



Inspectorate
Ministry of Social Affairs and Employment

Annual Report 2014

Summary

1 The Inspectorate for a labour market in motion

The current situation in which the Inspectorate SZW plays a role, can perhaps be best described by developments such as flexibilisation, labour migration and responding to the consequences of the crisis. Problems are becoming more complex and more intrusive and the demand for supervision is on the rise. The government is decentralising responsibilities, yet at the same time, acts more vigorously. The Inspectorate anticipates this trend with risk-oriented supervision, effective actions and signalling.

The nature of work in the Netherlands is changing. The number of employees with permanent employment is decreasing dramatically, whilst the number of temporary workers and self-employed individuals is actually increasing. Self-employed individuals are subject to fewer occupational health and safety regulations, and it is easier for non-EEA residents to start work as self-employed individuals than as employees. Due to this, in part, the Inspectorate regularly comes into contact with bogus self-employed persons: workers who operate under the status of a self-employed individual, but, in reality, have permanent employment.

The flexibilisation of the labour market raises new questions with respect to working conditions. Temporary workers, for example, are significantly more likely to fall victim to accidents than permanent employees, especially in the construction industry. A possible explanation could be the lack of knowledge and skills amongst temporary workers. Non-Dutch workers also fall victim to (deadly) accidents at work relatively often. Failure to speak or understand the language of communication was a frequent factor in this regard.

Certain groups of self-employed individuals are often exposed to poor working conditions. Inspectors notice an increased tendency in the construction industry to outsource high-risk activities to self-employed individuals. Considering the restricted margins for self-employed individuals, these parties often fail to invest enough in their own safety at work.

The Working Conditions Act only gives the Inspectorate limited options for taking action in unsafe work situations involving self-employed individuals. This is especially serious when vulnerable groups of self-employed individuals are responsible for their own safety at work. The Inspectorate regularly sees the undesirable tendency of employers to avoid their responsibility for accidents at work involving self-employed individuals.

At the lowest end of the labour market, the Inspectorate notices the tendency of a group of employers who are looking for ways to utilise workers in the least expensive way and with the least amount of risk involved. They achieve this through schemes that facilitate illegal employment and underpayment, for example. Many cases involve workers from countries where the wages are much lower than the norm for the Netherlands. The Inspectorate also observes schemes where employers formally pay the minimum wage, but inspectors are unsure whether employees truly receive that (hourly) wage.

The Administrative Law Act and Dutch Penal Code do not always allow for the Inspectorate to deal with (extremely) poor employment practices. Scheme arrangements, undeclared work while receiving benefits and labour exploitation are complex matters to pin point and are even more difficult to prove. Many of these schemes are objectionable from a fair labour market perspective, but do not contradict the letter of the law. The Fraud (Bogus Schemes) Act (Wet Aanpak Schijnconstructies, WAS) intends to combat this phenomenon.

Due to this, in part, principals should take on an important role in (enabling) safe and healthy work practices. However, inspections in the civil engineering (Grond-, Weg- en Waterbouw, GWW) and industrial cleaning sectors show that principals often fail to recognise their responsibilities in this regard. For tenders they primarily focus on the price, and pay less attention to safe and healthy work practices. Companies therefore feel compelled to bid lower, at the expense of safe and healthy working methods. The Working Conditions Act (Arbowet) does not yet offer any solutions in this regard.

Nearly half of the 818,000 Dutch occupationally disabled persons suffer from psychological problems. The majority of these individuals reached this point due to the psychosocial workload (PSW). PSW involves all risks like pressure and stress associated with work, bullying and aggression and violence at work. More than three-quarters of PSW-related work stoppage is due to stress. Judging from the increasing number of employees stopping work due to psychological problems, this phenomenon is merely expected to increase.

The largest PSW risks are evident in the education, public administration, health and welfare, transport and logistics and hotel and catering industries. Companies in these sectors devote relatively little or no attention to PSW in their Risk Inventory and Evaluation (RI&E) processes. The healthcare sector as well as the police often lack measures to combat excessive work pressure, excessive working hours and aggression and violence. The way in which aggression and violence are dealt with is also insufficient with respect to property construction companies, bailiffs and servants of the Tax and Customs Administration. If protocols to combat PSW are actually in place, it often appears that these are not being implemented properly on the workfloor.

