

Inspectorate SZW Annual Report 2016

SUMMARY

The Inspectorate SZW works for fair, healthy and safe working conditions and socioeconomic security for everyone.

May 2017

Preface

2016 has been a successful year in many respects. Our economy recovered, employment increased, and prosperity grew. These are positive developments for which the Dutch labour force has made an utmost effort. However, the year was also marked by other aspects. When glancing back more critically at 2016, we see the price that was paid in human lives for this growing prosperity. Occupational accidents claimed the lives of 70 workers. This means 19 more victims than in the preceding year. Partners, children or parents lost an essential part of their existence. A void that will never be filled again.

They are the workers who made the ultimate sacrifice for what are often needless errors. The private sector and the government have the moral obligation to draw lessons from their sacrifice. These fatalities affect not only the businesses where they occurred. They also have an impact on all companies where the same accident can occur in the future. As government we must make a maximum effort to prevent recurrences. The Inspectorate SZW (Inspectie SZW) dedicates itself to this objective every day. We do this together with the private sector where possible. There where there is willingness of entrepreneurs with integrity and where the employee is valued more than profits. Where this is not the case, we perform our role as a strict regulator and we intervene. In doing so, we employ all instruments in our possession to address abuses, above all to prevent them.

Production should never be more important than people. Yet, this is often still the case. There are numerous causes for accidents. Profits are prioritised over safety: temporary workers receive inadequate instructions or do not have an adequate command of the Dutch language. The total number of occupational accidents in 2016 was more than 2500. It is a 14% increase since last year. This is cause for concern. Not just because of the increase, but also because these are figures that reveal only part of reality: almost half of all reportable occupational accidents were not reported last year. Consciously or unconsciously: an outrageous number. Every accident victim is entitled to an independent investigation. Was this an unfortunate combination of circumstances or a situation that could have been avoided?

Remarkable is that the increase of the number of occupational accidents in 2016 was larger than can be explained by the expansion of the economy and activity. This makes clearly identifying all causes even more important. As well as excluding them as much as possible.

Labour exploitation was the other cost of the increase in prosperity in 2016, such as unpaid working hours, inaccurate hourly rates, and fees unlawfully passed on to employees. An appealing example was a mushroom company going into involuntary liquidation, due to the legal consequences of labour exploitation. Polish pickers were working there in deplorable conditions, were systematically underpaid, and worked excessively long days. Behaviour typical for hardcore criminals. They intentionally take the risk and break the rules. Yet, there is another category that actively searches for loopholes in the law. They use constructions that might be consistent with the letter of the law, but apply them in a multitude of undesirable ways. This behaviour undermines the foundation of our society. For example, we encountered a structure involving sailors on a large vessel. The employees had signed up as sailors, but performed maintenance and renovation on a moored vessel. The employer needed a work permit for this, which he tried to avoid by signing up employees as sailors. More than 120

foreign nationals were underpaid and did not receive a holiday allowance. Most of them came from the Philippines, others from Croatia and Ukraine.

Within the EU we detect a lot of exploitation too. While the rules governing working conditions may be aligned throughout Europe, this is hardly the case on the ground. Our Dutch minimum wage is for more than 100 million EU citizens an amount that is much higher than what they receive in their country. It is therefore not difficult to have them work at lower rates. Mala fide employers can make big profits by paying fewer euros per hour than is legally required. These are exorbitant profits that encourage unfair competition at the expense of bona fide entrepreneurs.

For the Inspectorate, underpayment and exploitation—in addition to the increasing number of occupational accidents—are important phenomena about which we are increasingly concerned. We are therefore actively targeting these topics. Here too, we do this in partnership with others where possible, but with different partners. These partners are – among others - the Dutch new Food and Consumer Product Safety Authority (nieuwe Voedsel en Warenautoriteit, nVWA), the Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport, ILT), and the Dutch Tax Authority. This is not just for performing inspections, but also to see how we can better use each other's data files. Linking the information allows us to achieve targeted analyses and conclusions faster. This enables us to be as targeted and as efficient as possible where it is needed the most. Namely, there where it concerns healthy, safe, and honest work. Socio-economic security for everyone.

Marc Kuipers

Inspector-general

Social Affairs and Employment

Brief summary of the results of the Inspectorate SZW

2016 was an exceptional year. The forces in the labour market and society necessitated an intermediate adjustment to the annual plan¹. There were four important developments. Their current situation is described below. Thereafter, we list notable results achieved in monitoring programmes.

Occupational accidents

A significant increase in the number of occupational accidents was noted in the adjustment to the annual plan. A direct consequence thereof was the Inspectorate devoting more capacity to investigating occupational accidents and less to preventive risk-oriented supervision. The reason for this was preliminarily asserted to be the economic development and a further analysis of the whole year 2016 was promised.

