, in which each party has its own area of responsibility. The financial responsibility rests with the municipality. The aim is to ensure that the necessary functionalities are available.

The Council calls on the core municipalities to further develop their leading role in their region. According to the Council, the responsibility for the result of the efforts of the public parties should be more explicitly assumed by the core municipalities. Taking into account the responsibilities of each one and the role of municipal councils, there is a benefit to be gained from giving the collaboration a more binding form. This means, in the Council's view, that the chair of the regional Job Centre can and must also take the lead in creating the infrastructure and safety net proposed in this report. With specific regard to the target group discussed above, the special needs education sector should also become a more definite member of the regional Job Centre. The rules of and responsibilities within the regional Job Centre are set out in the Order in Council [*algemene maatregel van bestuur*] on Job Centres. Perhaps this order in council, or other relevant legislation and regulations, should be reviewed from the perspective of the problems discussed above and the desired enhanced directing role of core municipalities.

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<sup>8</sup> A regional Job Centre is a regional administrative joint venture between municipalities, the Employee Insurance Agency and social partners. It should not be confused with other "job centres" such as implementing organisations for social services, WISE firms and UWV Job Centres. The regional Job Centres as referred to in this report are as laid down in an order in council (2014) under the Work and Income Administration Structure Act [*Wet Structuur Uitvoeringsorganisatie Werk en Inkomen, SUWI*].

<sup>9</sup> Programme Council, 2015, *Analyse convenanten en marktbeveiligingsplannen regionale Werkbedrijven*.

The Council is aware of the tension that can be created by a more binding collaboration between municipalities in relation to local autonomy, which is also essential. This could conceivably be implemented in the form of an agreement between municipalities in the labour market region. The executive councillors of the core municipalities must be able to assume ultimate administrative responsibility for the directing role. The actions of individual municipalities in relation to the WISE firms may have consequences in terms of whether or not specific functionalities are available at regional level. This therefore requires coordination and agreements at regional level. It would be advisable for the current regional Job Centres to be involved in such an agreement.

In order to place the regional Job Centres, as described above, more firmly on the map, it may be helpful to provide additional resources.

## **2. Promoting an adequate social infrastructure in the longer term**

Through the regional Job Centres, the 35 labour market regions have acquired a role in implementing the jobs agreement. It is vital that implementation by municipal social services, WISE firms, private parties and the Employee Insurance Agency should respond effectively to cooperation on that scale. To this end, it would be helpful if the products and services of public players were reviewed in order to better determine the needs of each target group. Ninety WISE firms are currently operating in the social infrastructure. The recent Sector Plan for sheltered employment provides the impetus to increase regional coordination and cooperation. The intention is not to cause disruption in the short and medium term to the process of increasing cooperation at regional level. No large-scale merger process is envisaged, nor is there a desire to increase the administrative burden. What is wanted is for the WISE firms to participate in and move towards the labour market region. The Council is aware of the existing responsibilities and financial obligations between municipalities and WISE firms but it believes that this cooperation must quickly be taken to a higher level. Work must be done to encourage greater cooperation.

If regional cooperation is obstructed by restrictive financial frameworks, ways must be found to remove them. For example, the Council has heard that the cost of the old sheltered employment system is delaying the provision of new facilities, that there is a shortfall in the total amount of funding (for re-integration), but also that the allocation of and responsibility for local funding does not encourage regional cooperation between municipalities and WISE firms.

The aim is to encourage vulnerable groups to participate in the labour market and to create a reliable safety net in cases where they can only work in a sheltered environment. This regional infrastructure will also make it possible to utilise the efforts of employers more effectively.

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