



Inspectorate
Ministry of Social Affairs and Employment

Annual Report 2013

Summary

Introduction

The Inspectorate SZW started more than two years ago. Supervision is very important to society; *the Inspectorate works as efficiently as possible to achieve the objectives of the Ministry of Social Affairs and Employment (the Ministry SZW): working together towards fair, healthy and safe working conditions and socio-economic security for everyone. She does this by means of a focused approach based on risk- and environmental analyses.*

The most important findings are listed below, per domain. This is followed by a table with key indicators of the Inspectorate SZW for 2013.

Fair working conditions

In the domain 'Fair working conditions', the Inspectorate SZW supervises compliance with three laws: the Foreign Nationals Employment Act (Wav), the Minimum Wage and Minimum Holiday Allowance Act (WML) and the Placement of Personnel by Intermediaries Act (Waadi).

The Inspectorate carried out 4,930 inspections within this domain in 2013. This involved checking 7,362 employers. In 2013 the Inspectorate invested in a risk-oriented approach. As a result of this approach, the number of employers who were fined increased to more than 24%. This is an increase in excess of 14% more than in 2012.

In 2013 the Inspectorate SZW received 860 reports of possible underpayment. She confirmed a violation in 20% of the cases reported. In 2013, the Inspectorate confirmed in total that 582 employees were earning less than the minimum wage. This is 214 employees more than in 2012.

During inspections within the framework of the Foreign Nationals Employment Act, the Inspectorate discovered a higher average number of persons employed illegally in cases involving a violation. Employers are subjected to a re-inspection after the Inspectorate has discovered persons working illegally. In 2013 89% of this group of employers did not contravene the Wav again. The number of Romanians working illegally increased.

Another trend within the domain 'Fair working conditions' is that matters are becoming more complex due to international formats, the volatility of businesses and limits to instruments of enforcement. As a result investigations are taking longer and demand close collaboration with other inspectorates. This has resulted in a lower number of cases realised and a lower number of administrative fines imposed than in 2012.

This was also due to the fact that in 2013 a lot changed in enforcement policy in relation to e.g. the Waadi. Moreover, in a number of cases involving the WML, court rulings made it more difficult to enforce the WML. The Ministry SZW appealed against these rulings. During the course of 2013, a policy rule which stipulates a maximum for fines for the Waadi, came into force with retrospective action. This had consequences for fines that the Inspectorate had already imposed and for current investigations. These examples clearly demonstrate that the enforceability of laws and legislation within the domain 'Fair working conditions' is under pressure. In the long term, adjustments should contribute to improved enforceability of laws and legislation, but in the short term some consequences may be difficult for current investigations. In 2013 the Inspectorate formed a special team with extra inspectors in order to pay closer attention to complex cases, such as the approach to sham set-ups. This team also supports the social partners in maintaining cao's (collective labour agreements). In 2014 the team will be expanded further.

Cases are sometimes so complex that it is impossible to prove them with administrative powers. In such cases the Special Investigation Service tries to supply the Inspectorate with the necessary evidence. This Investigations directorate has powers pertaining to criminal procedure and is deployed in the broad terrain of the Ministry SZW. In this way, supervision and investigation supplement one another. For instance, the Investigations directorate might discover a phenomenon about which the supervisors can subsequently remain alert. Such signals can also be useful for the policy departments of the Ministry SZW.

In 2013 the Criminal Investigations Department completed 67 criminal investigations. The emphasis in these was on detecting labour exploitation, organised forms of benefit fraud, illegal work and organised fraud in respect of working conditions. At the request of the Ministry of VWS, the department also deployed detectives in combatting fraud involving personal care budgets. The number of detectives involved in combating care-related fraud will be increased further during 2014.

Healthy and safe working conditions

In the domain 'Healthy and safe working conditions', the Inspectorate SZW places the emphasis on sectors with the highest risks. In 2013 this resulted in the Inspectorate carrying out 14,865 investigations. The fact that the Inspectorate successfully targeted businesses that involve such risks can be seen from the increasing percentage of interventions that the Inspectorate carried out as a result of its visits. In most of the sectors inspected, this percentage, known as the enforcement percentage, was higher in 2013 than in 2012. For example, the enforcement percentage for investigations of groundwork, road and hydraulic engineering was 63% in 2012 and 70% in 2013. Furthermore, the Inspectorate carried out 2,086 investigations in response to work-related accidents, a slight increase in comparison with 2012 (2,026 accident-related investigations carried out).

