

2011 Annual Report of the Social Affairs and Employment Inspectorate  
(SZW Inspectorate)

Summary

## SZW Inspectorate key indicators for 2011

<b>Number of inspections, investigations, reports and reviews</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
<ul style="list-style-type: none"> <li>Active labour inspections (Working Conditions Act, Working Hours Act, Nuclear Energy Act, Commodities Act)</li> </ul>	14,638	18,541	21,386
<ul style="list-style-type: none"> <li>Accident investigations, complaints, reports</li> </ul>	4,091	3,374	3,774
<ul style="list-style-type: none"> <li>Major Hazard Control (Major Accidents (Risks) Decree, Supplementary Risk Assessments)</li> </ul>	601	494	521
<ul style="list-style-type: none"> <li>Labour market fraud (Foreign Nationals (Employment) Act + Minimum Wage and Minimum Holiday Allowance Act)</li> </ul>	9,925	9,440	9,723
<ul style="list-style-type: none"> <li>Completed criminal investigations</li> </ul>	62	40	48
<ul style="list-style-type: none"> <li>(Memorandums on the findings of) reports on work and income</li> </ul>	27	13	11
<ul style="list-style-type: none"> <li>Supervision tests for intended legislation</li> </ul>	18	15	19
<b>Enforcement interventions based on inspections</b>			
<ul style="list-style-type: none"> <li>Working conditions encouragement, warning, demand, closure, penalty report, order subject to a penalty, charges brought</li> </ul>	64%	61%	58%
<ul style="list-style-type: none"> <li>Major Hazard Control re-inspection and settlement, warning, demand, closure, charges brought</li> </ul>	41%	43%	45%
<ul style="list-style-type: none"> <li>Labour market fraud warning, penalty report, charges brought</li> </ul>	17%	18%	17%
<b>Administrative penalties</b>			
<ul style="list-style-type: none"> <li>Number of penalty orders (Working Conditions Act, Working Hours Act, Foreign Nationals (Employment) Act and Minimum Wage and Minimum Holiday Allowance Act)</li> </ul>	3,503	3,943	4,983
<ul style="list-style-type: none"> <li>Amount of the penalty imposed</li> </ul>	€ 34.4 m	€ 42.7	€ 41.2
<ul style="list-style-type: none"> <li>Penalty collected</li> </ul>	€ 27.9 m	€ 26.0	€ 28.9
<ul style="list-style-type: none"> <li>Number of charges brought (Working Conditions Act, Working Hours Act, Nuclear Energy Act, Major Accidents (Risks) Decree, Foreign Nationals (Employment) Act and Dutch Penal Code)</li> </ul>	193	107	121
<ul style="list-style-type: none"> <li>Official reports on criminal investigations</li> </ul>	62	40	48
<b>Total staffing establishment year-end 2011</b>			
Composition in full-time equivalents (fte)	<b>1,136</b>	<b>1,207</b>	<b>1,273</b>
<b>Number of inspectors/detectives/investigators (fte)</b>			
<ul style="list-style-type: none"> <li>Labour directorate</li> </ul>	203	218	230
<ul style="list-style-type: none"> <li>Major Hazard Control directorate</li> </ul>	35	42	40
<ul style="list-style-type: none"> <li>Labour Market Fraud Directorate</li> </ul>	176	171	188
<ul style="list-style-type: none"> <li>Investigation Directorate</li> </ul>	204	202	206
<ul style="list-style-type: none"> <li>Work and Income Directorate</li> </ul>	39	40	78
<b>Total</b>	<b>657</b>	<b>673</b>	<b>742</b>
<b>Number of SZW Inspectorate employees involved in the primary process</b> (such as project managers, inspection support staff, project secretaries, analysts, investigators, penalty office assistants, team leaders, inspection teams)	<b>192</b>		
<b>Other employees</b> (including management, management support, planning & control assistants, IT staff)	<b>287</b>		

## **SZW Inspectorate**

The Social Affairs and Employment Inspectorate (SZW Inspectorate) came into being 1 January 2012. The Labour Inspectorate, the Social Intelligence and Investigation Service and the Work and Income Inspectorate have been merged into this new inspectorate. Its establishment was worked on during the course of 2011. This annual report sets out the efforts and results of the SZW Inspectorate for each work area.

