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EUROPEAN SOCIAL CHARTER

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the European Social Charter
submitted by

THE GOVERNMENT OF THE NETHERLANDS

1 January 2015 - 31 December 2018

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CYCLE 2020

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Thirty-second Report

for the period 1 January 2015 - 31 December 2018

Report

For the period 1 January 2015 to 31 December 2018, made by the Government of the Netherlands in accordance with Article C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter.

This report does not cover the application of such provisions in the non-metropolitan territories to which, in conformity with Article L they have been declared applicable.

With respect to certain articles of this thematic report (group 1), reference is made to letter ESC 52/2019 (The Netherlands) of 27 May 2019.

In accordance with Article C of the revised European Social Charter, copies of this report have been communicated to:

- Netherlands Trade Union Confederation FNV
- National Federation of Christian Trade Unions in the Netherlands CNV
- Trade Union Federation for middle classes and higher level employees MHP
- Netherlands Council of Employers' Federations RCO

Upon receiving comments by social partners, these will be forwarded accordingly.

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Article 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Appendix to Article 1§2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Information to be submitted

Article 1§1

1) Please describe national employment policy and the general legal framework.

Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics (for example Eurostat data) or any other relevant information, in particular: the GDP growth rate; trends in employment covering all sectors of the economy: employment rate (persons in employment as a percentage of the population aged 15-64 years), youth employment rate; activity rate (total labour force as a percentage of the population aged 15 years and over); unemployment rate, long-term unemployment rate, youth unemployment rate; employment status (employed, self-employed); all figures should be broken down by gender; employment policy expenditure as a share of GDP, including the relative shares of 'active' (job creation, training, etc.) and 'passive' (financial compensation, etc.) measures.

The government made structural improvements on the labour market by making work pay better through a package of measures to relieve structural tax burdens for workers on labour and by making it easier for parents to combine work and taking care of children. The government invests € 5.2 billion to lower the tax burden on labour, starting 2019. This has been put into law with the 'Belastingplan 2019 (Tax plan 2019)'. The tax system is simplified, the number of tax brackets will be reduced to two in 2021, tax rates are lowered and tax credits are increased.

The quality of childcare is improved and, starting 2019, the childcare allowance is increased by €248 million. Research shows that the decision of young mothers to participate is particularly sensitive to financial incentives, as they make it easier for them to combine paid work and care for children. This also contributes positively to the economic independence of women.

The government also focused on restoring the balance on the labour market. The coalition agreement of 2017 announced a set of measures aimed to improve the balance between permanent and flexible work. This followed an assessment that insecurity in the labour market had grown too much; that the gap between those with and without opportunities was widening; that both employees and employers faced too much risk; and that there was too much competition on labour conditions. To this end, the government set itself the goal of restoring a balance to the labour market. Furthermore, employers will incur lower costs and risks when they employ workers in open-ended contracts, making it more attractive to hire staff in general. Flexible work has become more expensive for employers.

Key measures set out in the coalition agreement have now been put into a draft law, which the minister sent to Parliament on 7 November 2018. The *Wet Arbeidsmarkt in Balans* (Labour Market in Balance Act) contains a first set of important reforms with respect to contract law, dismissal law and unemployment insurance. An additional set of measures concerning sickness pay and disability insurance was announced on 20 December 2018. Further measures concerning self-employment will be developed in 2019.

The government aims to improve labour market opportunities of people with an occupational restriction by starting the initiative 'breed offensief' and making work pay better for people in a disability insurance. In addition, help and support to find work are improved for recipients of disability insurance. In 2013 social partners agreed to increase the number of jobs for people with an occupational restriction by up to 125.000 additional jobs by 2026 ('Banenafpraak' for both the private and public sector). The government has set the legal framework to accommodate achieving this target. As part of 'breed offensief' the government is simplifying this legal framework by making it easier for employers to cooperate with each other in creating jobs for this target group.

The economic growth is solid and increasing. This has a positive impact on the labour market. However, two comments are to be made, in addition to this positive description. The first is that the economic growth is lower than the average over the two decades preceding the Great Recession. The second comprises the continued extreme accommodative monetary policy stance. Economic growth in 2015 (2.2%), in 2016 (2.1%), in 2017 (3.3%) and in 2018 (2.5%). *Source: DNB National Central Bank*

Labour participation, age: 15 to 74 years, sex: total m/f, highest educational level: total
 Source: CBS National Statline

Year	2015	2016	2017	2018
Topic				
Labour force and not in labour force X 1000	12,685	12,768	12,870	12,936
Labour force X1000	8,907	8,942	9,017	9,125
Permanent employee X1000	5,143	5,158	5,206	5,352
Flexible employee X1000	1,767	1,841	1,948	1,970
Self-employed person X 1000	1,384	1,403	1,442	1,452
Part time working hours X1000	4,046	4,076	4,170	4,289
Full time working hours X 1000	4,248	4,327	4,409	4,485
Unemployed labour force X1000	614	538	438	350
Unemployment rate %	6.9	6.0	4.9	3.8
Not in the labour force X 1000	3,778	3,826	3,853	3,812
Gross labour participation rate %	70.2	70.0	70.1	70.5
Net labour participation rate %	65.4	65.8	66.7	67.8

Table 1.1 Main data for the Netherlands, 2013–2018

	2013	2014	2015	2016	2017	2018
	mutations per year, in %					
International economy						
Relevant world trade volume of goods and services	2.7	4.4	3.8	3.6	4.3	4.0
Competitor prices (a)	-2.7	-0.5	7.9	-3.7	0.6	0.0
Oil price (in USD per barrel)	107.1	97.9	51.9	43.3	49.3	49.5
Euro exchange rate (USD per euro)	1.33	1.33	1.11	1.11	1.11	1.14
Long-term interest rate the Netherlands (in %)	2.0	1.5	0.7	0.3	0.6	0.8
Volume GDP and spending						
Gross Domestic Product (GDP, economic growth)	-0.2	1.4	2.3	2.2	3.3	2.5
Household consumption	-1.0	0.3	2.0	1.6	2.2	2.4
Public consumption	-0.1	0.3	-0.2	1.2	0.6	1.6
Investments (including stocks)	-3.9	3.2	11.2	3.1	6.3	4.8
Exportation of goods and services	2.1	4.5	6.5	4.3	4.9	4.5
Importation of goods and services	1.0	4.2	8.4	4.1	4.5	5.1
Prices, wages and purchasing power						
Price level Gross Domestic Product	1.4	0.1	0.8	0.6	1.1	1.6
Export prices goods and services, excluding energy	0.1	-0.8	1.5	-0.9	1.0	0.3
Import price levels	-1.9	-2.7	-5.4	-4.4	3.6	-0.5
Inflation, Harmonised Index of Consumer Prices (HICP)	2.6	0.3	0.2	0.1	1.3	1.3
Wage rate, market sector (per hour)	1.9	1.0	-0.2	0.6	2.2	3.2
Contract wages market sector	1.2	1.0	1.2	1.5	1.6	2.2
Purchasing power, static, median all households	-1.4	1.2	1.0	2.7	0.3	0.6
Labour market						
Labour force	0.8	-0.4	0.4	0.4	0.8	1.1
Working population	-0.8	-0.6	1.0	1.3	2.0	1.7
Unemployed labour force (x thousand persons)	647	660	614	538	440	390
Unemployed labour force (in % of labour force)	7.3	7.4	6.9	6.0	4.9	4.3
Employment (in hours)	-0.9	0.7	0.6	2.0	2.0	1.6
Other						
Labour income share (in %) (b)	73.8	74.1	72.2	72.9	72.5	73.0
Labour productivity, market sector (per hour)	1.0	0.9	1.5	0.4	1.5	1.0
Individual saving share (in % of disposable income) (c)	-0.7	0.3	-0.4	0.3	0.3	0.5
Balance current accounts (in % of GDP)	10.2	8.9	8.3	8.7	8.8	8.5
	level in % of GDP					
Public sector						
EMU balance	-2.4	-2.3	-2.1	0.4	0.6	0.8
EMU debt (ultimo year)	67.8	68.0	64.6	61.8	57.2	53.7
Public financial burden	36.5	37.5	37.3	38.7	38.8	38.9
Gross public spending	46.9	46.4	45.2	43.8	43.0	42.5
a) Goods and services, excluding resources and fuels.						
(b) From the MEV 2018 onwards, CPB will be using a new method of calculating labour income share (AIQ). This new calculation method more effectively takes into account the labour income of the self-employed, and therefore is more in keeping with current economic reality. A joint publication by CBS, CPB and DNB provides more information on this subject.						
(c) Level; the disposable household income includes public saving. The individual saving share will be 0.6 percentage points lower in 2017 and 0.2 percentage points lower in 2018, due to the incorporation of personal pension fund management (Pensioen in Eigen Beheer), see the text box in Chapter 1 of the MEV 2017.						

Source: CPB Netherlands Bureau for Economic Policy Analysis

Unemployment regional, per province (% of total labour force)

Source: CBS National Statline

Year	2015	2016	2017	2018
Province				
Groningen	8.1	7.0	5.5	4.8
Friesland	7.0	5.9	4.7	3.7
Drenthe	6.8	5.7	4.7	3.2
Overijssel	6.4	6.1	4.4	3.1
Flevoland	7.2	7.5	4.9	4.1
Gelderland	5.9	4.9	3.7	3.4
Utrecht	6.2	4.7	4.4	3.1
Noord Holland	6.5	5.1	4.5	3.5
Zuid Holland	7.4	6.1	4.6	4.0
Zeeland	5.5	3.7	3.5	3.0
Noord Brabant	6.4	5.0	3.7	3.1
Limburg	6.5	4.8	4.1	3.3

Unemployment, men (% of male labour force)

Source: CBS National Statline

	15-25 age	25-35 age	35-45 age	45-55 age	55-65 age	65-75 age
2015	11.3	5.7	4.4	4.9	8.4	6.0
2016	11.4	4.4	3.6	3.9	7.0	4.2
2017	9.0	3.6	3.1	3.0	5.3	4.1
2018	7.7	3.1	2.4	2.5	4.2	4.1

Unemployment, women (% of female labour force)

Source: CBS National Statline

	15-25 age	25-35 age	35-45 age	45-55 age	55-65 age	65-75 age
2015	11.2	6.1	6.3	6.4	7.6	4.1
2016	10.3	5.2	5.4	5.5	7.4	4.9
2017	8.8	4.6	3.7	4.3	5.8	5.0
2018	6.6	2.8	2.8	3.4	4.8	4.5

Article 1§2

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

The Dutch Constitution enshrines that there must be free choice of labour (Article 19(3) of the Constitution). The article extends to 'all workers and job seekers', irrespective of whether they have an employee status, or they have or will be granted a self-employed status. Two dimensions can be differentiated in the right to free choice of labour: the absence of restrictions of access to certain types of labour and the absence of coercion in respect of acceptance of that labour.

