



# Annual Report 2018 Inspectorate SZW

## (summary)

**This annual report provides an insight into the activities and results in 2018 of the Inspectorate SZW. It shows to what extent the programme-based approach of the Inspectorate is successful, cooperating with other parties, in achieving results and effects that promote a fair, safe and healthy labour market and socio-economic security for everyone.**

The Inspectorate SZW made three major changes in 2018. The number of inspectors was increased under the coalition agreement. The Inspectorate switched to a programme-based approach and a start was made with the 'from dots to effect' movement, in which managing and rendering account by social effect is treated as a long-term development task. These changes are making heavy demands on everyone at the Inspectorate.

Strengthening the inspection chain means that - after a number of years of decline - the power to act is set to increase. The number of employees grows from around 1,125 fte in 2017 to about 1,550 in 2022. The first milestone was reached in 2018, when the Inspectorate grew to approximately 1,250 fte. It took a year before this increase in employees resulted in more operational deployment. The extra funding under the coalition agreement has been earmarked for investments in the following themes:

- fair work (labour exploitation and underpayment)
- discrimination on the labour market
- risks involving chemical companies subject to the Major Accidents (Risks) Decree (Brzo)/exposure to hazardous substances
- restoring the balance between accident investigations and preventive inspections on safe and healthy working conditions<sup>1</sup>

In 2018 the programme-based approach was further incorporated in the organisational structure. Inspectors, investigators and researchers were assigned to the priority programmes. Preparations were also made in 2018 for the further development of information-driven working methods. The risk-based approach entails using as much data as possible from the organisation itself and of other parties. In 2018 this led for example to new methods for ascertaining the modus operandi of foreign intermediaries. During 2018 the Inspectorate also cooperated with the Financial Intelligence Unit, the University of Amsterdam and the bank ABN AMRO to uncover human trafficking

and labour exploitation networks by using digital financial sources.

The third and foremost task is the Inspectorate's intention to account for the social effects of its interventions rather than rendering account by presenting numbers. This is given substance by including key figures for the Inspection Control Framework (ICF) in the budget of the Ministry of Social Affairs and Employment for 2018. It is also reflected in the social goals to which the various inspection programmes are committed. They aim to achieve these goals through various interventions as described in this annual report.

### Realisation budgetary indicators

The enforcement objectives in the areas of fair, safe and healthy work in 2018 were largely achieved. Risk-based inspections enabled the Inspectorate to take enforcement action in more than half of the first inspection visits. Also, re-inspections showed a significant rise in compliance with laws and regulations (ranging from 70 to almost 90 percent). This increase can be regarded as one of the Inspectorate's social effects.

The ICF indicators for the balance between accident investigation and active inspections and participation in the joint Brzo inspections with other public authorities relate to the year 2020 and have not yet been met. This development has already been announced in the letter to the House of Representatives (Tweede Kamer/TK) on the expansion of the inspection chain.<sup>2</sup> The delay is caused by the many reports of work-related accidents that call for a great deal of inspection capacity and the substantial increase in the number of employees in 2018. Due to an intensive training programme it will not be possible to deploy the new inspectors until 2019. The hiring and training of new colleagues has implications for the productively deployable capacity of employees who are already in service. This is also the reason why the Inspectorate in 2018 did not take part in the joint Brzo inspections as often as in the previous year (56 versus 60 percent).

<sup>1</sup> TK 29 544 nr. 846

<sup>2</sup> Letter to the House of Representatives (Tweede Kamer/TK), 31 October 2018, Expansion of the inspection chain Inspectorate SZW (Uitbreiding inspectieketen Inspectie SZW)