2011 was a year in which many companies felt the effects of the economic crisis. As in the previous year, the SZW Inspectorate focused on how this affected compliance with the various laws concerning working conditions, the labour market and employment relationships. Whereas the number of reports and complaints in these areas had previously risen, in 2011 the number remained virtually unchanged compared to 2010.

In the labour market fraud area there was a decrease in the number of inspections in which a violation was established. The number of illegally employed people went down as well. It seems that employers are not any more inclined to seek refuge in illegal labour than they were beforehand.

The opening of a criminal investigation is the most extreme legal remedy in this area. The Criminal Investigation directorate can open an investigation in response to fraud notifications received from the Labour Market Fraud directorate of the SZW Inspectorate, the UWV Employee Insurance Agency and the Social Insurance Bank. The SZW Inspectorate prioritises the countering of labour exploitation: the most extreme form of labour market fraud. In 2011 62 criminal investigations were conducted, 9 of which concerned labour exploitation/human trafficking.

There was a perceivable negative trend in the working conditions area. The level of compliance with occupational health and safety regulations fell from 64% in 2006 to 58% in 2011. Companies have their own responsibility in this regard. The SZW Inspectorate has assisted them with this by developing self-inspection tools.

The investigation into a number of major accidents such as those at Chemie-Pack and the B-Tower made stringent demands on the available inspection capacity. This resulted in a reduction in the capacity available for some inspection projects.

The Inspectorate drew up various programme reports in the work and income area in 2011. The report in section 4 provides an insight into how the work and income system is performing.

### **The work area Labour market fraud**

This work area covers the private and the public sector, as well as private citizens who have work carried out for them. Based on risk analyses and reports the SZW Inspectorate concentrates primarily on companies with a high risk of illegal employment and/or underpayment. These are generally companies with peak labour periods, low and unskilled and heavy physical work and where a large workforce is needed to get the work done. In 2011 the focus was placed on the cleaning and temporary employment sector, the building industry, catering, agricultural and horticulture and retail. The inspectorate conducted pilots in the healthcare and transport sectors.

The percentage of inspections in which a violation is established has for some years been fluctuating between 16% and 18%. In 2011 a violation was established in 17% of the inspections. The number of illegally employed people found during the inspections fell to 2,030. The SZW Inspectorate has drawn up a penalty report for illegal employment against more employers. This increase can be attributed to the fact that more employers in a single chain have been fined, e.g. in the case of temporary labour or contracting.

In 2011 the SZW Inspectorate drew up fewer penalty reports for underpayment than in 2010 (96 compared to 127). On the one hand this has to do with the enforcement policy for normal working

hours, which was amended in 2011. It is related on the other to the ruling of the Council of State in which a narrow interpretation of Article 18, section 2 of the Minimum Wage and Minimum Holiday Allowance Act was given. As a result of this the Inspectorate was unable in certain situations to draw up a penalty report if an employer was unwilling or unable to submit documents showing information such as the nature of the employment relationship or the payment of salary. The Minimum Wage and Minimum Holiday Allowance Act was adjusted on this point at the beginning of 2012.

In 2011 we notified more employers than in 2010. During its inspections the SZW Inspectorate considers whether a service has actually been performed or whether workers are actually supplied. In that case the employer is fined for not being in possession of the necessary work permit.

### **The work area Working conditions**

The working conditions area covers all companies with employees in the Netherlands. The public sector and self-employed people without personnel are also subject to the supervision of the SZW Inspectorate. The priority sectors are decided on the basis of risk analyses. Approximately 50% of the available inspection capacity is used in response to reported industrial accidents, complaints, mandatory reports and indications of possible misconduct. The remaining capacity is used for inspection projects in the 18 priority sectors and in monitoring investigations. Specific focal points in 2011 included the theme of *Asbestos*, the programmes *Accident Prevention* and *Working with Hazardous Substances* and the theme *Aggression and violence against employees with public tasks*.