Since 2005, labour exploitation has been punishable pursuant in Section 273f of the Criminal Code (*Wetboek van Strafrecht*). This Section also criminalizes other forms of trafficking in human beings such as sexual exploitation, criminal exploitation and organ trade. Since the previous report, there have been no relevant statutory changes in the field of labour exploitation.

The Netherlands has ratified the ILO 'Forced Labour' protocol and this entered into force on 8 August 2018. In November 2018, the Ministry of Justice and Security, Ministry of Public Health, Welfare and Sport, Ministry of Foreign Affairs, and the Ministry of Social Affairs and Employment launched the programme '*Samen tegen Mensenhandel*' ['Tackling trafficking in human beings together']. While drawing up the plan of this programme, the social partners were involved in the action line on labour exploitation. Various operational and strategic actions have been formulated in the '*Samen tegen Mensenhandel*' programme that focus on the prevention, detection, approach and support for victims of labour exploitation. In addition, work is currently being done in cooperation with the social partners, to further explore improving the approach to labour exploitation and the support for victims.

Article 1§3

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) Please provide indicators, estimated if necessary, on the functioning and the performance of the employment services in practice, including the number of vacancies registered by employment services; placement rate (placements made by the employment services as a share of notified vacancies).*

With reference to letter ESC 52/2019 (The Netherlands) of 27 May 2019, no information is requested.

Article 1§4

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

With reference to letter ESC 52/2019 (The Netherlands) of 27 May 2019, no information is requested.

Question of the European Committee of Social Rights with respect to article 1§1

about the previous report of the Netherlands (2010)

a) *The Committee asks if any measures are envisaged to support the vulnerable groups (older people, women and young people) to reintegrate the labour market.*

The budget for activating and providing services to people in a vulnerable position is to be increased, which will create an opportunity for 20,000 more people in sheltered employment. This means that more people with a disability can undertake paid work, because municipalities are given more opportunities to organise more sheltered workplaces, offering tailoring to find work or to 'make life easier' for employers.

Additional resources are provided to strengthen the use of sheltered employment, by replacing the instrument of wage cost subsidies in the Participation Act (*Participatiewet*) with the possibility of wage dispensation. This means that employers can pay below the statutory minimum wage, depending on the earning capacity of the person concerned. Dependent on the municipal income scheme claimed by the person concerned, the municipality will supplement the income.

The government takes a number of steps to make it more attractive to offer employment to people with disabilities. Firstly, the government will support and promote initiatives to create jobs through reshoring for this target group. Secondly, the results of the broad study of bottlenecks and opportunities are examined, with particular attention being paid to improving performance at the government. Thirdly, it will soon be arranged that the jobs of people who are in the job arrangement target group who are earning more than the statutory minimum wage, will continue to be included. This prevents employers from being discouraged from investing in their staff.

To be able to achieve a cultural shift for older people in the labour market, an ambitious age-conscious personnel policy is needed. The government expects social partners to make non-binding arrangements about this, with attention for training, inter-sectoral mobility, prospects of less burdensome work and the usefulness and need for specific provisions for older people in collective labour agreements. If, in the government's view, too little progress is made in seriously putting this into effect, then the government will not hesitate - after having discussed this matter with the social partners - to draw conclusions from it. The government, in turn, is obliged to look critically at any obstacles for the proper implementation of the tripartite responsibility. This could also include opportunities to broaden communications or to facilitate options such as part-time retirement (through second pillar pensions or generation pact schemes).

For those older workers who, despite the efforts of employers and employees, become unemployed or occupationally disabled anyway, the Older Unemployed Persons Income Scheme Act (*Wet Inkomensvoorziening voor oudere werklozen, IOW*) has been extended by four years, so that, after expiry of the unemployment benefit or benefits under the Return to Work (Partially Disabled Person) Regulations, these employees do not have to 'eat up' their own or their partner's assets before they qualify for income support. In view of the increasing degree of participation of older workers and the affordability of the scheme, the *IOW* will be adapted by raising the age limit together with the statutory retirement age as from 2020. At the same time, the government also invests EUR 40 million a year in additional personal counselling by the Employee Insurance Agency (*UWV*) of job seekers on unemployment benefit.

Question of the European Committee of Social Rights with respect to article 1§2

about the previous report of the Netherlands (2010)

a) The Committee asks following this study what measures were taken to combat discrimination on grounds of ethnic origin.

The Action Plan on Labour Market Discrimination (2018-2021) is aimed at preventing labour market discrimination that covers all grounds of discrimination. No specific policy for groups of ethnic origin is developed in the plan.

In addition to the Action Plan on Labour Market Discrimination, the Ministry of Social Affairs and Employment in 2018 started a programme “Verdere Integratie op de Arbeidsmarkt” (further integration on the labour market), which aims to improve the labour market position of migrants from all non-western countries. Short term goal of this programme is to develop an evidence base of effective measures and instruments, which in the long term should help to improve the labour market position of non-western migrants. An exhaustive analysis of scientific research showed that there is a lot of evidence as regards the disadvantaged position of this group, as well as insight in potential causes of this disadvantaged position, but there is almost no scientific evidence as to measures, instruments or policies that effectively and efficiently can help to eliminate disadvantages (in the Dutch setting). The programme therefore consists of (experimental and small scale) pilots and evaluation. Evaluation that should result in insights in “what works” to improve the labour market position of this group. These insights can then be implemented in the second phase, by various stakeholders. The programme focusses on various issues the non-western migrants encounter on the labour market, both pre-entry as post- and re-entry issues. On the pre-entry side for example one pilot is testing several “nudges” that should help to objectify recruitment and selection and reduce or eliminate the influence of prejudice and discrimination. On the post-entry side one pilot will be developed with a focus on an inclusive working environment and improving the circumstances to help non-western migrants build their career.

b) The Committee requests further information on developments in the law and practice on discrimination on other prohibited grounds.

The current Action Plan Labour Market Discrimination 2018-2021 builds on the Labour Market Discrimination Action Plan 2014-2018 (2014) and the Pregnancy Discrimination Action Plan (2017). The action plan is a part of The National Action Program against discrimination, a broad program aimed at an effective and coherent approach to discrimination in all forms.

From 2014, many measures have been taken within the framework of the Action Plan Labour Market Discrimination, which have already been completed or are still being implemented. The parliament is informed of the progress annually. Many measures are ongoing, such as the inspections that are carried out in the workplace by the Inspectorate SZW (Social Affairs and Employment).

The authorisations of the Inspectorate SZW will be expanded so that they can also oversee recruitment and selection policies that must include sufficient safeguards to set up a discrimination-free recruitment and selection policy.

Another important project is the Diversity Charter of the Labour Foundation. This Charter is used to build a network of precursors who want to promote the importance of diversity and inclusiveness on the labour market within their own sector. Meanwhile, 180 organizations from the public and private sectors have signed this Charter and thereby commit themselves to self-set goals to promote diversity and inclusion in the workplace. Since the start of the project until the end of 2018, a total of 23 Charter meetings have been organized in which more than 1,300 people attended.

To combat gender discrimination, ‘the Baby en Baan (Baby and Job) online campaign’ was used, among other things. The Facebook page Baby en Baan (Baby and Job) was created to raise

awareness about pregnancy discrimination among women between 20 and 36 years old and to offer action perspective in the case of pregnancy discrimination. 1.3 million women were reached in the first 6 months of the campaign, after which the campaign was extended to mid-2019.

c) The Committee asks what type of work is performed in prisons.

and

d) The Committee refers to its statement of interpretation in the General Introduction and asks that the next report include updated information on this issue. (prison work and working conditions)

An important aim of imprisonment is to prepare offenders for a successful return into society. Rehabilitation is generally considered a fundamental principle of penitentiary law in the Netherlands. In the Netherlands the principle of rehabilitation is commonly referred to as re-socialisation. Although not a legally enforceable right, it is generally considered that it takes a central role in the implementation of punishment. The principle is codified in Article 2 paragraph 2 of the Penitentiary Principles Act, which obliges the government to make sure criminal sanctions are carried out in a way that prepares the person involved for his or her return in society with a focus on re-socialisation and education possibilities.

e) The Committee refers to its statement of interpretation in the General Introduction. It asks that the next report include updated information on this issue. (loss of unemployment benefits)

Based on the Unemployment Insurance Act (*WW*), an employee who becomes or stays unemployed voluntarily or through their own fault, cannot claim a benefit. The term 'stays unemployed' means that the unemployed worker does not accept any suitable work offered or does not seek work of his own accord.

In accordance with the Unemployment Insurance Act, the unemployed worker is obliged to make efforts to be able to retain suitable employment. In addition, within the framework of the Unemployment Insurance Act, the employee is obliged to prevent becoming unemployed or staying unemployed, because, in relation to the work to be undertaken by him, he sets demands that obstruct accepting or getting suitable employment. The obligations concerning suitable employment are mainly pursuant to Section 24 of the Unemployment Insurance Act.

In the period prior to six months having lapsed in which a right to unemployment benefit exists pursuant to the Unemployment Insurance Act, suitable employment is understood to mean employment corresponding to the employment from which the worker has become unemployed. In this respect, mainly the nature and level of employment, the level of income and the travelling time are considered. After this period of six months, all employment is suitable when considering the strengths and capabilities of the employee, unless this cannot be expected of him for reasons of a physical, mental or social nature. All such matters are included in the Suitable Employment Decree for *WW* and *ZW* (Sickness Benefits Act).

On violation of the obligations relating to suitable employment, on grounds of the *WW*, the Employee Insurance Agency may recurrently deduct an amount from a benefit, or temporarily or permanently refuse a benefit, in whole or in part, depending on the type of obligation that is being violated.