The overall increase in 2016 is less extreme than in the first half-year. Nevertheless, the number of victims of occupational accidents did increase by 14% in 2016 in comparison with the year before. The number of fatalities rose to 70, whereas this was 51 the year before. The analysis shows that economic forces are the most likely cause. The highest growth figures can in fact be found in high-risk sectors such as industry, construction, trade, and waste management. A plausible explanation for this can be found in the combination of a larger population at risk, increase time pressure, and inadequate rapid availability of the proper professionals.

The analysis of occupational accidents devotes special attention to the question of whether the risks pre-eminently pertain to certain (vulnerable) groups. The analysis in this annual report confirms that temporary employment agency workers are twice as likely to suffer an accident as employees directly employed by an employer. Earlier investigations had also revealed this. The available data neither confirm nor deny that self-employed persons incur a higher risk.

On balance, there was an increase to more than 2500 accidents investigated, whereas this was less than 2400 before. Enforcement pertaining to non-compliance with the Dutch Working Conditions Act (*Arbeidsomstandighedenwet*) took place in 60% of the more than 2500 cases.
1 Lower House of the Dutch Parliament 2016-2017, 34 550-XV, no. 5.

This enforcement turns out to be very effective. Many companies are adjusting their behaviour: after all, the accident ‘proves’ the necessity. Reinspections reveal a percentage of repeat violations that is 6% lower than in companies free of accidents.

The experiences gained from the accident investigations are used in designing the preventive, risk-oriented programmes. This way, other companies vulnerable to potential accidents can benefit from the lessons learned. It enables them to also make the working environment for their own employees safer and healthier.

Focus on underpayment

The adjustment of the 2016 annual plan describes the Inspectorate having modified its approach. It does this by placing the main focus of the labour market legislation on the question of whether underpayment potentially exists in accordance with the Dutch Minimum Wage and Minimum Holiday Allowance Act (*Wet minimumloon en minimumvakantiebijslag, WML*). It also takes compliance with the Working Hours Act (*Arbeidstijdenwet, ATW*) and the Foreign Nationals (Employment) Act (*Wet arbeid*

vreemdelingen, WAV) into account in that regard. This means a more intensive approach for the company as well as for the Inspectorate, as this involves in many cases a review of the books and requires financial information to be presented.

The initial results of this new approach are as anticipated: less and more intensive cases (less than 3000 cases, approximately 25% fewer than in absence of the new approach) and more enforcement (more than 40% in comparison to more than 20% before). The Inspectorate has detected more violations of the WML. Moreover, many of the companies investigated do not maintain an adequate registration of working hours.

To improve compliance, the Inspectorate provides support to employers and employees in the form of a self-inspection tool called 'Working Honestly' with which they themselves can verify whether they are in compliance with the statutory regulations.

Companies with hazardous substances

Due to society's considerable attention to the (long-term) consequences of the use of hazardous substances by companies (such as in the case of Lycra and Teflon by Dupont), a more in-depth investigation is being performed in that regard. This investigation will be completed in 2017.

The programme Companies with Hazardous Substances comprises—in addition to a large group of companies with limited quantities of hazardous substances—a specific group governed by the Risks (Serious Accidents) Decree (Besluit risico's zware ongevallen, Brzo '99). An important shift of activities named in the adjustment to the annual plan has occurred throughout the entire year. It concerns the consequences of the Brzo 2015 entering into force and the regulation pursuant thereto, the RRZO.

As indicated in the adjustment letter of the annual plan, a large number of companies did request an assessment of full safety reports in 2016. In concrete terms, this means that the number of inspections and (safety) investigations performed was more than 25% higher than anticipated in the annual plan.

Programme

The decentralisations in the social sphere are nearing the transformation phase—after the transition phase. As stated in the adjustment, the intermediate evaluation caused the programme to be modified accordingly. These modifications were implemented after the adjustment of the annual plan. Instead of the former three programmes pertaining to work and income, there is now one single programme in 2017. Participation and financial self-reliance Furthermore, the Inspectorate monitors the services to people with psychological problems in the system of work and income through its programme Psychosocial Risk Factors and Psychological Problems. The Inspectorate also contributes people and resources to the Joint Inspectorate for Youth² who operate under the direct management of the leadership of the Joint inspectorate for Youth.

On the basis of the 2016 figures, the Inspectorate SZW establishes that its programme-based approach—in which it uses a mix of supervisory tools, criminal investigations, and communication methods—is working. This can be derived from the compliance percentages increasing over the duration of a programme period and from the multi-year reports, among

others.