The Inspectorate notices that supervision becomes more complicated because companies make increasingly use of legal assistance. Companies often employ the services of lawyers, and this happens quite frequently during inspections. The number of personal injury cases under The Government Information (Public Access) Act is on the rise. The number of cases in which companies object or appeal to disciplinary action is also on the rise. This implies that inspectors lose more time collecting and recording information and dealing with notices of objection and appeals. Inspectors point out that the elevated penalties and more determined efforts to enforce disciplinary measures (mandatory under the law) could be possible causes.

2 Trans-domain supervision

The Inspectorate works with various other inspection agencies and government service departments, in order to achieve specific inspection- and enforcement results. It also works with chain partners and sector organisations in order to come to agreements on safe, healthy and fair working conditions, and to share knowledge and information, amongst other things.

International cooperation is also becoming increasingly important. With the continued development of the Liaison Bureau, the Inspectorate works on promoting the exchange of information on a European level. The Inspectorate is also strengthening its international network in other ways, like through exchange projects. In the Senior Labour Inspectors Committee (SLIC), European inspection agencies coordinate their supervision tasks and advise the Committee. Furthermore, a new liaison with Europol (since 2014) ensures enhanced cooperation in international investigations.

In 2014 the Inspectorate verified the feasibility, enforceability, ability to supervise and the 'fraud-proofing' of 29 new laws, regulations and certification schemes. The Inspectorate identified possible impediments in 15 cases and the rules were adjusted.

The trans-domain programmes led to a number of specific results. The Inspectorate thus developed a database of habitual violators (dataprofiel notoire overtreders) with the Dutch Forensic Institute, to facilitate in the selection of these types of companies. The Inspectorate integrated its partial approaches to 'hazardous substances' into one approach, to increase its effectiveness in this field. In the construction-, agriculture- and transport programmes, inspections and cooperation have resulted in better working conditions and compliance with rules.

3 Fair labour market

The Inspectorate SZW sees to a fair labour market and takes action in the event of illegal labour, underpayment, poor working conditions and labour exploitation. The Inspectorate concentrates primarily on habitual violators and complex fraudulent schemes. Investigations are becoming larger in scale and more labour-intensive, often involve international aspects, and therefore take more time. Rulings by various courts are also rendering existing instruments less effective. The Inspectorate is examining which legislation is required or in need of amendment, in order to address this.

The number of reports and victims of labour exploitation increased substantially in 2013, due to two large investigations in particular. The labour exploitation investigations are extremely important, yet time-consuming. The Dutch Penal Code does not always offer sufficient options for dealing with exploitation. The Inspectorate is investigating whether it can deal with employers differently in such cases, or whether legislation must be amended.

The Inspectorate is also working on increasing its effectiveness in other areas. The Inspectorate is consulting with the Institute for Employee Benefit Schemes in an attempt to better deal with those who work illegally while receiving benefits. Based on arrangements in the Social Plan (Sociaal Akkoord), the Inspectorate has also been assigned extra resources for the investigation of bogus schemes.

4 Health & safety

The number of accidents reported to the Inspectorate shows a slight increase from 3,475 in 2013 to 3,518 in 2014. The number of serious accidents also increased slightly. One possible explanation could be the fact that the current increase in construction activities often involves the services of smaller self-employed companies, in particular. The Inspectorate already established that smaller self-employed individuals invest less when it comes to safety at work. The elevated penalty for failure to report an accident also plays a role. The number of (fatal) victims remained stable during recent years.

Since 1 January 2014 the Inspectorate has only been investigating complaints and signals involving *suspicions of serious or major violations*. This preselection process has resulted in the Inspectorate having to investigate fewer complaints and signals. The Inspectorate also receives and investigates complaints from works councils or participation bodies. The number of complaints in this category is actually increasing.

The Inspectorate runs into many deficiencies as a result of the preselection process and risk-oriented supervision. Despite this, it has noticed many improvements in terms of the risk awareness amongst employees and employers and compliance with labour regulations.

Years of European efforts aimed at machine safety have resulted in unequivocal standards for machines, pressure vessels, lifts, and personal protective equipment. Market supervision of suppliers and manufacturers facilitates in dealing with products that are intrinsically unsafe, right at the source. The 'product safety' risk, under which machine safety is classified, is not yet at the required level; but many improvements are noticeable.