*f) The Committee asks that the next report include updated information on this issue.
(protection personal data)*

The Personal Data Protection Act (*Wet bescherming persoonsgegevens*) has not applied since 25 May 2018. On that date, the General Data Protection Regulation (GDPR) entered into force. This has entailed several important changes to protect the privacy of employees in relation to previous privacy legislation. For example, the Dutch Data Protection Authority (hereafter referred to as: AP) has been given more authority to supervise compliance with privacy legislation. In addition, the AP plays an important role in respect of public information. A great deal of importance is attached to the AP's instructions. In addition, employers must maintain a processing register within the meaning of Article 30 of the GDPR. Finally, an important effect has been for greater awareness in respect of privacy legislation.

The general framework already existed before 2018. This was apparent from a study of temporary employment agencies carried out by the AP in 2015 and 2016. It showed that violations of the Personal Data Protection Act were observed, but these ceased due to measures taken by temporary employment agencies as instructed by the AP.

However, more attention has been given to privacy since 2018. Employees make greater use of their rights under the GDPR and they use the GDPR as an instrument in employment conflicts, as evidenced by two recent rulings (ECLI:NL:RBAMS:2018:7398 and ECLI:NL:RBAMS:2019:2166). In both cases, the issue was that the employer had secretly had employees investigated by an investigation agency. The employees discovered this and argued that there was a violation of their right to privacy. This was not accepted by the court, but it shows that privacy is more relevant and that employees are aware of their rights. Moreover, despite these two recent rulings, it has been observed that any violations by employers are often resolved immediately after being identified by the AP and that there are few court cases of privacy violations by employers.

Question of the European Committee of Social Rights with respect to article 1§3
about the previous report of the Netherlands (2010)

a) The Committee asks the next report to provide information on how they operate and coordinate their work with the public employment services.

The Netherlands has ratified ILO Convention No 181 which promotes cooperation between private and public employment services.

The public employment service (PES) and private employment agencies have a longstanding intensive cooperation in assisting jobseekers. For instance the PES has signed a joint venture agreement with a federation of private employment agencies in which they committed themselves to joint activities focused on leading more jobseekers to work. They also agreed to promote the influx in work/training jobs for specific groups of jobseekers, such as young persons with disabilities, older unemployed persons (over 55 years of age) and people who are unemployed for more than three months.

In many aspects, their activities can be complementary in the framework of active labour market policies.

The Netherlands was one of the first countries to introduce market competition for employment services in order (amongst others) to overcome the limited capacity of public providers and extend the supply of employment services. The private employment services are allowed to compete freely with each other. The public employment service acts as a so-called regulator.

Article 9 - The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

Information to be submitted

Article 9

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please supply any relevant statistics or other information on public spending on vocational guidance services, their geographical distribution and the institutions that provide them, their staffing levels and the qualifications of those staff, and the number of persons served and their characteristics, in terms of age, sex, educational level and occupation.*

With reference to letter ESC 52/2019 (The Netherlands) of 27 May 2019, no information is requested.

Question of the European Committee of Social Rights with respect to article 9

about the previous report of the Netherlands (2010)

- a) The Committee asks the next report to contain information on the budget allocated to vocational guidance or at least an approximate estimation of it.

The system of adult education has changed considerably since 2009/2010. In addition, there have been expenditure cuts. Since 2015, municipalities are no longer bound to a compulsory purchase of education programmes at Regional Training Centres (*ROC*). Municipalities have received a total of approximately €58.9 million per year in the last few years for adult education (= offering basic skills). They can only spend this benefit on basic skills programmes and courses (specific benefit).

In addition to the budget for adult education, funds are available through '*Tel mee met Taal*' [Be included with language] (an action programme for basic skills) and funds are allocated to *MBO* (VET) colleges for vocational training for young people as well as adults.

However, the Ministry of Education has reserved no specific budget for career advice or counselling for adults.

Article 10 - Everyone has the right to appropriate facilities for vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. to provide or promote, as necessary:
 - a. adequate and readily available training facilities for adult workers;
 - b. special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;
5. to encourage the full utilisation of the facilities provided by appropriate measures such as:
 - a. reducing or abolishing any fees or charges;
 - b. granting financial assistance in appropriate cases;
 - c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
 - d. ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Information to be submitted

Article 10§1

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: the total amount of public expenditure devoted to vocational training; the number of vocational and technical training institutions and types of education and training provided; number of teachers and pupils.*

The qualification structure of Dutch vocational training is undergoing extensive remodelling towards competency-based learning, in order to meet society's needs for modern and flexible employees. The occupations for which vocational courses are offered, plus the competences needed to practise those occupations. Qualifications must be broad and robust, and should indicate what qualities and attitudes are needed in the workplace.

Among the Dutch educational sectors, the VET sector maintains the closest relations with the labour market. VET colleges have frequent contacts with companies and organisations where students work

or obtain their work experience. Regional trade and industry maintain solid relationships with the VET colleges about the quality and content of the courses on offer.

These contacts between VET colleges and companies are extremely important in ensuring a close match between the education that colleges offer and the skills that companies need. On the national level, the needs of trade and industry are brought in line with the education and training programmes through the 'Foundation of Vocational Education and Labour Market' (SBB), where employers and education are equally represented. Together they advise the Minister of Education about the core subjects of the VET system, such as the qualification structure, the examinations and the requirements of internships.

Technology continues to dominate much of our daily lives. To be able to compete worldwide, the Netherlands needs more highly skilled technicians. We need to use the talents we have available, especially the talents of women. The current low participation of women in STEM fields is a problem for most European countries.

In the Erasmus+ KA2 project GirlsTech this theme is addressed. Eight countries share their knowledge to improve their own policies. The project is not about developing a new universal tool, but to focus on peer learning activities, to find out which approaches might be suitable for the participating countries. The project lasted from 1 September 2016 until 31 August 2018.

Article 10§2

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: the existence of apprenticeship and other training arrangements for young people; the number of young persons benefiting from training systems; how the arrangements for vocational training are divided between the various types of vocational activity; length of the apprenticeship; the total public spending (and private spending, if possible) on these types of training and the availability of places for all those seeking them; equality of access to apprenticeship training for all those interested, including national of the other States party.*

With reference to letter ESC 52/2019 (The Netherlands) of 27 May 2019, no information is requested.

Article 10§3

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: the existence of facilities for training and retraining of adult workers, in particular the arrangements for retraining redundant workers and workers affected by economic and*

technological change; the approximate number of adult workers who have participated in training or retraining measures; the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures; equal treatment of non-nationals with respect to access to continuing vocational training.

See the information provided under article 9 ESC, more specifically the answer to the question of ESCR.

Article 10§4

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: types of training and retraining measures available; the number of persons in this type of training and the impact of the measures on reducing long-term unemployment; equal treatment of non-nationals with respect to access to training and retraining for long-term unemployed persons.

In the Netherlands, the long term unemployment rate refers to the share of unemployed persons since 12 months or more in the total number of active persons in the labour market. The long term unemployment rate reached in the Netherlands an all-time high in the first quarter of 2015. Contrary to a few years ago, long term unemployment is now in a similar downward trend as short-term unemployment.

Support provided to the long term unemployed in the Netherlands concluded: training vouchers for long term unemployed aged over 55; intensified placement counselling and assistance for persons entering long term unemployment and career guiding and network training on labour market issues, as well as wage cost subsidies.

In 2014, about 1 billion euros was spent on overall reintegration policy in the Netherlands. Little is known, however, about the effectiveness of this total package. Dutch studies find small positive effects on the change of finding employment. Nevertheless, the costs often outweigh against the benefits, because part of the expenditure seems not to be effective.

Short Term Unemployment, Source: CBS National Statline

	Short term unemployment X 1000	Long term unemployment X 1000
2016 1 quarter	347	232
2016 2 quarter	300	235
2016 3 quarter	276	205
2016 4 quarter	270	194
2017 1 quarter	297	182
2017 2 quarter	265	172
2017 3 quarter	230	153
2017 4 quarter	230	138
2018 1 quarter	246	136
2018 2 quarter	199	128
2018 3 quarter	211	110

2018 4 quarter	211	94
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Article 10§5

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: whether the vocation training is provided free of charge or that fees are reduced; existing system for providing financial assistance (allowances, grants, loans, etc.); measures taken to include time spent on training taken by workers in the normal working hours; supervision and evaluation measures taken in consultation with social partners to ensure the efficiency of apprenticeship for young workers.

With reference to letter ESC 52/2019 (The Netherlands) of 27 May 2019, no information is requested.

Question of the European Committee of Social Rights with respect to article 10§5 about the previous report of the Netherlands (2010)

- a) *The Committee asks for clarification on the conditions to receive financial assistance for each of the groups: Dutch nationals, EU nationals and non-EU nationals.*

If a student is enrolled in university or in higher or secondary vocational education, the student can apply for student finance. The study has to last at least one year and must be fully recognized in the Netherlands.

The eligibility depends on the nationality, residence status and age. The student has to be younger than 30 years. For secondary vocational education students there is a minimum age of 18 years (except for the student travel product). There is no minimum age for higher education students. Student finance comprises 4 components: a regular loan, a student travel product, a supplementary grant and a tuition fee loan.

Nationals of the Netherlands and EU/ EEA and Swiss nationals qualify for student finance.

With respect to all other nationals, student finance is only available to students with a residence permit type II, III or IV.

(type II: issued after 5 years residency / type III: issued on asylum grounds- temporary / type IV: issued on asylum grounds- permanent).

Per academic year 2017/2018 it is possible to qualify for *levenlanglerenkrediet* ('life long learning loan'). Students enrolled in a fulltime study in secondary vocational education, or a fulltime or parttime study in higher education, can qualify for this form of student support when they are no longer eligible for regular student support. To qualify for *levenlanglerenkrediet* a student has to be 30 years or older, except when the student is enrolled in a higher education part-time study or when the student has already obtained a higher education diploma.

Article 15 - The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Information to be submitted

Article 15§1

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information to demonstrate effective access to education and vocational training for persons with disabilities (total number of persons with disabilities, number of persons with disabilities of 0-18 years of age, number of persons with disabilities in mainstreaming and special education and vocational training, including higher education; number of integrated classes and special education institutions, basic and in-service training for teachers).*

Services and Facilities

Access to health services (the supply and funding) for people with disabilities is facilitated by Dutch social medical expenses insurances; the Long-term care Act (*Wet langdurige zorg, Wlz*); and Healthcare Insurance Act (*Zorgverzekeringswet, Zvw*) and provisions under the responsibility of the municipality; Public Health Act (*Wet publieke gezondheid, Wpg*) and the Social Support Act (*Wet maatschappelijke ondersteuning, Wmo*) 2015. No differentiation may be made for claims and benefits of people with a disability.