- End-users, such as painters, graffiti removers, concrete renovators, and floor coating companies show an increase (20%) in the use of an SDS (Safety Data Sheet) when taking protective measures and informing employees about risks; Certified asbestos companies were also more in compliance with the laws and regulations in 2016. A trend started in 2012 (from 30% to approximately 70% compliance in 2016);
- Regarding occupational safety and health, we detect a modest improvement in the compliance with the key provisions³. There is improvement in the case of six of the nine provisions.

Results of multi-year approach—multi-year reports:

- *Waste sector* In the past years, companies in the waste sector have worked hard at creating a safe working environment for their employees at the insistence of the Inspectorate SZW. Much has improved in that regard. However, the number of accidents in the sector remains relatively high. The occupational hazards in this sector still require much attention. However, after a long-term inspection effort, the Inspectorate has decided to focus on other sectoral priorities. The parties in the industry have explicitly been called on to assume their responsibilities regarding occupational health and safety. See the programme reports for the *Waste Sector*.
- *Government services*
In the past years, government services have worked hard at creating a safe working environment for their employees at the insistence of the Inspectorate SZW. Much has improved in that regard. Many new instruments and means of communication have been developed. There is also commitment of the top of those organisations, which has initiated improvement programmes. Most violations have been resolved. In the coming years, the Inspectorate SZW will reinspect there where institutions are still dealing inadequately with the risks. See the programme reports for *Government Services*.
- *Care and welfare*
The Inspectorate reported that the approach to the psychosocial risk factors (PRF), aggression and violence, and pressures of work is still wanting in many institutions. See the programme reports for *Care and Welfare*. Reinspections of the then observed violations were performed in 2015 and 2016. More than 80% of the principal places of business visited had taken measures. The sector is also investing in dealing with PRF: industry organisations are supporting the institutions with tailored and further expanded Occupational Safety and Health (OSH) catalogues for dealing with PRF.

3 Key provisions: RI&E and plan of action, registration of occupational accidents, contact with working conditions service/expert, absenteeism policy, company emergency response, health and safety officer, consultation with employees about occupational safety and health policy, information, training, and supervision. Dutch Ministry of Social Affairs and Employment (Ministerie van Sociale Zaken en Werkgelegenheid), **Inspectorate SZW Annual Report 2016**

Notable results of 2016 monitoring programmes

International cooperation: the approach to labour exploitation is taking form

In 2016, 21 European countries jointly dealt with abuses and labour exploitation in international transport by road during a week-long campaign. This resulted in the detection in Europe of 275 (potential) victims of labour exploitation and in the arrest of 47 suspects in total outside of the Netherlands. By exchanging knowledge, investigative organisations have gained more insight in potential labour exploitation networks. See also the results in 2.1.1 Labour exploitation.

Habitual offenders: dishonest work more persistent than unsafe work

Systematic offenders will not be released before being back in compliance.

Reinspections of companies that were violating the law mainly as far as honest work (WML, WAV, ATW) was concerned revealed new violations at 44% of those companies. These companies remain subject to tightened monitoring and increasing sanctions.

The Inspectorate's reinspections also covered earlier violations of the Dutch Working Conditions Act. In comparison with 'honest' work, companies are apparently modifying their behaviour much more frequently as far as safe work is concerned. Reinspections of working conditions revealed that 87% of the violations detected earlier were resolved. A third of the 79 employers that had violated the Working Conditions Act twice before continued to persist thereafter and were (or are being) dealt with using even more stringent measures or criminal law.

Where possible, the Inspectorate also targets the persons behind the (mala fide) companies. In 2016, this involved 11 persons in total. In the case of involuntary liquidations of mala fide companies, the Inspectorate verifies whether those result in restarters and re-entrants that will also deserve attention and action in the future.

Bogus schemes exposed and dealt with

The Inspectorate dealt with bogus schemes concealing violations of labour laws or disguising forms of fraud. So-called 24-hour care involved e.g. employees 'residing' with care-dependent clients and being almost continuously at work. However, substantially fewer hours were paid. Another example concerns employees signing up as sailors, but actually performing maintenance and renovation work.

This way, the employer wanted to avoid the required work permit. Bogus schemes can pertain not just to one or a few employees, but also to many more. The case of the 'sailors' involved more than 120 persons.

Cleaning: Fast-food chains are assuming increasing responsibility

The Inspectorate has called on fast-food chains to assume their responsibility in their role of client/hirer of cleaning companies. The Inspectorate observed many violations when inspecting the cleaning organisations in question. The fast-food companies have assumed their responsibility: the companies have taken over the cleaning themselves or work from now on only with certified cleaning companies.

Cleaning industry organisations have taken to expelling members in the case of apparent abuses. Various cleaning organisations have ceased their operations.