The Inspectorate is concerned about health and safety risks at work. This is because the compliance of businesses with occupational health and safety obligations has left a lot to be desired for a number of years now.

It is clear to the Inspectorate that the behaviour of managers and employees is in remiss. Examples are: failing to wear prescribed protective clothing and failing to abide by safety precautions.

Furthermore, at work locations where jobs are divided over various parties, such as building projects, the Inspectorate has identified a lack of coordination, a lack of clarity regarding responsibility and inadequate collaboration in the field of working conditions and safety. This can lead to serious accidents. Apparent, for example, from the investigation of the Dutch Safety Board in 2013 into the causes of two large accidents at the Grolsch Veste in Enschede and in the 'B-tower' in Rotterdam.

The biggest risks are often to be found in complex sectors that involve many businesses and employees. For example: the construction industry, the metal industry and the asbestos industry. The Inspectorate SZW identified many violations in all these industries in 2013. Observance of rules in the above-mentioned sectors varies from unsatisfactory to poor. This results in dangerous situations for employees. For instance, many accidents still occur in the building industry: a quarter of the accidents investigated occurred in the building industry.

The Inspectorate SZW deployed various interventions in order to improve compliance with the laws and legislation related to occupational health and safety. In addition to her own interventions, she also sought collaboration with branch associations within the high-risk sectors. These organisations are usually aware of the need to take concrete action but apparently it is difficult to convert agreements and activities on this central level into concrete improvements on the shop floor of individual businesses.

Within sectors subject to the Major Accidents (Risks) Decree (Brzo-companies) and the Additional Risk Assessment and Evaluation Decree (ARIE-companies), the Inspectorate has ascertained that companies knew what they needed to regulate in the field of safe processes (analysis, storage, processing, transport).

This relates to, for example, compliance with regulations that apply to the production of and trade in chemical substances (the so-called REACH-obligations¹). However, the application of regulations and provisions, instruments and instructions by employees (the 'how') has often still not been properly taken care of.

The Inspectorate SZW has inspected Brzo-companies and ARIE-companies on location. This involved inspections at 327 businesses (or installations) subject to Brzo regulations and 50 businesses (or installations) subject to ARIE regulations. The emphasis was on detecting and dealing with businesses that were performing badly. The Inspectorate issued more than 250 warnings and 229 alteration demands to these high-risk businesses. Parts of production were temporarily suspended in 22 businesses in these categories. A few subsequently ceased business operations permanently.

In 2013 a lot of attention went out to Odfjell, a tank storage company, and the investigation carried out by the Dutch Safety Board². The cabinet announced a number of measures in response to this investigation and the conclusions and recommendations. The measures regulate closer collaboration between the supervisory partners involved in the field of Brzo-companies and a joint enforcement strategy. In December 2013 the court in Rotterdam sentenced Odfjell, the tank storage company, for acting contrary to permit regulations and for failing to take measures to prevent serious accidents. The court also condemned Odfjell for contravening the Working Conditions Act. The court fined Odfjell to the sum of €3 million. In addition, a criminal investigation has been initiated on the order of the Public Prosecutions Department. This is in response to old data on incidents and exceptional events that Odfjell supplied retrospectively. The Inspectorate is carrying out this investigation in collaboration with the Seaport Police.

Persistent reports about tank storage company Odfjell and the shortcomings found there raise the question whether businesses involved in this type of activity comply sufficiently with legislation. Due to these signals, the Inspectorate decided to participate in a national tank storage project, together with other supervisory instances, under the flag of the LAT (National Approach to Supervision) risk-control businesses (RB). In this context, the Inspectorate inspected 117 comparable businesses in 2013. This investigation showed that the situation in none of these businesses was as serious as at Odfjell's. Some violations did lead to re-inspection. This revealed that 93% of the violations were corrected in time.

Socio-economic security in work and income

Investigations in the domain of 'Work and income' show that many improvements are still possible in the system of work and income. For instance, improvements can be realised in respect of knowledge about people with rights to benefits, a cohesive approach to regional labour market policy, the generous policy on allowing exemptions and Suwinet security.

