

2012 Annual Report

Inspectorate SZW

Summary



The Inspectorate SZW's first year

The Inspectorate SZW was formed on 1 January 2012, on the merger of the former Labour Inspectorate, Work and Income Inspectorate and Social and Intelligence Investigation Service. The shared objective is *'joint efforts to achieve more effect'*. In the first year after the merger the Inspectorate achieved good results. The majority of the plans were achieved. The percentage of enforcement interventions relating to all legislation initiated after inspections increased and was higher than planned. The amount of administrative fines imposed on offenders also increased and was significantly higher than planned. This was largely due to the imposition of several fines relating to a large number of illegally-employed employees in which per case more legal persons than one were involved. Supervision is of great importance to society: the Inspectorate works as effectively as possible on achieving SZW's objectives: working together to provide honest, healthy and safe work and socio-economic security for everyone. The Inspectorate adopts a targeted approach on the basis of risk analyses and analyses of developments in society.

Emphasis on personal responsibility

The Inspectorate takes action against employers and employees who assume their personal responsibility and have made the appropriate arrangements only when there are specific indications that this is necessary. The Inspectorate also devotes attention to non self-sufficient groups who do not have the knowledge or position required to enable them to stand up for their working conditions and terms of and conditions of employment.

In 2012, the Inspectorate assessed which sectors and branches of industry have implemented some form of self-regulation. The Inspectorate was able to limit the number of inspections in sectors which have implemented self-regulation of an acceptable level. The Inspectorate then shifted its focus towards supervision of the self-regulation system. Pursuant to this approach, the selection of companies took account of organisations that have voluntarily implemented an occupational health and safety care system which has been granted OHSAS certification ^[1]. Companies with OHSAS certification are not included in active inspections of working conditions. Temporary employment agencies with SNA certification are not included in the supervision of the administrative records of agencies.

The Inspectorate SZW supports companies and organisations by providing information about their obligations, for example in the form of online self-inspection tools. The Inspectorate SZW determines which sectors or locations do not require inspections, although it always keeps a finger on the pulse. For example, in 2012 the Inspectorate devoted additional attention to risk evaluations and inventories at small companies in view of the deterioration in compliance with occupational health and safety care obligations observed in the small and medium-sized enterprises. The situation improved slightly in 2012.

The Dutch government endeavours to limit working conditions legislation to regulations stipulating objectives that are as specific as possible. The social partners can then prepare a health and safety catalogue which lays down how they will comply with the specific healthy and safe working conditions objectives. In 2012, the Inspectorate was able to award an increasing number of health and safety catalogues a 'good' assessment (67 in 2012, resulting in a total of 146 health and safety catalogues at the end of 2012). The Inspectorate makes use of these health and safety catalogues as a reference framework in its enforcement.

^[1] OHSAS 18 – 1 is a British standard for the certification of occupational health and safety management systems.

The Placement of Personnel by Intermediaries Act (*Waadi*) prescribes that temporary employment agencies shall register with the Chamber of Commerce. As from 1 July 2012, companies hiring temporary employees may call on the services solely of registered temporary employment agencies. This emphasises the personal responsibility of both temporary employment agencies and companies making use of their services. The Inspectorate supervises both parties' compliance with their obligations. Five *Waadi* cases involving ten employers were being investigated at the end of 2012: no investigations have been concluded to date.

The investigations in the field of work and income reveal a potential for improvement throughout the entire chain, in particular in guiding people receiving benefits to paid employment, cooperation between professionals and the provision of feedback on and evaluation of municipal information processes.

The Inspectorate observes that municipalities, the UWV employee insurance agency and the SVB social insurance bank are taking a number of initiatives that are designed to further professionalise their operations. The Inspectorate is of the opinion that these initiatives are of importance to the improvement of implementation practice. The Inspectorate requests attention for (further) professionalisation, for example in exchanges of best implementation practices.

Goal-oriented supervision, strict when necessary

The Inspectorate deploys its capacity on the basis of risk analyses and intensifies its efforts and pressure when necessary. The Inspectorate carries out its work in cooperation with other parties whenever feasible, when it makes full use of its expertise and all necessary powers. The new law; *Wet aanscherping handhaving en sanctiebeleid SZW-wetgeving* ('Social Affairs and Employment Legislation Enforcement and Sanction Policy (Increased Stringency) Act') that came into force on 1 January 2013, offers new opportunities for this approach.

The Inspectorate's focus on Seveso II¹ companies exhibiting a substandard performance resulted in an increased deployment of severe enforcement instruments in 2012. More unannounced visits to inspect high-risk companies were made in 2012: this had not previously been customary practice with high-risk companies.

In 2012 – and in line with its annual plan – the Inspectorate devoted additional capacity to following 'persistent offenders' doggedly and to tackling other notorious offenders. The Inspectorate then worked intensively – and successfully – with other supervisory authorities. When the administrative law approach to stop abuse achieves insufficient effect then the Inspectorate deploys its criminal law investigation instruments, in particular to combat labour exploitation, organised benefit fraud and mala fide temporary employment agencies. The Inspectorate SZW's Investigations Directorate completed 61 investigations in 2012. These 61 investigations resulted in 184 persons being regarded as suspects. The fraudulent amount involved was assessed as € 19.1 million.

The Inspectorate dealt severely with a considerable number of notorious offenders in 2012. The examples in the following summary reveal that these activities encompassed the full range of the Inspectorate's supervisory spectrum.