In the construction sector and in related sectors, the Inspectorate notices that contractors are distributing and outsourcing work to small businesses and self-employed individuals more frequently. This leads to less clarity on the entirety of activities and responsibilities. This complicates supervision and on average cases take more time to investigate.

The Inspectorate and its partners have worked on a method with which to measure safety performance amongst BRZO companies (companies that are subject to the provisions of the Risk Assessment Major Hazard Companies) Decree), and in so doing, work in a more risk-oriented fashion. In 2014 the partners also devised the BRZO + Multiannual Plan 2015-2018. The partners also made a start on the development of the PGS29 screening framework (for large-scale tank storage) for an unequivocal licensing process and with the development of a new setup for the Hazardous Substances Publication Series (Publicatiereeks Gevaarlijke Stoffen, PGS).

Companies are trying to fight measures in court more frequently, due to experiences with stricter enforcement amongst BRZO companies, including the imposition of orders subject to a penalty and the accompanying closure. The Inspectorate also imposed administrative penalties based on the Wahss / Major Accidents (Risks) Decree fining guidelines. In addition the judge imposed a number of significant penalties in criminal investigation cases.

The planned objectives with respect to the Major Accidents (Risks) Decree (BRZO) have largely been met. Despite this, the pressure to reach the objectives is increasing. The BRZO partners will focus on the cultural aspect at BRZO companies, companies which often employ an apathetic wait-and-see attitude towards safety measures. The deficient implementation of the described safety measures is related to this. The Inspectorate will also be conducting unannounced inspections more frequently. In conclusion, 2014 was the first year in which the Inspectorate publicised a summary of its inspection results.

Positive results were also booked on other levels. Examples include the increased level of safety at work for asbestos removal activities, the use of certified companies, and compliance with the rules. Specific safety agreements were made with all chain partners in the Rail Infrastructure. The 'Healthy Metal' digital tool which was developed by the Inspectorate, helps young employees in the metal industry to recognise and manage safety risks. Re-inspections in the educational setting show that most deficiencies that were encountered in 2013 have since been remedied. Also, a combination of information and inspections led to increased safety for professional work equipment.

5 Secured existence

In 2014 the laws were adopted and the preparations were made for a number of major decentralisation shifts towards municipalities: from 2015 they will be responsible for implementing the Youth Law (Jeugdwet), the 2015 Social Support Act (WMO) and (effective August 2014) the Inclusive Education Act (Wet passend onderwijs). The Participation Act (Participatiewet) will also have entered into force in 2015. In 2014 the Inspectorate conducted various investigations which provided an understanding of the important topics leading up to and within the new situation.

In its 'Know your clients (Ken uw klanten)' report, the Inspectorate elaborates on the case load management of the Institute for Employee Benefit Schemes (UWV) and the municipalities. This report pointed out that client managers often have insufficient actual knowledge of their clients: improvement is therefore needed for better case load management and also to accomplish a more effective provision of services.

In the report on the 'Implementation of the Work and Social Assistance Act for young people (Uitvoering WWB voor jongeren [18-27 jaar])', the Inspectorate elaborates on how young people are counselled in their search for work. Half of the municipalities have the infrastructure for this, but the infrastructure can be used more effectively. Also, management of the implementation is open-ended, which means there is a risk for arbitrariness. In conclusion, professionalisation of the implementation is needed.

Both reports indicate a strong degree of autonomy on the workforce, often without visible management or responsibility in terms of content and results. The Inspectorate already came to this conclusion in the past, based on investigations carried out since 2010.

The report on the 'Agreements for and the results of the regional labour market policy (Afspraken en resultaten regionaal arbeidsmarktbeleid)' includes the results of the Inspectorate's investigation of the labour regions. Government, entrepreneurs and educational institutions work together in this regard to achieve better alignment of the supply and demand for the labour market. Specific agreements are needed for such cooperation. The agreements are still quite limited, still only focus to a limited extent on getting people who receive benefits to work, and are certainly not being implemented by the municipal employment and income (W&I) departments at all times. Also, the individual regional labour market situation and the objectives are often described in a rather abstract manner. The Inspectorate rules in the report: the added value of the regional labour market policy for people who are in a situation where they receive benefits, is still insufficient.