Transport: tackling unfair competition together with peer services

The Inspectorate SZW works together with ILT, the police, Customs, and nVWA in supervising transport by road. The complex situations (clients and employers from various EU countries, drivers from multiple countries in the EU or beyond) involved make that the only effective approach to deal with various abuses and forms of unfair competition in the transport industry is a joint one. Violations were found at 60% of the companies investigated. Requests for revoking the permits of 49 companies were submitted to the licensing authority, the National and International Road Transport Organisation (Nationale en Internationale Wegvervoer Organisatie, NIWO).

Industry organisations developed a quality mark (PayChecked) that gives clients, carriers, and employees more assurance about the compliance with labour legislation.

Catering and retail: continuing to monitor ‘ceased’ entrepreneurs

In the Catering and Retail industry, the Inspectorate has expanded its approach to habitual offenders of the labour legislation with an investigation into ceased businesses in which entrepreneurs effectively continue their operations under a different name. The violators were followed persistently, until they ceased their (illegal) activities. The collaboration with municipalities resulted in 96 of such companies ceasing their operations.

Occupational safety and health as a structural component of corporate policy

The analysis of our own research data reveals that the compliance with structural provisions of the Working Conditions Act has improved in 2016. Namely, frequent consultation about occupational safety and health policy with employees, the presence of a company emergency response team, and the presence of a health and safety officer are clearly and significantly improved compared to 2014. The slightly downward trend of recent years in the compliance with the structural provisions seems to have thereby been halted.

Exposure to hazardous substances: better use of available knowledge

In the oil, pharmaceutical, chemical, plastics, and rubber industries, 100 of the 130 inspected companies took additional measures against the risk of exposure to hazardous substances. During its inspections, the Inspectorate also promoted the improved use of safety data sheets (SDS). Namely, the cooperation with the Royal Netherlands Federation of Entrepreneurs in Painting, Finishing, and Glass Installation (Koninklijke Vereniging Federatie van Ondernemers in het Schilders-, Afwerkings- en Glaszetbedrijf, FOSAG) resulted in 2016 in a more active use of the SDSs by painters.

Psychosocial risk factors

Psychosocial risk factors are some of the most important causes of the loss of workers. The Inspectorate is using a wide range of intervention methods to enhance the awareness of that issue. To promote this, the Inspectorate has published a self-inspection tool called ‘Pressures of work and inappropriate behaviour’ on the Internet in 2016. In 2016, the A&O fund for higher professional education (A&O fonds voor het hoger beroepsonderwijs) promoted this self-inspection tool and developed information material for higher professional education.

In healthcare, the Inspectorate discovered that 90% of the institutions inspected had taken measures to reduce the risk of PRF as a result of earlier inspections. The sector is investing in the approach to PRF by adapting and expanding the occupational safety and health catalogues.

The Inspectorate SZW has informed new entrants in healthcare about occupational safety and health and about performing a risk assessment. It also announced that inspections could potentially take place. It turns out that newcomers have rolled up their sleeves. 65% of the effectively inspected institutions had performed a risk assessment and prepared a plan of action with attention for pressures of work, physical stress, and dealing with aggression and violence.

Employment discrimination: promoted awareness and measures

At the request of the Dutch Lower House, the Inspectorate formed a team in 2015 to prevent discrimination in the workplace. In addition to inspections, the Inspectorate also uses communication and cooperation with industries. The self-inspection tool called 'Pressures of work and inappropriate behaviour' devotes attention to discrimination. Inspections have revealed that companies indeed use this tool and that the companies specified the measures that they would be taking. Industries have contacted the Inspectorate to discuss how to better facilitate their members.

Certification: findings result in actions

In 2016, the Inspectorate reviewed the compliance of diving work certificate holders with the requirements. The Inspectorate of Security and Justice (Inspectie Veiligheid en Justitie, Inspectie VenJ) supported this effort by encouraging all fire brigades to take the right measures. De Dutch Foundation for Work under Overpressure (Stichting Werken onder OverDruk, SWOD) used the results in campaigns to improve compliance among certificate holders.

The Inspectorate's monitoring of the certification of safety shoes has prompted that sub-market to produce and market orthopaedic safety shoes in accordance with European product safety requirements from now on.

Vulnerable young people are at risk of being overlooked

The Inspectorate has noted that municipalities work increasingly better together with schools when supporting young people with an occupational disability, but that certain groups of young people are at risk of being overlooked. It also appears that municipalities do not always offer the support young people need to find work. The Dutch State Secretary for Social Affairs and Employment is strongly committed to improving this group's situation and organised a meeting with the Dutch Ministry of Education, Culture, and Science (Ministerie van Onderwijs, Cultuur en Wetenschappen, OCW) and the members of 35 municipal executives to discuss the results, among other initiatives.