¹ Seveso II implemented in Dutch law via *Besluit risico zware ongevallen (Brzo)* or in English, Major Accidents (Risks) Decree

- The Inspectorate SZW and Tax and Customs Administration inspected more than 1,300 temporary employment agencies in 2012. Fines were imposed to a total of more than €5 million. The Government intends to ensure that mala fide entrepreneurs in the temporary employment agency sector cannot commit further offences. One of the spearheads stipulates that the criminals behind the organisations will be caught.
- It became clear that the programme for improvements at a tank storage company had not yielded the required results. New incidents occurred in 2012, and inspections revealed serious shortcomings. As a result, the tank storage company had to be shut down. This problem gave cause to accelerated inspections of twelve storage companies. These were carried out in cooperation with colleague supervisory authorities.
- Inspections at other companies resulted in them being ordered to stop certain installations and, in one case, the prohibition of the operation of the control room. This resulted in interruptions in the production and, ultimately, in the use of installations that did comply with the legal requirements.
- The managers of a mushroom farm were arrested on the suspicion of continuing labour exploitation. The investigation was part of the chain approach.
- The supervision of certification and inspection institutions resulted in one crane certification company losing its authorisation in 2012.
- The market supervision of machines and products for professional use resulted in interventions for products including side curtain ventilation systems for stables and lifting platforms for the European market.
- Following an investigation a person who had committed benefit fraud for many years was ordered to repay the benefits and, in addition, received a one-year prison sentence.
- Following a notification from the UWV, the Inspectorate SZW and UWV conducted a criminal investigation of potential fraud in the job coach scheme. This investigation revealed that a company had abused the scheme by submitting statements for more job coaching hours than the actual hours worked. The UWV demanded the repayment of all payments unjustifiably been made to the company, in total almost € 1.5 million. The company's assets were seized. The company's recognition was also withdrawn, as a result of which it is no longer permitted to supply its services to the UWV. The company lost an appeal against this withdrawal.
- The Ministry of Health, Welfare and Sports requested the Inspectorate to carry out an investigation of fraud with personal budgets an instrument in health care support. Personal budget fraud is often accompanied by fraud in the domain of the Ministry of Social Affairs and Employment such as fraud regarding Work inability benefits according to Labour Capacity Act (WIA) and income concealed by persons receiving benefits. In 2012, 3 investigations of 9 suspects relating to personal budget fraud were completed. The amount of the fraud in these cases currently totals € 0.6 million.

Table 1 | Inspection SZW: key figures for 2012

	Actual 2010	Actual 2011	Planning 2012	Actual 2012
Number of inspections, investigations, reports and tests				
- Active OH&S inspections (OSH, working time, radiation, product safety legislation) ²	18,541	14,638	15,600	15,966
- Accident investigations, complaints, notifications	3,374	4,091	3,800	3,730
- Major Hazard Control (Seveso II + major hazard companies) ³	494	612	590	512
- Labour market fraud (illegal employment, minimum wages, rules on temporary agencies)* ⁴	9,629	9,655	7,500	7,160
- Completed criminal law investigations	40	62	63	61
- (Statements of findings from) Work & Income reports	13	27	25	18
- Supervisory feasibility tests of planned regulations	15	18	N/A.	16
- Enforcement and implementation tests	unknown	unknown	N/A.	10
Enforcement interventions following inspections				
- Working conditions: encouragement, warning, demand, stoppage, fine report, cease and desist order under penalty, official report	61%	64%	60%	63%
: demand, stoppage, official report	43%	41%	25%	44%
- Labour market fraud*: warning, fine report, official report	18%	18%	>17%	21%
- Number of official reports to the Public Prosecutor ⁵	107	193	N/A.	103
- Number of persons reported	124	187	185	184
Administrative fines				
- Number of fines imposed (Arbo, ATW, Wav and WML)	3,943	3,501	3,420	3,376
- Amount of fines imposed (x € million)	42.6	34.4	27.9	42.5
- Amount of fines collected (x € million)	26.0	27.9	31.8	29.4
Staffing level, FTEs, at end of			2011	2012
Inspectors, Detectives and Investigators				
- Arbo			203	221
- MHC			35	39
- AMF			176	187
- Investigation			204	174
- Work and income			39	43
Total			657	664
Number of Inspectorate SZW staff involved in primary process (project managers, project secretaries, analysts, Centre of Expertise staff, BDI staff)			192	175
Other staff			287	275
(Including management, management support, planning & control staff, ICT, policy support and communications)				
Total, general			1,136	1,114

² Dutch Legislation; Arbowet, ATW, KEW, Warenwet

⁴ Dutch legislation; Wav, WML and Waadi

³ Dutch Legislation; Brzo, Arie-regeling

⁵ Dutch Legislation; (Arbo, ATW, KEW, Brzo, Wav and Criminal Code)

* As from this annual report, the figures for Wav, Waadi and WML are for concluded investigations. In the past, the figures – solely in this domain – related to investigations that had been initiated in the relevant year. The historical figures for 2010 and 2011 have now been recalculated on the basis of concluded investigations. As a result, the actuals for 2010 and 2011 do not correspond with the figures in the Annual Report 2010, Annual Report 2011 and other external publications. The Inspectorate has adopted a more risk-oriented approach to inspections. This results in more labour-intensive inspections, which in turn results in a lower number of inspections than in previous years and an increase in the percentage of established offences.

Abbreviations

Arbo/Arbowet	Working Conditions Act
ATW	Working Hours Act
KEW	Nuclear Energy Act
Warenwet	Consumer Goods Act
Bzro	Major Accidents (Risks) Decree
ARIE	Supplementary risk inventory and evaluation
Wav	Foreign Nationals Employment Act
WML	Minimum Wage and Minimum Holiday Allowance Act
Waadi	Placement of Personnel by Intermediaries Act
MHC	Major Hazard Control
AMF	Labour Market Fraud