### Active-reactive balance not yet restored in 2018

For that reason it did not prove possible to improve the active-reactive balance in 2018. The relationship between active and reactive inspections has come under further pressure. However, a modified accident investigation method had the effect that the increase in the reports of work-related accidents was accompanied by a fall in the number of accident reports investigated. This is somewhat paradoxical, as the Inspectorate is asked to use a growing part of the inspection capacity to carry out accident investigations. The balance achieved in 2018 - 24 percent active inspections versus 76 percent accident investigations - is therefore still a long way from the target balance for 2020. The fall in the number of investigated accident reports is partly due to changes in the work process. Now a closer look is taken at whether reports should be investigated. For example, the question of whether there has been an unfortunate convergence of circumstances is now being considered more explicitly. Based on this information, it can be established whether the employer could have foreseen the accident and - accordingly - whether the employer was culpable. To determine whether there has been an unfortunate convergence of circumstances, the Inspectorate assesses the information provided by the reporting party (usually the employer) and also contacts the victim to hear his or her version of events. The enhanced selection beforehand generally enables inspectors to focus their attention more on the more complex and larger investigations. This goes hand in hand with increasingly stringent legal requirements for penalty reports. Obtaining evidence, for example through witness hearings, is becoming increasingly labour-intensive for inspectors.

In 2018, the Inspectorate also invested in increasing the learning effect of work-related accidents for the company itself and for sectors and occupational groups, professional training organisations, manufacturers of work equipment and the Inspectorate itself. Pilot projects have been launched to explore the opportunities this presents. One pilot project concerns the method to carry out an active rather than causal inspection into the facts of the accident, with a broader view of the overall situation at the company. Another project explores the possibilities of having the employer draw up his own improvement report after an accident. In 2019 it will be decided whether pilot projects give rise to changes in the working method.

### Programme-based approach: the intervention mix aimed at greater impact

The enforcement of laws and regulations is central to the programme-based approach. As well as enforcement instruments (warnings, fines, periodic penalty payments and shutdowns), other interventions are also used within the programmes. The three most common interventions deployed in the programmes in 2018 were: (re-)inspections, exerting pressure on the chain and communicating on the subject of compliance.

The Inspectorate bases the choice of interventions on aspects such as knowledge drawn from the behavioural sciences, adapted to her own practical experience. Inspection visits often reveal that employers are not always aware of rules and requirements. This underlines the importance of communication on this subject from the Inspectorate and sector umbrella organisations. This way the Inspectorate has an impact that goes beyond the employers she inspects. It is clear that a varied mix gets results.

The following are some results of the three most common interventions with concrete examples from the programmes.

#### *Inspections as a more integral part of broader influence strategies*

Conducting inspections is the central aspect of virtually all inspection programmes. The use of inspections as an enforcement instrument is now part of a broader inspection strategy, known as 'context-rich inspection'. During the inspections more attention is paid to the effectiveness of communication, behaviour and culture. It will be clear that these 'richer' inspections take more time, which contributed to the fall in the number of inspections carried out in 2018.

However, the intended enforcement percentages were achieved in almost all programmes in the areas of: Healthy and Safe Work (target 55 percent - result 57 percent), Brzo (target 44 percent - result 47 percent) and Fair Work (target 50 percent - result 52 percent).

### **Re-inspections: social impact indicator**

Re-inspections at the companies of violators - aimed at establishing the increase in compliance in a sector - form an important indicator of the Inspectorate's social impact. Improved compliance with laws and regulations ultimately contributes to a reduction in occupational risks and, accordingly, their consequences such as (fatal) work-related accidents, absence from work, occupational diseases and labour exploitation.

In 2017, compliance with health and safety at work increased from 45 percent in the case of an initial inspection to 79 percent in the case of a re-inspection. In 2018, compliance rose from 43 to 88 percent. The impact of re-inspections is less significant in the area of fair work; the compliance rate rose in 2017 from 50 percent at an initial inspection to 61 percent at a re-inspection. In 2018, compliance rose from 48 to 73 percent.

Of course, these effects vary from one programme to the next. A successful example is found in the Care Programme. In the area of home care, the Inspectorate checked 92 home care institutions for compliance with the Foreign Nationals Employment Act (Wav), the Minimum Wage and Minimum Holiday Allowance Act (WML) and the Working Hours Act (ATW). During the first inspection just over half of them were found to be committing violations. This mainly concerned violations of the ATW and the WML. The re-inspections revealed that all home care institutions had taken measures to ensure that they complied with the ATW and the WML.

