

Inspectorate SZW Annual Report 2015

SUMMARY

The Inspectorate SZW works for fair, healthy and safe working conditions and socio-economic security for everyone.

May 2016

Preface

The Dutch economy is growing again. Unfortunately, the economic upturn barely seems to reduce the pressure on the remuneration and working conditions of workers. This especially applies to people working at the lower end of the labour market, but also to groups of self-employed professionals without staff who are confronted with lower earning margins. A number of employers are approaching or overstepping the limits of working conditions legislation by using bogus schemes. This creates unfair competition in the labour market between companies and erosion of the Dutch labour market.

In 2015 the number of industrial accidents (2165) and fatal accidents (51) investigated, more or less remained the same compared to previous years. Younger and older employees relatively often become a victim of industrial accidents. Temporary agency workers and non-Dutch workers also run a relatively large risk of an industrial accident (fatal or not).

The increase in the number of refugees and migrants in 2015 has not yet had any major consequences for the abuses and violations we have established, but it is a point of concern. With this increase, the number of people in our society running an increased risk of underpayment and exploitation is growing.

2015 also marked the beginning of the decentralisation of the health care sector, youth care sector and the Participation Act. Our research shows that the formation of regional public employment services is under way, but that the cooperation required for a specific execution still offers room for improvement.

The Inspectorate combats abuses and deals with companies that repeatedly violate labour and working conditions acts. We do this by carrying out inspections, repeat inspections and criminal investigations, in combination with compliance communication and disclosure of inspection results as an additional influential approach.

We are observing a positive development in the areas to which we have applied a multi-year programmatic approach. In 3 to 4 years, compliance with working conditions has increased by several tens of percents in, for example, the field of asbestos removal and in the metal and construction sectors.

In 2015, the Inspectorate SZW started a project for the purpose of a fully programmatic and project-based working procedure. This project allows the Inspectorate to further achieve its ambitions to be a modern and flexible organisation.

In 2016, the Inspectorate will continue to invest in creating healthy, safe and fair work and socio-economic security for everyone, in an economically powerful and social Netherlands, with a level playing field for businesses, protection of employees at work and a properly functioning social system.

M.J. Kuipers, LL.M.
Inspector-general
Social Affairs and Employment

Efforts, results and findings of the Inspectorate in a nutshell

In this annual report, the Inspectorate SZW looks back and renders account, linking this with future efforts and making use of quantitative indicators where possible.

The spearheads, as provided for in the annual plan 2015, were:

- the tackling of serious abuses
- cooperation with other inspectorates
- new cooperation with the Ministry of Health, Welfare and Sport

Results

- Improvements in compliance with working conditions at inspected businesses by means of a multi-year, programmatic commitment to, among other things:
 - asbestos removal: improvement of 24 percentage points in 4 years and in 2015 a trend towards further improvement
 - metal, petroleum, chemical, pharmaceutical, plastics and rubber sectors: improvement of 18 percentage points in 4 years
 - physical load in the construction industry: improvement of 31 percentage points in 4 years
 - exposure to quarts dust in the construction industry: improvement of 21 percentage points in 3 years
 - metal producers industry: improvement of 10 percentage points in 3 years
- In close cooperation with the Tax and Customs Administration, the Employee Insurance Agency and the Immigration and Naturalisation Service, the Inspectorate did not only call cleaning companies in the fast food sector to account for abuses (underpayment, exploitation), but also their clients. Result: more fast food companies organise the cleaning themselves and deter rogue providers.
- An increase of more than 5% in the imposition of penalties, in accordance with the intention to tackle abuses and to impose penalties where necessary.
- In 2015, 952 penalties were imposed for illegal employment and 93 penalty reports were drawn up in respect of underpayment; the highest number since 2013 (see 2.2.3 for more information about the approach to bogus constructions). The Inspectorate carried out 4,500 inspections in the field of labour market fraud.
- Cooperation with the other supervisors in the social domain for the purpose of monitoring decentralisation operations.
- Under the direction of the Public Prosecution Service, the Inspectorate completed 61 investigations in 2015, including confiscation cases, in the domain of Social Affairs and Employment.
- In cooperation with other inspectorates, the Inspectorate tightened the standards for companies that are subject to the Major Accidents (Risks) Decree to bring them more in line with the state of technology.
- Investigations into industrial accidents, complaints and reports regarding working conditions resulted in a lot of information for companies, sectors and employees in order to reduce risks. More than 4000 of these investigations were carried out.
- Fraud involving personal care budgets was investigated on the instructions of the Ministry of Health, Welfare and Sport and under the direction of the Public Prosecution Service. In 2015, the Inspectorate completed 11 investigations in which 40 suspects were involved and in which fraud was committed to the amount of 8.3 million euros.