Supervision of the performance of the decentralised tasks was and is still encompassed with the five government inspectorates. Now that the municipalities are integrating their actual implementation, these inspectorates will also, where possible, integrate and deal with their tasks jointly. This involves system supervision, for the most part. This implies that the Inspectorate will

not intervene or correct things for the individual municipalities. It will assess and promote the performance of the system, in the way that it is given shape during implementation. During the initial years – the so-called transformation phase – the municipalities will be in particular need of good examples. The government inspectorates can describe such examples, along with examples of things that can be improved.

At the same time the Inspectorate ascertained that the domain is developing so rapidly, that it was still too early at the end of 2014 to determine which topics require its attention. For this reason the Inspectorate will continue to closely follow the developments in the field of Employment and Income – and beyond, on the social domain.

Table 1 Inspectorate SZW Key indicators for 2014

	Realisation 2013	Annual Plan 2014	Realisation 2014
Number of inspections, investigations, reports and reviews			
- Active Occupational Health and Safety Inspections (Working Conditions Act, Working Hours Act, Nuclear Energy Act, Commodities Act) (4)	14,440	14,114	13,665
- Accident investigations, complaints and other reports under the Working Conditions Act (4)	3,504		3,386
- Major Hazard Control (Major Accidents (Risks) Decree, Supplementary Risk Assessments)	447		445
- Labour market fraud (Foreign Nationals (Employment) Act, Minimum Wage and Minimum Holiday Allowance Act, Working Hours Act and Temporary Working Agencies Act) (4)	4,930	5,300	5,054
- Completed criminal investigations	67	63	65
- Work and Income programme reports	6	7	6
- Other Work and Income programme reports	21	5	10
- Supervision reviews for intended legislation	17	N/A	16
- Enforcement- and implementation reviews	9	N/A	8
Enforcement interventions based on inspections			
- Working conditions encouragement, warning, demand, closure, penalty report, order subject to a penalty, official report (1) (3) (4)	65%	60%	60%
- Major Hazard Control re-inspection and settlement, warning, demand, closure, official report (1)	38%	25%	43%
- Labour market fraud (1) (4) warning, penalty report, official report	24.5%	27%	18.6%
- Number of official reports (Working Conditions Act, Working Hours Act, Nuclear Energy Act, Major Accidents (Risks) Decree, Foreign Nationals (Employment) Act) and Dutch Penal Code)	99	N/A	72
- Number of persons who had charges brought against them.	181	130-160	221
- Established damage (x million €)	34.5	34.9	31.8
Administrative penalties			
- Number of decisions imposing a penalty (Working Conditions Act, Working Hours Act, Foreign Nationals (Employment) Act, Minimum Wage and Minimum Holiday Allowance Act and Temporary Working Agencies Act)	3,793		N/A
- Amount of the penalty imposed (x million €)	45.5	49.4	36.2
- Penalty collected (x million €) (1)	30.4	39.0	29.6
Overview of FTE at the end of (2)			
	2013		2014
Inspectors, Detectives and Investigators			
- Working Conditions Act	220		222
- MHC	39		41
- AMF	175		201
- Investigation	175		208
- Work and Income	49		52
Total	659		725
Of which temporary	39		68
Of which permanent	620		657
Number of SZW Inspectorate employees involved in the primary process			
Of which temporary	3		4
Of which permanent	197		202
(project leaders, project secretaries, analysts, employees, Expertise centre and DBI employees)			
Other employees	238		236
Of which temporary	2		8
Of which permanent	236		228
(including management, management support, planning & control assistants, IT staff, policy support and communication)			
Total general	1,097		1,168
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1 The objectives for 2014 are not derived from the Annual Plan but from the Inspection Plan (enforcement based on inspections) and the SZW Budget (Administrative penalties).

2 Effective 2014, the decision was made to amend the classification by category. The figures for 2013 were adapted based on this classification, for the sake of comparison.

3 This involves the percentage with enforcement interventions, in all cases except for cases in projects not aimed at enforcement and for cases classified under the category for other reports.

4 Reference is made to Appendix 2 under table 1 for details on the difference compared to the number of planned cases and the enforcement percentage for Occupational Health and Safety inspections. Reference is made to Appendix 1 under table 1 for details on the difference compared to the number of planned cases and the enforcement percentage for Labour Market Fraud.