The number of inspections in which the SZW Inspectorate took enforcement measures again increased in 2011. In 2009 an enforcement instrument was used in 58% of the inspections; in 2011 that had risen to 64%. The number of demands for compliance in particular has increased. The number of warnings decreased. On 1 January 2011 a number of policy rules were repealed, as a result of which a demand rather than a warning is issued in sectors without an occupational health and safety catalogue. In 2011 the SZW Inspectorate favourably reviewed 48 (sub) catalogues. Most of them (43) concerned additions to previously reviewed catalogues. About 51% of employment in the Netherlands thus falls within the scope of an occupational health and safety catalogue.

In 2011 there were 3,469 accidents, of which the inspectorate investigated 2,094. There were 63 fatal accidents. The SZW Inspectorate investigated a number of highly publicised and labour-intensive accidents, such as at Grolsche Veste and the B-Tower.

### **The work area Major Hazard Control**

This work area covers about 450 companies that have to meet strict safety requirements pursuant to the Major Accidents (Risks) Decree. There are also about 350 companies that are required to draw up an Additional Risk Assessment (ARIE) owing to the presence of hazardous substances. In 2011 357 Major Accidents (Risks) Decree and ARIE inspections were carried out. An enforcement instrument was used in 41% of these cases.

The number of interventions in 2011 rose substantially compared to 2010. This can be explained on the one hand by the increase in re-inspection visits and by the stricter enforcement policy on the other. The number of demands rose from 86 in 2010 to 122 in 2011, for example. There was also a slight rise in the number of (preventative) closures.

In cases of very serious incidents or several notifications of deficiencies at a company the Public Prosecution Service can open an investigation. The SZW Inspectorate takes part in criminal investigations such as these and brought charges on 10 occasions in 2011. The fire at Chemie-Pack is a case in point.

One of the specific focal points in 2011 was the maintenance stops project at companies subject to the provisions of the Major Accidents (Risks) Decree and Additional Risk Assessments. The SZW

Inspectorate monitors compliance with the various laws in partnership with the fire brigade and the competent authority. 26 inspections were carried out, in which one enforcement process was initiated in 55 violations.

### **The work area Criminal Investigation**

The Criminal Investigation directorate is the special investigation department at the SZW Inspectorate. This directorate investigates fraud and other serious offences within the work and income chain.

In 2011 62 criminal investigations were concluded, in which 159 natural persons and 28 legal persons were involved as suspects. These investigations identified criminal proceeds totalling € 51 million.

The crime analysts of the SZW Inspectorate carried out 68 analyses for their own criminal investigation department in 2011. Tactical analyses were also completed for the building, agriculture and horticulture and cleaning sectors. These serve as input for the selection of the companies to be inspected in the labour market fraud area. Also, another 33 analysis reports have been drawn up for the intervention teams.

The SZW Information Hub received 2,217 fraud reports in 2011. These were refined and divided between the SZW Inspectorate and the implementing organisations in the work and income chain, such as the Employee Insurance Agency and the Social Insurance Bank.

### **The work area Work and Income**

The SZW Inspectorate supervises the implementation of the work and income policy. The inspectorate focuses mainly on the extent to which the implementation of the policy by the Employee Insurance Agency, the municipal authorities and the Social Insurance Bank, jointly and in partnership with other public and private organisations, contributes to the legislator's objectives.

Based on its supervisory findings in the implementation of the social security schemes by municipal authorities, the SZW Inspectorate has concluded that municipal authorities are not adequately fulfilling their leading role in the development and implementation of the regional labour market policy. Communicating with and supervising those entitled to benefits under the Work and Social Assistance Act requires attention since half of this group does not feel obliged to apply for jobs. Also, many municipal authorities are reluctant to impose sanctions, especially in cases where people refuse flexible employment.

Municipal authorities can literally and figuratively benefit from improved enforcement in cases where income from employment has not been declared. A recurring point of concern among municipal authorities is the inadequate protection of digitally stored personal data in the area of work and income.

The SZW Inspectorate delivered the following results in the work and income area in 2011 from the perspective of the four supervision programmes (participation, income security, service-providing government and information processes):

- 7 programme reports resulting from the 2011 Annual Plan and 1 programme report arising from the 2010 Annual Plan;
- 17 memorandums of findings underlying the programme reports;
- 2 separate reports, 2 exploratory studies on current (political) themes;
- 18 supervision reviews on intended regulations;
- national assessments of the legal/effective implementation of laws by independent administrative bodies and municipal authorities.