Findings

Developments and approach to psycho-social workrelated stress

Psycho-social workrelated stress has been identified by the Ministry of Social Affairs and Employment and in the long-term plan 2015-2018 and annual plan 2015 of the Inspectorate SZW as one of the most important causes of work-related absence. This is also the reason for initiatives taken by the Ministry of Social Affairs and Employment, such as 'check your work stress'. Over the past few years, the efforts made by the Inspectorate in respect of this risk have mostly focussed on the care and welfare sector and government services and was expanded in 2015 to a general psycho-social workrelated stress programme.

Experiences in the care and welfare sector show that awareness is followed by measures being taken, which this sector is already working on. The first results of the broad Psycho-social workrelated stress programme initiated in 2015 confirm the pattern that existed in the care and welfare sector. This means that the majority of the inspected companies outside the care and welfare sector do not yet have a clear picture of the risk. Companies pay little or no attention to this risk in the Risk Inventory and Evaluation (RI&E). As a result, little specific action is taken.

An important lesson to be learnt from this is that companies, the Ministry of Social Affairs and Employment and the inspection programme share a common challenge to find solutions to raise awareness and improve the approach to companies. An important step is to meet the so-called system requirements, such as - in a general sense - with working conditions. The system requirements start with paying serious attention in the RI&E and following the prescribed Psycho-social workrelated stress policy cycle for companies. Research performed by the Inspectorate confirms in a general sense that compliance with system requirements indicates a lower risk.

Decentralisations

2015 marked the beginning of the decentralisations for the health care sector, youth care sector and the Participation Act. In order to follow this transition, a large number of investigations were initiated and partly completed in 2015. This showed, among other things, that the formation of regional public employment services is under way, but that the translation of the cooperation agreements into specific implementation practice is still limited.

Suwinet

Suwinet is a system that is used by municipalities, the Employee Insurance Agency and the Social Insurance Bank to consult personal data. These data are privacy-sensitive data regarding citizens. Research showed that data protection by municipalities within Suwinet has improved, but that there are still many municipalities that have not yet taken appropriate actions in terms of privacy protection. Following this, the Ministry of Social Affairs and Employment has made agreements with the Association of Dutch Municipalities regarding improvement of the data protection.

Refugees and migrants

The increase in the number of refugees and migrants in 2015 has not yet had any major consequences regarding the number of abuses and violations detected by the Inspectorate. However, the increase in the number of refugees and migrants is a clear point of concern in the long-term plan 2015-2018 and the risk analysis across the whole of the Inspectorate. Because the total group of people in society that run a risk of underpayment, exploitation and other abuses is increasing as a result of this.

Healthcare fraud investigation

On the instructions of the Ministry of Health, Welfare and Sport, the Inspectorate SZW is the investigative service for fraud with personal care budgets ('PGBs') and is charged with the investigation of fraud involving funds paid under the Exceptional Medical Expenses Act and the Healthcare Insurance Act.

Based on the fraud reports received as well as the pending investigations, the Inspectorate observes an increase in systematic and large-scale fraud committed by criminal and other

organisations with healthcare funds, especially PGBs. In 2015, the number of reports of (suspected) PGB fraud qualifying for criminal prosecution has therefore increased.¹

Permanent competitive pressure

An important learning point from 2015: even during an economic upswing, there is a constant competitive pressure on companies and, therefore, on (labour)costs. In order to reduce the costs, employers sometimes cut back on remunerations or the safety of employees and self-employed professionals without staff.

The Trends section in the inspection domain discusses the various trends identified by the Inspectorate in more detail. The Inspectorate will include these trends the coming years in the operational programmes.

Healthcare fraud investigation

On the instructions of the Ministry of Health, Welfare and Sport, the Inspectorate SZW is the investigative service for fraud with personal care budgets ('PGBs') and is charged with the investigation of fraud involving funds paid under the Exceptional Medical Expenses Act and the Healthcare Insurance Act.