In 2015, several laws in the Netherlands that are geared towards care and support for people at home and in care institutions, were reviewed ('reform of long-term care'). It concerns laws that play a crucial role in the social domain. It relates to the Social Support Act (*Wet maatschappelijke*

ondersteuning, Wmo), the Youth Act (*Jeugdwet*), the Health Insurance Act (*Zorgverkeringswet*) and the Participation Act (*Participatiewet*).

The *Wmo* dated 2007 was comprehensively reviewed in 2015. Based on the *Wmo* 2015, municipalities are responsible for social support. This is also understood to include supporting the self-reliance and participation of people with disabilities, chronic psychological or psychosocial problems, as much as possible in their own environment. The definition also includes the support of people who, whether or not in connection with risks to their safety as a result of domestic violence, have left their home, and who are in need of protective housing and refuge. Municipalities have also been given the task of encouraging accessibility to facilities, services and areas for people with disabilities and thus contribute to the realisation of an inclusive society.

Basic education

In the Netherlands, every child has the right to education and development. All children have access to primary and secondary education (free of charge). Moreover, help is available for all children who need additional support. Those could be children who also have an impairment. The right to education in the Netherlands is protected by the Compulsory Education Act (*Leerplichtwet*) 1969. By tradition, the Netherlands has an education system which comprises both mainstream and special schools. This means that for children with specific impairments (such as children with severe multiple impairments), the possibility exists to provide education at a specialised facility for special education or special secondary education. In special secondary education, pupils can make a choice out of three specializations: diploma-oriented, employment market or daytime activities.

On 1 August 2014, the 'inclusive education' system was introduced in the Netherlands. In so doing, it was determined by law (in the Appropriate Education Act (*Wet op het passend onderwijs*)) that schools have a duty of care: for each child that requires additional support, an education must be offered that is as appropriate as possible.

The Netherlands has an inclusive education system. Almost all children and young people go to school. The Primary Education Act (*Wet op het primair onderwijs, WPO*), the Expertise Centres Act (*Wet op de expertisecentra, WEC*) and the Secondary Education Act (*Wet op het voortgezet onderwijs, WVO*) provide for education being organised in such a way that pupils are able to undergo a continuous development process, and that education is adapted to the progress in the pupil's development. The *WPO* and *WVO* also provide for pupils who are ill at home or in the hospital to be able to enjoy an education in an adequate manner (Section 6b *WVO*, Section 8 paragraph 10 *WPO*). Both the *WPO* and *WVO* provide for education to pupils with needs for additional support (for example, in Section 18a *WPO* and Article 10e Learning support (*leerwegondersteunend onderwijs, LWO*) and Section 17a *WVO*). Pupils who are not in a position to follow mainstream education with additional support may undertake special secondary education if they themselves or their parents choose to do so. That is provided for in the Expertise Centres Act (*Wet op de expertisecentra, WEC*) which ties in as much as possible with the regulations for mainstream education. In 2014, both the Appropriate Education Act (*Wet op het passend onderwijs*) and Higher Education (Quality in Diversity) Act (*Wet kwaliteit (v)so*) were introduced with the aim that children and young people, regardless of where the education is given, have the right to an education of good quality.

Decentralisation of care services, youth services and work

Policy has been decentralised by means of the Social Support Act (*Wet maatschappelijke ondersteuning, Wmo*), the Youth Act (*Jeugdwet*), the Health Insurance Act (*Zorgverkeringswet*) and the Participation Act (*Participatiewet*). In this context, there is a great deal of policy freedom for municipalities to decide on the right to and type of support. To provide support to its inhabitants,

the municipality must initiate 'general provisions' such as community work, meal services, handyman services, etc. In addition to these general provisions, people can notify the municipality if they need any form of support; this type of notification has no prescribed form and is easily accessible. The law stipulates that after being notified, the municipality must carefully scrutinise the needs, characteristics and individual circumstances of the person. Behind the scenes, this scrutiny is sometimes referred to as 'kitchen table discussions' to emphasise equality between the municipality and client. The municipality must also look at other areas important to life, such as healthcare, education and conviction. This could lead to a decision to approve a 'tailored provision'. Examples of this are: domestic help, an adaptation of the home, a mobility scooter, a wheelchair or individual coaching in daily living activities.

The term tailored provision already implies: the provision must be appropriate for the individual, and according to the law, it must contribute to the realisation of a situation in which the client is able to be self-reliant, to participate and to be in their own living environment for as long as possible. The provision may also take account of the need for protective housing or refuge.

The municipality can also look at the 'own strength' aspect: whether the person can reduce or eliminate the difficulties being encountered, either on their own, by engaging the usual help, informal care or with other people in the social network, or with general provisions. People who are in need, can rely on free and independent client support. The aim is to assist the client with information and advice on the application process and getting suitable relief.

The law guarantees the right to make own choices in the needed support. Under certain conditions, one can buy the necessary care on one's own with a so-called 'personal budget'. It allows people with disabilities to have more personal control over their life and to be able to seek healthcare providers for support in the desired manner and at the time that it's needed. This right is subject to certain conditions: a person must actually be able to handle matters personally, such as making work arrangements with the social and care workers and be able to keep records. The budget is not deposited directly into the client's account, but it is paid to the caregiver by the administration agency under supervision of the central government.

Elaboration of inclusive education system

On introduction of the inclusive education system, better conditions were created structurally to address the problem more effectively of children who stay at home, and temporarily or no longer go to school. The school board where parents have enrolled their child has a duty of care: the school has the responsibility to guarantee a most appropriate programme for the pupil, if possible at a mainstream school. The school does this in mutual consultation with parents, municipalities, child and youth services and other partners. It is not permitted to refuse a pupil without an appropriate programme being available. The principle of inclusive education is: mainstream where it is possible, special where it is needed. A child should be able to get an education which brings out the best of his or her talents. Special facilities and schools are available for pupils who need a highly specialised education and care programme.

In the past few years, work has been undertaken (through inclusive education partnerships) to realise a coherent set of educational facilities for all pupils in the region. In the period 2015-2017, measures were also taken to further improve the possibilities for customisation. For example, a pupil who is enrolled at a special school, can follow part of the programme at a mainstream school (symbiosis) and the government encourages making more use of expertise from special education at mainstream schools. There is also better support for pupils, schools and parents. If it is very difficult to place a school-aged pupil as a result of an impairment, chronic physical or mental illness or disorder, then parents and pupils can engage the services of an educational care consultant. Additionally, since 1 August 2018, a change in the law entered into force enabling mainstream

schools to deviate temporarily in the number of teaching hours if this is in the interests of a pupil's tailored programme. Previously, this was only possible in special secondary education.

An easily accessible and gratuitous national dispute committee has also been established, where parents can present their differences of opinion about admissions to, removals from or the content of the educational support.

To be able to bring about a tailored programme in specific cases, since 2016-2018 an intervention team has worked on a national government level with involvement from organisations that can support parents and schools locally, such as education care consultants and behavioural work. This intervention team has played an important role in various cases to get pupils from home back to school again to learn with an appropriate programme.

The Primary Education Council (sector organisation for primary education) receives a subsidy to support developments on a local level. On request from the educational field, prerequisites for an experiment were worked out in which schools offering special education and mainstream education temporarily cooperated fully in an integrated facility. The enrolment period for the first stage of this experiment ended on 1 May 2018. At the request of the Ministry of Education, Culture and Science (*Onderwijs, Cultuur en Wetenschap, OC&W*), the Netherlands Centre for Education Law (consisting of education law professors) published a report on 1 December 2016 about study entitlements, which explored the relationship between appropriate education and inclusive education. They found that the Dutch system currently does not contravene the Convention, but that a profound social and political discussion is desired to examine where further development is possible.

Special education and care facilities are available for pupils with a visual and auditory impairment. These institutions cluster 1 (visual) and cluster 2 (auditory), offer pupils additional support, such as help in learning Braille, sign language and/or self-reliance. This is possible in both mainstream and special education. Hence, study materials are converted into accessible forms for reading and pupils can also make use of facilities such as Braille displays and sign language interpreters.

Senior secondary vocational education (MBO)

Senior secondary vocational education has no separate special institutions for young people with disabilities. Young people with disabilities have the right to be admitted to vocational education if they have proper prior education. The right to be admitted was introduced in 2017, which means that all young people who enrolled before 1 April at an *MBO* institution, have the right to be admitted to the training programme of their choice. This also applies to young people with disabilities who have attained their special secondary education diploma (*voortgezet speciaal onderwijs, VSO*).

The lump sum received by institutions contains a proportional budget for providing inclusive education. This means that they should, based on the Equal Treatment of Disabled and Chronically Ill People Act (*Wet gelijke behandeling op grond van handicap of chronische ziekte, WGBH/CZ*), offer an inclusive education programme including appropriate support for anyone who needs additional support to follow and to accomplish *MBO* education.

Institutions put this into effect in different ways. By far the most pupils are admitted into mainstream *MBO* education. Institutions offer support inside and outside the classroom performed by specialists, and, after being equipped for that purpose, more and more by the teaching staff themselves.

In 2018/19, 2.7% of the *MBO* students receive additional support, as at reference date 1 October (13,810 students)¹.

Source: Education Executive Agency (DUO). In previous years this was as follows:

	additional support needs	
	volume	% of total number of <i>MBO</i> students
2018/19	13,810	2.7%
2017/18	12,335	2.5%
2016/17	9,107	1.8%
2015/16	12,588	2.6%
2014/15	9,867	2.0%

The professionalism of teaching staff on a pedagogical and didactic level spearheads this phase. Teaching staff must be aware of differences between students and be able to act accordingly. The main components of the technical repertoire are differentiation in the manner of offering education, in the treatment of students, in offering suitable apprenticeships, and taking care of adapted examinations for generic as well as profession-oriented aspects.

Young people in a vulnerable position are encouraged on all *MBO* levels to take full advantage of their own potential. Transitions from one type of education to another are potential risk moments that are given special attention. Cooperation between various education sectors and institutions is important, to keep the risk of failure for pupils as low as possible.

In case of disputes relating to admission or support, students and their parents can make use of the institution's complaints procedure, or they can turn to the Netherlands Institute for Human Rights for mediation and advice. Should the need arise, students and parents can address the court, without intervention.