Another example comes from the Psychosocial Workload Programme (PSA). Re-inspections revealed that 95 percent of the organisations where deficiencies in PSA policy were identified in 2016 and 2017 had rectified them within the set time limits. Organisations inspected and found to have no deficiencies requiring legal enforcement also tightened up their approach to PSA prevention.

### **Pressure on the chain as an increasingly important intervention**

Exerting pressure on the chain is a powerful intervention, especially when combined with inspections. In his role as a client, the employer is called to account for his chain responsibility, which can have a snowball effect on good employer practice. Positively influencing social standards for good employer practice is more effective if it comes from similar organisations.

Chain cooperation and influence have been successfully applied in many programmes. A good example is found in the Catering and Retail Programme. This programme cooperates with municipalities to prevent violations. The Inspectorate and the Municipality of Amsterdam signed an agreement to this effect at the end of 2018. The Inspectorate informs the Municipality of Amsterdam

which catering companies have been fined for a fair work violation. This enables the municipality to decide whether to temporarily or permanently revoke the operating licence or issue a warning. In 2018, the municipality of Amsterdam revoked nine operating licences and issued six warnings based in part on investigations carried out by the Inspectorate.

Another example is drawn from the Companies with Hazardous Substances Programme, which in the autumn of 2018 set up a temporary steering committee and a working group specifically for chromium-6 with public authorities, sector organisations and a number of large clients to exchange knowledge about working with chromium-6 in a healthy and safe manner. These parties concluded that chromium-6 should always be replaced - where possible - by an alternative that is not or less harmful to health. The use of chromium-6 is only permitted if it has been authorised under REACH legislation.

### **International pressure and collaboration**

There is increasing cooperation at EU level. The establishment of an European Labour Authority and the introduction of the WagwEU will make it possible to facilitate cooperation in cross-border enforcement more effectively.<sup>3</sup>

A good example of successful international cooperation is found in the programme Bogus Schemes and Compliance with Collective Bargaining Agreements. In this programme, joint action was taken in the Benelux against social dumping and cross-border fraud. A bogus construction was identified in which workers officially living in the Netherlands were actually living and working in Belgium, receiving Dutch benefits and possibly being underpaid. There were also suspicions of fake or falsified A1 statements and false self-employment.<sup>4</sup>

Under the Market Monitoring Programme, the Joint Action on Chainsaws (from the ADCO Machinery Directive) was completed in 2018. Ten Member States participated. One of the eight chainsaws investigated (on behalf of the Inspectorate) turned out not to be in conformity, resulting in a serious risk. The Inspectorate filed a RAPEX report. The manufacturer withdrew the product from the market.<sup>5</sup>

<sup>3</sup> The Terms of Employment Posted Workers in the European Union Act (WagwEU) regulates the terms of employment to which employees of European companies are entitled when they work temporarily in the Netherlands. This Act also facilitates improved monitoring of the compliance by European companies with these working conditions.

<sup>4</sup> In certain cross-border employment situations, the employer or his employee use an A1 certificate to indicate in which country the social security contributions (e.g. for retirement pension, child benefits and unemployment benefits) must be paid.

<sup>5</sup> The European report is expected.

## Communication on Compliance

Communication can promote compliance with rules, for example by clarifying them and encouraging their correct application. For example, employers can be made aware that competing companies that comply with the rules are more profitable than companies that do not. Deterrent communication is mainly aimed at influencing the decision of deliberate offenders on whether or not to comply with the rules.

In the Care and Welfare Programme in 2018, the Inspectorate launched a campaign with four practical examples of healthcare providers that effectively deal with the physical burden on employees. Checklists, good examples and background information on promoting safety culture have been posted on the Health & Safety portal website (Arboportaal) in order to draw attention to the subject of safety culture.<sup>6</sup>

Another example comes from the Labour Market Discrimination Programme. The security sector is marked by a high risk of aggression and undesirable behaviour. Inspections revealed that several security companies did not have their own policy in order.

Collaboration with the Dutch Security Sector (NVB) and the Private Security Service Centre resulted in an amended Health & Safety Catalogue and Risk Assessment, including discrimination.

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<sup>6</sup> See : <https://www.arboportaal.nl/onderwerpen/gezond-en-veiligheidscultuur>