Based on the fraud reports received as well as the pending investigations, the Inspectorate observes an increase in systematic and large-scale fraud committed by criminal and other organisations with healthcare funds, especially PGBs. In 2015, the number of reports of (suspected) PGB fraud qualifying for criminal prosecution has therefore increased.

Permanent competitive pressure

An important learning point from 2015: even during an economic upswing, there is a constant competitive pressure on businesses and, therefore, on labour and other costs. In order to reduce the costs, employers sometimes cut back on remunerations or the safety of employees and self-employed professionals without staff.

¹ Inspectorate SZW, Alert letter on criminal investigations conducted by the Inspectorate SZW into healthcare fraud, November 2015, pages 1 and 2.

Inspectorate SZW key indicators for 2015

	Realisation 2014	Annual Plan 2015	Realisation 2015
Number of inspections, investigations and reports			
Working conditions inspections and investigations	17134	16,000 - 17,000	16288
Major Hazard Control inspections and investigations (Major Accidents (Risks) Decree, Additional Hazard Identification and Risk Assessment)	453	380 - 420	350 1)
Labour market inspections (Foreign Nationals (Employment) Act, Minimum Wage and Minimum Holiday Allowance Act, Working Hours Act and Placement of Personnel by Intermediaries Act)	5054	4,000 - 5,000	4500
Completed investigations in the Social Affairs and Employment domain	65	56	61
Completed investigations in the Health, Welfare and Sport domain	N/A	10 - 14	11
(Programme)reports in the Social Security domain	16	27	22
Other activities			
Supervision reviews for intended legislation	16	N/A	15
Enforcement and implementation reviews	8	N/A	20
Exemptions granted	1333	N/A	1570
Working Conditions Catalogue reviews	43	N/A	35
Designation of Certification Institutions	24	N/A	27
Measures imposed in the case of Designated Institutions	4	N/A	4
Enforcement interventions based on inspections and investigations 2)			
Violations of working conditions	60	62	48.7 3)
Violation of Major Hazard Control	43	40	42.8 4)
Labour market violation	18.6	20	25.6
Number of official reports (Working Conditions Act, Working Hours Act, Nuclear Energy Act, Major Accidents (Risks) Decree, Foreign Nationals (Employment) Act)	72	N/A	84
Criminal investigation results			
Number of persons who have been reported	221	120 - 160	169
Established loss (x million €)	31.8	35	66.2
Number of official reports	65	N/A	72
Administrative penalties			
Number of penalty rulings sent (Working Conditions Act, Working Hours Act, Foreign Nationals (Employment) Act, Minimum Wage and Minimum Holiday Allowance, Placement of Personnel by Intermediaries Act)	2912	N/A	3183 5)
Number of penalties imposed (x million €)	36.2	N/A	29 6)

1) These are 278 periodical inspections under the Major Accidents (Risks) Decree, 14 notification assessments, 31 safety report assessments, 23 accident investigations and 4 other cases. The number of MHC investigations is lower than provided for in the annual plan 2015. In 2015, the Inspectorate SZW investigated a number of major accidents (e.g. Shell Moerdijk and Chemelot). More time was required for accident investigations than originally estimated. This has resulted in fewer MHC inspections.

2) This is the enforcement% of projects that are also aimed at enforcement. This is not the case for all projects of the Inspectorate SZW, e.g. investigations into fictitious employment relationships, support with collective agreements and monitor investigations into Working Conditions.

3) The enforcement% achieved is lower than forecast in the annual plan. The enforcement% is comprised of enforcement% in inspection programmes, repeat inspections, accidents and complaints. The enforcement% for repeat inspections is much lower than for initial inspections, which affects the total enforcement% (15% versus approximately 60%)

4) Based on periodical inspections under the Major Accidents (Risks) Decree alone.

5) Around 300 fewer penalty rulings were drawn up in 2015 due to the strike within the context of the Central Government Collective Agreement.

6) The inspector writes a report based on the fined offences. When deciding on the height of the fine the fine trailer takes into consideration the facts and circumstances, where in the context of proportionality is provided in moderation grounds, such as included in policies. No fine should be imposed if no blame at all can be determined. In 2015 3183 penalty rulings were sent. In 15% of the cases no penalty was imposed, in 17% of the cases the imposed penalty was lowered on the grounds of proportionality. Due to the rulings of the Council of State in 2015 there were more cases of lowering the imposed penalty than in the previous years. As a consequence the total amount of imposed fines is lower than last year.