Higher Education

The Netherlands has about 700,000 students in higher education. One-third of them state having a functional disability (ranging from a chronic disease to dyslexia). Of those, one-third states that this disability hinders them in their study. 70% of the students with a functional disability state that they are satisfied with the provisions that they have been offered². The Higher Education and Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek, WHW*) stipulates that on accreditation of funded and non-funded programmes in higher education, aspects are considered that include study coaching and facilities that improve accessibility and educational feasibility for students with functional disabilities. The Expertise Centre for Inclusive Education has developed a policy scan to be able to analyse the effects of policy on studying with a disability.

In addition, the government has incorporated diverse measures in the *WHW*, enabling students with functional disabilities entitlement to financial and other support, including financial support from institutions and a partial waiver of any study loan.

Accessibility to education materials

In the Netherlands, diverse measures have been taken to ensure that education is offered in suitable languages, methods, means of communication and learning environments for pupils or students. For pupils and students with an audio-visual and visual impairment, the government subsidises the conversion of existing learning resources to an accessible format. At the request of pupils, students and workers or job seekers with a visual impairment, the foundation Dedicon converts existing

¹ Formally: the additional support resulting from the disability. This is examined at the intake interview.

² Source: Student Monitor

schooling and study materials into diverse alternative reading formats for these learners to use, such as: tactile drawings, Daisy audiobooks, Braille ready files (electronic Braille files), photo PDF files, Braille music and music audio.

Furthermore, within the context of the programme 'Learning smarter with ICT', attention is paid to accessibility.

A number of schools/administrations work together using technology to solve various bottlenecks. Themes being worked on are, for example, accessibility to electronic learning resources for the blind and partially sighted, and the development of more and better digital educational materials for children with serious and multiple disabilities.

Other support

Pupils with disabilities who need support when travelling to an educational institution can make use of school bus services. Since 1920, education legislation has already been arranged in such a way that municipalities are responsible for implementation of school bus services. Since 1987, within the regulations contained in education legislation, municipalities have more policy freedom for implementation of the school bus services, among other things, by striking a balance between private transport and public transport, either with or without supervision and modified transportation.

Based on the Equal Treatment of Disabled and Chronically Ill People Act (*Wet gelijke behandeling op grond van handicap of chronische ziekte, WGBH/CZ*), pupils and students in primary education, secondary vocational education and higher education are eligible for individualised adaptations and support insofar as it does not lead to a disproportionate burden on the educational institution.

Article 15§2

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information on the number of persons with disabilities in working age, in ordinary employment and in sheltered employment (estimated, if necessary). Please, also indicate whether the basic provisions of labour law applies to persons working in sheltered employment where production is the main activity.

Participation Act

The Participation Act (*Participatiewet*) entered into force as of 1 January 2015. Since then, people who could not independently earn the statutory minimum wage because of an impairment can no longer be admitted in the Sheltered Employment Act (*Wet sociale werkvoorziening, WSW*) and the Disablement Assistance Act for Handicapped Young Persons (*Wet werk en arbeidsondersteuning jonggehandicapten, Wajong*). Instead, they can rely on the Participation Act for support to work and, if necessary, for an income scheme. Municipalities are responsible for implementing the Participation Act.

The aim of this act is to get as many people as possible, either with or without an occupational impairment, to find work. Moreover that more people find work at a regular employer. This applies to people both with and without impairments. Based on customisation, municipalities determine who is eligible for what kind of support. Based on the Participation Act, municipalities have tasks in the field of: integration into the workforce, income support, wage cost subsidy and sheltered employment.

On the basis of research and bottlenecks pointed out by employers and employees, several improvements have subsequently been made in the Participation Act. The most important of these was in 2015: an adaptation in the wage cost subsidy calculation, allowing more young people to be eligible and the opportunity for people to apply for sheltered employment on their own accord.

The execution of the Participation Act is monitored and evaluated. The final evaluation is expected at the end of 2019. In 2015 and 2017 experience surveys were carried out among employers, employees and municipalities. Together with information from other surveys and discussions with all interested organisations (employers, job seekers and employees, municipalities, UWV, and the government, both nationally and in the employment market regions), bottlenecks and points for improvement in the execution of the Participation Act have been identified. Every year the Dutch State Secretary for Social Affairs and Employment informs the House of Representatives on progress of the employment targets and execution of the Participation Act.

Wajong

In the context of implementing the Participation Act, since 1 January 2015 admissions were discontinued in the *Wajong* of young disabled persons who do have an ability to work. Only young persons who have no sustainable ability to work qualify for the *Wajong* when they leave the education system after their 18th birthday. Young persons with an ability to work are now the responsibility of municipalities (refer to Participation Act).

As a result of the *Wajong* policy review, the government decided in 2018 to change the *Wajong* on number of points. Legislation is being prepared for this. This legislative proposal aims to take away barriers to work and to harmonise income schemes within the *Wajong*. The object is to make working more hours worthwhile. In addition, it is proposed to cancel the following of a training course as a prerequisite for *Wajong2015*. This will prevent young disabled persons who are eligible for *Wajong2015* to discontinue their training course prematurely.

WSW

The new intake of referrals pursuant to the Sheltered Employment Act (*Wet Sociale Werkvoorziening, WSW*) was ceased as at 1 January 2015. With effect from 1 January 2015 people who are distanced from the labour market as a result of an impairment, fall under the Participation Act. For the time being, the *WSW* continues to exist for all those people who fell under the scope of the *WSW* as at 31 December 2014. It is estimated that this law will continue to exist until about 2048 when the last people are expected to leave. The purpose of this measure is to get as many people as possible to work for regular employers.

Below, it is described that since 1 January 2015, people could be eligible for new sheltered employment within the scope of the Participation Act.

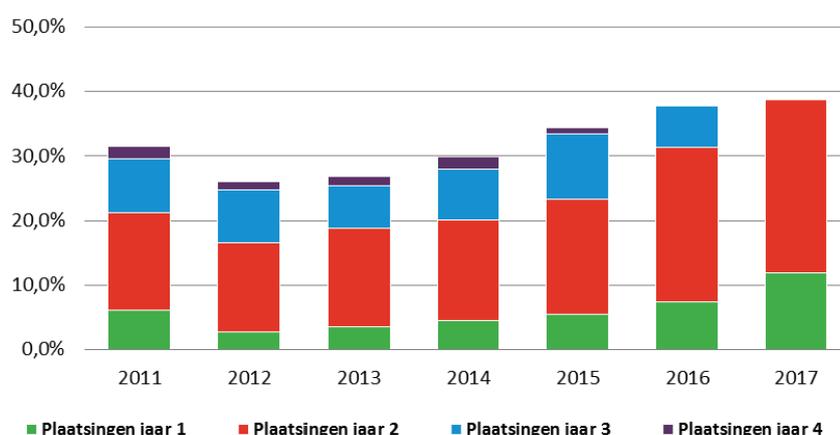
Sheltered employment

People may work in sheltered employment if they have been given a referral to that effect by the UWV. They are referred if they have a possibility to work only in sheltered employment. Initially, only municipalities could recommend citizens for sheltered employment. Since a change in the law of 2017, citizens may also apply for a referral on their own accord. The same change in the law stipulates that municipalities are obliged to offer a sheltered workplace to citizens with a referral, insofar as the estimated and funded number of sheltered workplaces has not been realised as yet. Due to these changes, the numbers of sheltered workers has increased significantly.

Municipalities handle the instrument sheltered employment within the statutory frameworks in their own way. That is why the processes and the results differ per municipality. Municipalities are assisted with national information (in writing and by means of meetings) and by national programmes in which municipalities consult with and learn from each other.

The number of persons that work in sheltered employment has grown steadily since the start in 2015, to approximately 2,500 at the end of 2018. These people typically have a (temporary or fixed) contract under civil law with at least the minimum wage; in some cases they have a contract in accordance with public service law. Sheltered workers work in a wide variety of jobs: production line work, cleaning, greenery, and in all kinds of small companies.

The figure below shows the placement percentage of reintegration programmes procured by the UWV for people with occupational disability benefits (Wajong, WIA/WAO/WAZ) geared towards employment. This percentage shows how many started the reintegration programmes in a given calendar year that has led to placement in paid employment after completion of the reintegration programme. As a reintegration programme often lasts several years, the effects are only visible in the long term. The percentage will still rise, especially for the programmes initiated in 2016, because many of these programmes have not yet been completed.



Source: UWV - Eight-Month Report 2018

Not all reintegration programmes procured by the UWV are directly aimed at getting people into employment. The UWV also aims to get people skilled for work (bringing them closer to the employment market), and into training programmes. The following table shows that the success rate of programmes completed in 2017 aimed at getting people skilled for work is reasonably high (at 75%). The share in 2017 of ended training programmes that have been successfully completed is 81%.

	Volume	% share
Programmes with placement as a direct goal	13,163	100%
- completed with a job	4,906	27%
- completed without a job	8,257	63%
Programmes to bring closer to employment market as a direct goal	9,796	100%
- successful	7,346	75%
- not successful	2,450	25%
Completed training programmes	3,731	100%
- successful	3,023	81%
- not successful	708	19%

The UWV's annual labour market participation monitor gives an insight into the size and composition of the database of people with occupational disability benefits, their work capacity and the extent to which they make use of employment provisions.

Table

Scheme	Number of benefit claimants*	With work capacity*	Of whom in employment*
WIA			
- IVA	98,100	-	-
- WGA 80/100	123,100	123,100	10,300
- WGA 35/80	55,700	55,700	25,000
WAO	272,600	Not known	48,300
Wajong			
- oWajong & Wajong2010	239,600	115,200	59,200
- Wajong2015	6,200	-	-

* At the end of 2017

Source: UWV, labour market participation monitor 2018,

The table below shows the labour market participation of disabled people (occupationally disabled) in volumes and percentages. About 14% of the Dutch population aged 15-64 years noted in a survey that they feel hampered by a chronic illness or disorder. 38.4% of these people work. This percentage also includes people who are fully and permanently incapacitated for work. If we exclude the people who indicate that they are not willing or able to work because of illness or an occupational disability, the net labour market participation of disabled persons aged 15-64 (with an ability to work) comes to 66%. In comparison, the same indicators are shown for the population as a whole.