Moreover, lower implementation budgets, changing requirements regarding the competences and skills of personnel and greater mutual dependency between the various parts of the social domain, are increasing the complexity for implementing organisations. Insofar as the Inspectorate is critical about imperfections in implementation, it is important to be aware of the enormity of the various change assignments.

¹ REACH: European regulation - Reach stands for: Registration, Evaluation, Authorisation and Restriction of Chemicals

² 'Security of Odfjell Terminals Rotterdam, period 2002-2012'.

In 2013 the Inspectorate published about the administrative power of municipalities. It stated that many municipalities are not achieving as much as is expected of them. Based on more than 30 investigations, one possible explanation is a limited amount of administrative guidance and accountability in respect of content and objectives. Another explanation often expressed by municipalities is that they have too many tasks and that expectations are too high in relation to what municipalities can cope with and are capable of achieving.

In 2013 the Inspectorate SZW carried out further research into various aspects of implementing the system of work and income. Investigations took place into the interpretation of regional labour market policy, case load policy, data exchange and Suwinet security, enforcements, obligations relating to young people, services for the elderly, allowing exemptions, and the realization of services in return.

The Ministry SZW and the Inspectorate SZW are investigating what will be the role and position of the central government's supervision via SZW in the social domain in the light of broad societal developments, such as the three decentralisations in the social domain. In collaboration with other government inspectorates, the Inspectorate SZW is working towards a joint vision of the future of supervision on matters that have (partial) impact on one another in this social domain.

Table 1*Key indicators Inspectorate SZW 2013*

	Realisation 2012	Inspection plan* 2013	Realisation 2013
Number of inspections, investigations, reports and checks			
- Active arbo-inspections (Arbowet, ATW, KEW, Commodities Act)	15,966	14,374	14,440
- Accident investigations, Arbo complaints and other reports	3,730	3,903	3,504
- Major Hazard Control (Brzo, ARIE)	512	448	447
- Labour market fraud (Wav, WML and Waadi)*	7,160	6,076	4,930
- Completed criminal investigations	61	62	67
- Programme reports Work and Income	6	7	6
- Other reports Work and Income	14	17	21
- Transparency checks proposed legislation	16	n.v.t.	17
- Enforcement and implementation checks	10	n.v.t.	9
Enforcement interventions following inspection			
- Working conditions encouragement, warning, demand, suspension, penalty report, order subject to penalty, fine disposition	63%	60%	66%
- Major Hazard Control re-inspection and settlement, warning, demand, suspension, fine disposition	44%	25%	38%
- Labour market fraud* warning, penalty report, fine disposition	21%	25%	24.5%
- Number of crimes officially reported (Arbo, ATW, KEW, Brzo, Wav and the Criminal Code)	103	n.v.t.	99
- Number of persons given a fine disposition	184	125-150	181
- Established losses (x million €)	19.1	25.0	34.5
Administrative fines			
- Number of fine orders (Arbo, ATW, Wav, WML and Waadi)	3,376	n.v.t.	3,793
- Fine imposed (x million €)	42.5	52.4	45.5
- Fine collected (x million €)	29.4	37.8	30.4
Capacity summary in fte at the end of			
Inspectors, Investigators and Researchers	2012		2013
- Arbo	221		224
- MHC	39		39
- AMF	187		176
- Investigation	174		176
- Work and Income	<u>43</u>		<u>43</u>
Total	664		658
Number of Inspectorate SZW employees involved in primary process (project leaders, project secretaries, analysts, Expertise centre staff, BDI staff)	198		205
Other employees (including management, management support, planning & control staff, ICT, policy support and communication)	<u>252</u>		<u>234</u>
Total general	1,114 =====		1,097 =====

*At the end of 2012 the Inspectorate elaborated upon its Annual Plan 2013 in an Inspection Plan 2013. This included the consequences of the intensification of the fraud policy as of 1 January 2013 (this had not yet been taken into account when the SZW 2013 budget was drawn up). In addition, the exact elaboration of the multi-year plan of the Inspectorate for 2013, e.g. the approach to malpractices and notorious offenders, had consequences for the production objectives for 2013. This resulted in lower predictions for various products in comparison to the Inspectorate's Annual Plan 2013.