Labour market participation of population aged 15-64 by occupational disability and ability to work, 2017^a

	Total			of which: with ability to work ^b		
	Total	Employed	Ditto, in % of total	Total	Employed	Ditto, in % of total
	<i>x 1000 persons/benefits</i>			<i>x 1000 persons/benefits</i>		
Population aged 15-64	11,044	8,367	75.8%	10,342	8,376	81.0%
- occupationally disabled	1,554	597	38.4%	900	597	66.3%

a. (Occupationally disabled) population in terms of annual averages

b. 'With ability to work' has been defined for the (occupationally disabled) population as 'excluding persons with disabilities who indicated in the labour force survey (*EBB*) that they are not willing or are unable to work because of illness or an occupational disability'.

Source: SZW (Ministry of Social Affairs and Employment) based on research by Statistics Netherlands - Participation potential 2017 of the (occupationally disabled) population

By far the largest number of occupationally disabled working people, work for a regular employer under normal circumstances. Policy mainly focuses on people with such an impairment that they are not in a position to independently earn at least the statutory minimum wage. With provisions such as additional counselling by a job coach, (funding of) additional adaptations to the working conditions or technical aids and wage cost subsidy for the employer, these people can start working at a regular employer. At the end of 2018, nearly 113,000 people worked with the support of one or several of such provisions in a regular working environment.

In addition, at the end of 2018, 49,279 people worked in a sheltered working environment.

In the period 2015 – 2018, the total number of people with an occupational impairment that could participate in the labour market with additional support increased from 135,814 at the end of 2015 to 162,042 at the end of 2018. That is an increase of 19%.

Indicator	Indicator Value	Relative time	Reference value	Trend	Source
Number of working people subject to employment targets, WSW or newly sheltered		(End of) 2017		Increase (135,814 in 2015)	UWV, Employment Targets fact sheet, Panteia, WSW statistics, Statistics Netherlands, Statistics Registration of Municipalities
- people employed subject to employment targets	98,824			(66,328 in 2012)	
<i>Jobs subject to Occupation Disability Employment Targets Act *)</i>	112,147		200,179	(75,179 in 2012)	
- people employed in WSW sheltered employment **)	49,078			(55,709 in 2015)	
- people employed in New sheltered Participation Act ***)	1,184			(0 in 2015)	

*) The aim of the Occupation Disability Employment Targets Act is expressed in terms of jobs: in 2026, 125,000 additional jobs for the occupationally impaired compared to 2012. This results in a reference value for 2026 of 200,179 jobs. One job is equal to 110.92 wage hours per month. This causes the number of people to differ from the number of jobs.

***) The WSW was discontinued in 2015 for new admissions. The number of people within this provision will decrease further in forthcoming years.

***) Since 2015, new sheltered employment is provided for by the Participation Act.

In the preceding report, the Committee requested that information be given in this report about the impact of the Work and Income (Capacity for Work) Act (*WIA*) in practice, particularly data on the reintegration of persons with disabilities in the labour market subject to the *WIA/Wajong/Participation Act*.

Since 2015, there has been a 10% increase in the number of working people with an occupational impairment in the policy's target group (see above). Support with reintegration provisions (based on the various regulations - prior to and during work) contribute to this.

Research (SEO, 2019) has shown that the chance of employment for young disabled persons has increased since introduction of the Participation Act.

“More young 18-year-old disabled people who are subject to the Participation Act work, than young 18-year-old disabled people who are subject to the *Wajong*. This has been adjusted for the economic cycle. In the first year after admission, 28% of the first group work and in the second group, 22% of the cases work. In the second year after admission, the difference between the two groups increases slightly, 35% as opposed to 26%. Growth in jobs for young disabled persons subject to the Participation Act, is particularly geared towards part-time jobs and temporary contracts. This corresponds with the findings of municipalities that permanent contracts are rare.” In addition, since the introduction of the Participation Act, among young disabled persons there has been a drop in the number of contacts with judicial authorities and reliance on benefits.

The above answer provides an insight into the impact of deploying reintegration for people with occupational disability benefits (*Wajong, WIA/WAO/WAZ*). This information is not available broken down per regulation.

The following tables, broken down into *Wajong* and *WIA/WAO/WAZ/ZW* provide an insight into the expenditure on reintegration for the years 2015 to 2018 (including available resources 2019) and the numbers of deployed reintegration programmes and provisions. These numbers may not be offset against expenditures, because the expenses of various programmes and provisions take place at a later stage.

Table: Expenditure on provisions and procurement of reintegration programmes and training

	2015	2016	2017	2018	2019
	<i>x million euro</i>				
Budget sect.3 (WIA/WAO/WAZ/ZW)					
- provisions	26	23	24	24	29
- reintegration programmes & training	48	38	40	53	64
Budget sect.4 (Wajong)					
- provisions	52	58	55	52	63
- reintegration programmes & training	48	35	33	33	41
Total					
- provisions	78	81	80	76	92
- reintegration programmes & training	96	73	72	85	106

Source: UWV fund statements

Table: Number of initiated reintegration services (including training and IPS, 2015-2018)

	2015	2016	2017	2018
WAO/WAZ	490	397	414	440
Sickness Benefits Act	11,497	7,777	7,703	8,777
WIA	4,553	4,266	6,962	9,155
Wajong	10,196	10,022	11,694	10,202
Total	26,736	22,462	26,773	28,574

Source: UWV Annual Report

Table: Volume of procured provisions WIA/WAO/WAZ/ZW and Wajong, 2015-2018

	WIA/WAO/WAZ/ZW				Wajong			
	2015	2016	2017	2018	2015	2016	2017	2018
Job coach	1,241	1,006	1,121	1,294	23,295	26,301	24,673	22,050
Intermediary	1,710	2,602	3,497	4,149	321	491	592	1,435
Transferable	4,217	4,553	4,649	4,608	552	489	557	569
Transportation	2,182	2,378	1,860	1,903	989	1,164	1,080	1,283
Other	178	203	198	165	50	55	66	42
Total procurement	9,528	10,742	11,325	12,119	25,207	28,500	26,968	25,379
Test placement	1,255	1,209	1,197	1,295	7,557	7,686	6,444	5,246
Wage dispensation					13,457	13,984	13,588	12,094

Source: UWV Quantitative information

In the preceding report, the Committee requested an update of figures for the reporting period

relating to the number of persons with disabilities who work and who are unemployed, and whether they have a specific occupational disability benefit or not.

Table 1.2.2: Labour market participation of population aged 15-64 by occupational disability and ability to work, 2017^a

	Total			of which: with ability to work ^b		
	Total	Employed	Ditto, in % of total	Total	Employed	Ditto, in % of total
	x 1000 persons/benefits			x 1000 persons/benefits		
Population aged 15-64	11,044	8,376	75.8%	10,342	8,376	81.0%
- occupationally disabled	1,554	597	38.4%	900	597	66.3%
Total aged 15-64 benefit scheme	993	257	25.9%	434	232	53.6%
- WAO/WAZ	285	50	17.7%	77	39	51.0%
- Wajong	246	59	24.1%	115	56	48.9%
- IVA	98	0	0.0%	0	0	0.0%
- WGA	179	35	19.7%	56	25	44.9%
- WIA under 35	77	36	46.4%	77	36	46.4%
- Participation Act in target group register	54	21	39.7%	54	21	39.7%
- WSW without AO benefit	55	55	100.0%	55	55	100.0%

a. (Occupationally disabled) population relates to annual averages; (benefit)scheme relates to figures at year end.

b. 'With ability to work' has been defined for the (occupationally disabled) population as 'excluding persons with disabilities who indicated in the labour force survey (EBB) that they are not willing or are unable to work because of illness or an occupational disability'. For persons in a (benefit)scheme the ability to work is measured by the UWV, which relates to 'partially occupationally disabled people' for the WAO/WAZ and WGA.

Source: SZW (Ministry of Social Affairs and Employment), based on research by Statistics Netherlands - Participation Potential 2017 - of the (occupationally disabled) population; UWV labour market participation monitor (benefit scheme), Fact sheet job arrangement (Participation Act in target group register); Panteia *Annual Report WSW statistics*

The formal unemployment rate of occupationally impaired persons between 2015 and 2017 decreased from 13.3% to 9.8%:

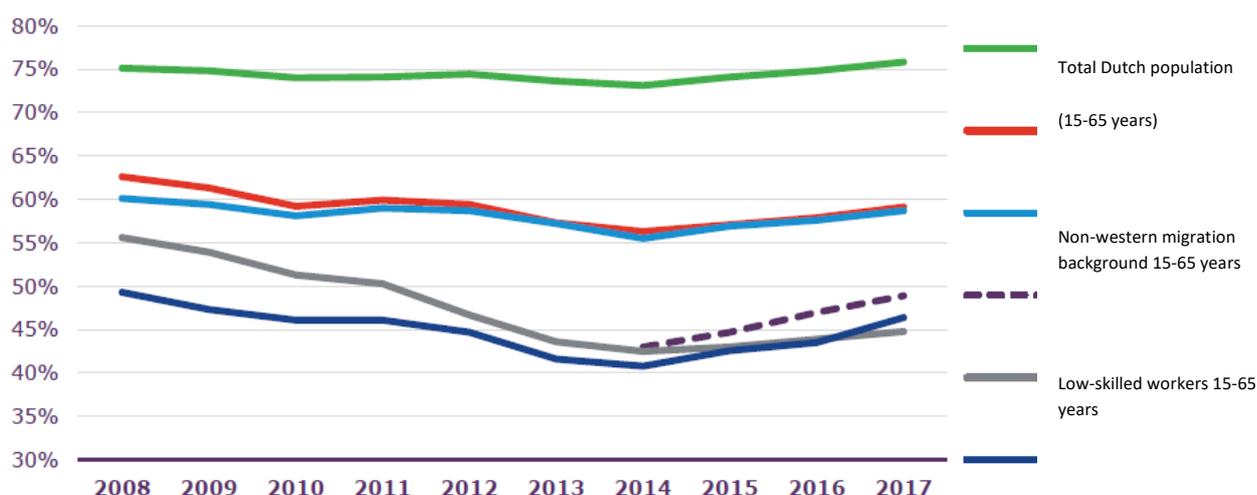
Indicator	Indicator value	Relative time	Reference value	Trend	Source
2 Percentage of unemployed occupationally impaired with ability to work, as a % of the total number of occupationally impaired aged 15-64 with an ability to work	33.7%	2017 (annual average)	19.00% (% 15-64)	Decrease (39.9% in 2015)	Statistics Netherlands, Participation Act 2017, Table 2 https://www.cbs.nl/nl-nl/maatwerk/2017/03/arbeidsparticipatie-en-de-afstand-tot-de-arbeidsmarkt
- willing to work, unemployed working population	7.2%		4.1%		
- willing to work, not unemployed working population	17.1%		5.5%	20.9%	
- not willing/cannot work (for reasons other than illness/occupationally disabled)	9.3%		9.4%	9.0%	

In the preceding report, the Committee requested whether data are available to substantiate that the obligation for effective work adaptations has led to an increase in employment of people with disabilities.

To be able to evaluate the effectiveness of measures, in the preceding report the Committee requested information on

- The percentage/figures on all persons with disabilities who work in the labour market
- The number of beneficiaries who are supported to get work and also figures on the progress of people with disabilities in the labour market

Figure 1.2 Percentage of employed selected groups, end of 2008 – end of 2017



Source: UWV and CBS statline.

Table 1.2 Key figures on development in labour market participation of the occupationally impaired

	2016	2017
Wajong beneficiaries total population		
% employed Wajong beneficiaries end-of-year	23.7%	24.7%
Wajong beneficiaries with ability to work*		
employed		
% employed Wajong beneficiaries with ability to work end-of-year	47.0%	48.9%
get employed		
% employed after 1 year, of those unemployed at end-of-year	17.6%	18.1%
% employed again within a year after job loss	52.0%	58.0%
staying employed		
% stayed employed 1 year after getting employed at regular employer	57.0%	58.7%
WGA/WIA under 35 former employees		
employed		
% employed WGA, full-time end-of-year	14.1%	13.7%
% employed WGA, part-time end-of-year	58.2%	57.9%
% employed WIA under 35 end-of-year	59.7%	62.3%
% employed on admission to WGA, full-time	19.3%	19.0%
% employed on admission WGA, part-time	55.0%	58.1%
% employed on claim assessment WIA under 35	62.0%	60.6%
get employed		
% employed within 1 year after admission WGA, full-time	19.5%	25.4%
% employed within 1 year after admission WGA, part-time	30.4%	33.3%
% employed within 1 year after admission WIA under 35	33.6%	37.1%

Article 15§3

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information on persons with disabilities' access to housing, transport, telecommunications and cultural and leisure activities.

The Netherlands encourages social integration and participation of people with disabilities into community life with its implementation of the UN Convention on the Rights of Persons with Disabilities. The Convention was ratified by the Netherlands (European part) on 14 June 2016. It was decided that the Convention will not apply there for the time being. On 14 July 2016, the Convention entered into force in the European part of the Netherlands.

In preparation of the ratification of the Convention, all existing legislation in the Netherlands was assessed and reviewed. This entailed comprehensive research into implementing legislation required to meet the obligations contained in the Convention. As a result of the review, two laws were amended, namely the Equal Treatment of Disabled and Chronically Ill People Act (*WGBH/CZ*) and the Elections Act (in the context of accessibility at polling stations). These have been brought into line with the obligations ensuing from the Convention. For the rest, it has been found that the legislation is consistent with the Convention.

Until 2017, the *WGBH/CZ* applied to employment, education, housing and public transport. This was not fully compliant with the Convention. With the entry into force of the act to execute the Convention in 2017, the *WGBH/CZ* was expanded so, at present, this also includes all 'goods and services'. This is a comprehensive field that includes the retail trade, the hospitality industry, culture, sports, recreation, business services, healthcare and internet services.

After ratification of the Convention, the Ministry of Health, Welfare and Sports drew up an implementation plan aiming to encourage an effective and full implementation of the general obligations arising from the Convention. The Convention was implemented based on relevant themes in terms of Article 15§3, such as building and housing, transport, participation and accessibility. In the run-up to drawing up the implementation plan, 40 organisations and institutions were consulted, including various civil society organisations and people with disabilities. In the plan, implementation of the Convention is defined as a broad social ambition and challenge for central government, municipalities, businesses and social organisations. In the implementation of the plan, the national government is working closely with the above-mentioned administrative partners.

In 2018, a detailed implementation programme "Unrestricted participation!" was drawn up. This implementation programme aspires to get people with disabilities to participate in society more in line with their own desires and abilities, just like everyone else. The main objective of the programme is that people with disabilities will noticeably encounter fewer thresholds that obstruct participation. Duration of programme 2018 – 2021.

In the Netherlands, improvements are gradually being made to ease access to public transport for people with disabilities. For example, there is a Station Accessibility programme, for which more than 600 million is made available over several years to adapt stations. The Ministry of Infrastructure and Water Management has agreed with the Dutch Railways (NS) on admitting accessibility equipment on trains, among other things. Local and regional authorities are responsible for execution of bus, tram and metro transport services. They make their own arrangements on

accessible transportation in the region. The aim is to make public transport accessible wherever possible by 2040.

If people cannot make use of public transport as yet, there is the possibility to make use of dedicated transportation; this includes *WMO* (social support) transport and *Valys* (social-recreational transport), school bus services and transportation to access employment or daytime activities.

Conclusion of non-conformity of the European Committee of Social Rights with respect to article 15 §2

about the previous report of the Netherlands (2010)

The Committee holds that the situation in the Netherlands is not in conformity with the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

See information provided under article 15§2 with respect to access to employment for persons with disabilities.

Question of the European Committee of Social Rights with respect to article 15§1

about the previous report of the Netherlands (2010)

a) The Committee asks to indicate the number of persons with disabilities in vocational training, including higher education, the number of integrated classes and special education institutions, basic and in-service training for teachers.

See information provided under article 15§1 with respect to vocational training and higher education.

With respect to training for teachers the following information is provided.

The Standards of Competence (Teaching Staff) Decree (*Besluit bekwaamheidseisen onderwijspersoneel*), inter alia, defines that subject-didactic competence means that the teacher is able to show a clear relationship between the learning objectives, the level and distinguishing of his pupils, the subject content and the content of diverse methods and resources. A teacher or lecturer must also at least know various ways to differentiate within a method and to do justice to differences between pupils to be able to be subject-didactically competent.

Colleges who offer teacher-training courses, have compiled the generic knowledge base, which states, inter alia, that attention must be paid to inclusive education within the training and that in its diversity, there is also attention for pupils with disabilities. After their initial training, a relatively high number of teachers, so too in mainstream education, undertake the Master's degree course SEN (special educational needs), of which a number of them even do so multiple times (due to the focus on different and/or multiple disabilities).

The table below shows the percentage of teachers with a Master's degree from a university of applied sciences specialising in Educational Needs, on the total number of teachers in the *MBO* (reference date: 1 October).

Year	% of teachers
2014	1.0%
2015	1.2%
2016	1.4%
2017	1.7%
2018	1.8%

Source: DUO³

b) *The Committee asks to be informed on the legislation on appropriate education that takes effect as of 2012.*

See information provided under article 15§1 with respect to vocational training and higher education

Question of the European Committee of Social Rights with respect to article 15§3

about the previous report of the Netherlands (2010)

a) *The Committee asks to be informed on the initiative of sport organisation for disabled persons to be integrated into mainstream sports federations, which now include adapted sports in their policy as standard.*

The government sees sport as a strategic tool for the inclusion of athletes (in the sense of sportsmen) with disabilities. The societal role of sport is increasingly emphasised, aiming to provide equal chances to everyone to participate in sport activities. The government has aimed to create this inclusion by integrating disability sports within local, mainstream sport associations. The government has set up a number of multiyear programmes to promote disability sport. Principle is that people with disabilities need to be able to take part in sport close to home, where possible at existing sports clubs. This is the key aim of 'Unlimited Activity', the new policy on disability sport drawn up by the Ministry of Health, Welfare and Sport.

A case study demonstrated that inclusion only exists when the athletes with disabilities actively participate in the association, not only as passive athletes. However, research has shown that athletes with disabilities feel often hindered to actively participate in volunteering and in sport associations. The results demonstrate also that sport associations, who have a clearly stated policy regarding the integration and inclusion of athletes with disabilities and take a personal approach to their members, tend to encourage participation well.

The Special Heroes Project (ran until the end of 2015) aimed to motivate children with physical or learning disabilities to join a local sports club. The main objective was the experience the joys of sport and exercise. Moreover, the government had earmarked €2 million until the end of 2015 for setting up sports desks at rehabilitation centres.

³ Salary administrations of institutions and higher education

Article 18 - The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:
4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Information to be submitted

Article 18§1

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply any relevant statistics or other information, if appropriate, on the rate of refusals to issue work permits in response to requests from nationals of other States party, broken down by country and whether these are first time requests or applications for renewal.

The Foreign Nationals Employment Act (*Wav*) sets out the rules for access to the labour market for workers from outside the EEA. An employer can attract workers from outside the EEA, if no prioritized labour supply is present in the Netherlands or the EEA. Should that be the case, the employer may qualify for a work permit. No work permit is required for highly skilled migrants and for key personnel/trainees of international concerns.

Since the previous report (24e, p. 47), several changes have been made to further facilitate access to the labour market of people from outside the EEA:

- The possibility to enable highly qualified foreign nationals to seek work in the Netherlands was expanded via the 'Orientation year for highly educated persons' regulation. The requirement of a work permit has been discontinued for all participants in the regulation. In addition, the target group of the 'Orientation year for highly educated persons' was expanded with the following groups:
 - Foreign nationals who have completed a post doctoral programme in the Netherlands or at Top-200 university abroad;
 - Foreign nationals who have conducted scientific research in the Netherlands;
 - Foreign nationals who have attained a Master's degree on the basis of an Erasmus Mundus Masters Course or who have completed a degree course in accordance with the Cultural Policy (Special-Purpose funding) Act (*Wet of het specifiek cultuurbeleid*) or a

training programme provided for in the context of the development and cooperation policy of the Ministry of Foreign Affairs.

- The work permit obligation for posting third-country nationals for temporary labour in the Netherlands, has been discontinued. (Bulletin of Acts and Decrees 2016, 348)
- For foreign students who want to undertake a non-compulsory traineeship, no work permit obligation applies. (Bulletin of Acts and Decrees 2016, 348)
- Exemption of the work permit obligation was introduced for students who undertake a degree course at the Academy of Architecture and who have to gain working experience as part of the study. (Bulletin of Acts and Decrees 2016, 348)
- The maximum time limit for the exception to the work permit obligation for teachers and researchers at higher education institutions, has been discontinued. (Bulletin of Acts and Decrees 2016, 348)
- In addition to their work in employment, highly skilled migrants, holders of an EU Blue Card and academic personnel may also work as self-employed entrepreneurs. Also, students from outside the EEA who study in the Netherlands, may, in addition to their study, work as self-employed entrepreneurs. (Bulletin of Acts and Decrees 2017, 134)
- By means of a flexible procedure and in the context of international trade, companies can get foreign workers to come to the Netherlands temporarily to pursue activities that do not cause any displacement in the labour market, without a work permit being required. It must be demonstrated that the workers, who the company wants to have come over because of their specific knowledge and expertise, are necessary for pursuing the relevant activities. (Bulletin of Acts and Decrees 2017, 134)
- It has also been made possible for foreign nationals who work in the context of a transfer within a company, can work as a self-employed entrepreneur in addition to the employed work, without the need to apply for a work permit. (Bulletin of Acts and Decrees 2018, 310)

Article 18§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please supply any relevant statistics or other information on chancery dues and other charges payable by foreign workers or their employers for work and/or residence permits and on the average time taken to issue these permits.

Since the previous report the following changes came into force. With effect from 1 April 2014, the EU Directive of 13 December 2011 relating to a single application procedure for a combined permit for third-country nationals to reside and work (2011/98/EU) was implemented. On implementation, a single application procedure was introduced for third-country nationals who want to work in the Netherlands for more than three months, which leads to a single combined residence and work permit (GVVA). The GVVA can be applied for at the IND. (Bulletin of Acts and Decrees 2014, 128)

The duration of the work determines whether an application must be made for a work permit or GVVA. Work-study students and asylum seekers cannot apply for a GVVA. For these people, the employer must apply for a work permit (TWV) at the UWV.

No fees need to be paid for application of a work permit (TWV). An application for a GVVA costs €285.

If the employer is a recognised sponsor and the application is complete, the IND will often decide within 2 weeks. If a work permit (TWV) is required, the IND would need about seven (7) weeks. If a GVVA is required, the IND would likewise need about seven (7) weeks. If an employer is not a recognised sponsor, then the IND decides within ninety (90) days. The UWV will decide within five (5) weeks on an application for a work permit (TWV).

Article 18§3

- 1) *Please describe the general legal framework.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

There are various permits for work in paid employment. Which permit a foreign worker needs, mainly depends on the or type of work. In most cases one can apply for a Single Permit. This permit combines the residence permit and the work permit.

A foreign worker is free on the labour market, when he has worked in the Netherlands for 5 years uninterruptedly, irrespective whether the work is performed at different employers. After those 5 years a Single Permit is not required anymore.

Article 18§4

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments

Question of the European Committee of Social Rights with respect to article 18§1 about the previous report of the Netherlands (2010)

- a) *The Committee asks for information in the next report on the number of work permits granted to applicants from non-EEA states, as well as on work permit refusal rate with respect to applicants from such States, as this information is relevant in order to assess the degree of liberality in applying existing regulations governing access to national labour market.*

In 2015, 6,952 work permits or positive recommendations were granted for a combined work and residence permit (TWV/GVVA). 909 applications were rejected or got a negative recommendation for a combined residence and work permit.

In 2016, 7,677 TWV/GVVA's were issued and 900 rejections or negative recommendations. In 2017, 8,852 TWV/GVVA's were issued and 1,241 rejections or negative recommendations.

In 2018, 10,056 TWV/GVVA's were issued and 1,051 applications were rejected or were given negative recommendations.

Questions of the European Committee of Social Rights with respect to article 18§2

about the previous report of the Netherlands (2010)

a) *The Committee asks whether the IND can renew both work and residence permits at the same time.*

To be able to work in the Netherlands, a foreign national from outside the EEA needs a residence permit and a work permit (TWV). In many cases, application can be made for a combined residence and work permit (GVVA). The GVVA combines the residence permit and the work permit (TWV). This means that application is made for a single permit; this application must be submitted to the IND. The IND requests advice from UWV on the labour market aspect. UWV assesses the request for advice from the IND based on the criteria set out in the Foreign Nationals Employment Act (*Wav*). If the *Wav* criteria have been complied with, the UWV gives IND a positive recommendation. The UWV recommendation forms part of the IND's decision.

From 3 months before expiry of the GVVA, an application can be submitted for its renewal. The IND verifies the ongoing compliance with the conditions of the GVVA and requests advice from UWV on the labour market aspect who assesses the conditions stipulated in the *Wav*.

b) *The Committee asks what level of income is considered acceptable.*

In the points system under the criteria 'personal experience', a foreign national can score up to 100 points. The level of income is part of this and up to 10 points can be scored here (see table). Accordingly, no minimum accepted income applies as it concerns the total score under the criteria 'personal experience', which also takes into consideration the education, entrepreneurship experience, working experience and experience in the Netherlands.

Income

	Gross income for 12 months prior to application:	
(max. 10 points)	< €12,000	0
	€12,000 – <€25,000	5
	€25,000 – <€45,000	7
	≥ €45,000	10

c) *The Committee asks what the accepted level of 'investment' category under 'the added value to the Dutch economy' is.*

In total, a foreign national can score up to 100 points in the points system under the criteria 'added value of economic activities for the Dutch economy'. The level of investment is one of the aspects for which points can be scored. Innovation and job creation are also considered. For investments, a maximum of 40 points can be scored. Therefore, no minimum amount of investment applies as several factors are taken into consideration for scoring points.

Questions of the European Committee of Social Rights with respect to article 18§3

about the previous report of the Netherlands (2010)

- a) *The Committee asks for information in the next report on the number of applications for work permits submitted by nationals of non-EEA States, as well as on the grounds for which work permits are refused to nationals of non-EEA States parties to the Charter.*

The total number of TWV/GVVA applications in 2015 was: 8,356, 2016: 8,967, 2017: 10,477 and in 2018: 11,717. In respect of the number of rejections per ground for refusal, see table.

Rejected work permits (TWV) and negative recommendations (GVVA) specified on the basis of labour market assessment and rejection reason:

Reason for rejection	2015	2016	2017	2018
Not relevant to the paragraph	276	382	789	536
Prioritized labour supply available	557	444	236	380
Incomplete application	31	49	32	32
Late vacancy listing	27	11	111	18
Unsatisfactory efforts by employer	-	-	3	19
Failing to observe rule	1	-	7	25
Unsatisfactory working conditions/circumstances	6	7	20	12
Not complied with wages	-	7	17	8
Age beyond threshold	-	-	-	6
Created barriers	-	-	6	5
No visa/residence permit present or applied for	-	-	-	2
No suitable housing	-	-	-	2
Prioritized labour supply within a reasonable term available	1	-	-	1
Irrevocable fine	4	-	-	-
Not within the scope of ICT	-	-	9	5
Outside the working scope of <i>Wav</i>	2	-	-	-
Unknown	4	-	-	-
Total	909	900	1,241	1,051

NB. The table shows the first registered reason for rejection of an individual application for a work permit (TWV) respectively a negative recommendation. This means there could be several reasons.

- b) *The Committee asks for information about the measures eventually adopted to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market.*

Access to non-regulated professions in the Netherlands is unprescribed, so there is no qualification requirement. Regulated professions can be found by means of the European database. If a profession has been regulated, the employee must comply with certain requirements to practise the profession. These requirements are governed by law established by the Dutch government. Each profession has a competent authority who checks on compliance with the requirements. A credentials evaluation alone does not grant permission to work in the profession. In accordance with

the Directive (2005/36/EC) on the recognition of professional qualifications, in December 2018 the Netherlands sent a report to the Commission, in which an overview is given of the number of applications for every regulated profession and a report indicating which requirements were repealed or relaxed in recent years.

If information is to be given to an employer in the Netherlands about foreign credentials, for example, to demonstrate 'personal experience', the Netherlands Organisation for International Cooperation in Higher Education (Nuffic), provides an overview of education systems abroad. For an additional fee, an evaluation of credentials attained abroad can be applied for via the International Credential Evaluation (IDW) website.

c) The Committee asks whether the legislation complies with this approach.

and

d) The Committee asks whether the rules regarding the employment of non-EEA nationals are gradually relaxed after certain period of time spent in the Netherlands.

The residence permit for paid employment or the Single Permit (combined permit for residence and work) entitles to reside in the Netherlands for the duration of the employment contract or the appointment. If a work permit is issued, the residence permit is valid for the same period as the work permit.

If no longer the conditions for the residence permit are no longer met, the IND (immigration office) will withdraw the permit. This also applies if the employment contract is terminated, e.g. in the case of summary dismissal. In this case, the person will have to leave the Netherlands unless he/she has other legal grounds to reside in the country. If the person cannot be blamed for the dismissal, you will be given 3 months to find another job.

A foreign worker is free on the labour market, when he has worked in the Netherlands for 5 years uninterrupted, irrespective whether the work is performed at different employers. After those 5 years a Single Permit is not required.

Article 20 - The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a. access to employment, protection against dismissal and occupational reintegration;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.

Appendix to Article 20

1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.
2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post natal period, shall not be deemed to be discrimination as referred to in this article.
3. This article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.
- 4 Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Information to be submitted

Article 20

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, in particular on employment and unemployment rates by sex and percentage differences in earnings.*

The national legal framework is mainly formed by the following two laws and Section 646 of Book 7 of the Dutch Civil Code (*BW*) which, inter alia, stipulate that the employer may not discriminate between men and women when concluding the employment contract, in providing training to the employee, in the working conditions, in the working circumstances on promotion and on termination of the employment contract.

Equal treatment (Men and Women) Act (*Wet gelijke behandeling van mannen en vrouwen, WGBMV*)⁴

This law entered into force in 1980 and prohibits both direct and indirect discrimination. This also includes discrimination on grounds of pregnancy, childbirth and motherhood.

The law prohibits discrimination on entering into an employment contract, in the terms of employment, in working conditions, on promotion and on dismissal.

Equal Treatment Act (*Algemene wet gelijke behandeling, AWGB*)⁵

This law entered into force in 1994 and prohibits both direct and indirect discrimination on grounds of gender and pregnancy. The law provides for protection against discrimination on various grounds, including employment.

The 'Actieplan Arbeidsmarktdiscriminatie' [Labour market action plan against discrimination] of 16 May 2014,⁶ describes various measures in the field of equal treatment for women and men. Below, is an overview of these measures.

Pregnancy

Several concrete actions are mentioned in the Action Plan. 1) As a result of the study dating back to 2012 'Hoe is het met bevallen?' [What about giving birth?] by the Committee on Equal Treatment (now known as the Netherlands Institute for Human Rights) and the recommendations contained in it, information on pregnancy/parenthood and employment has been collected and is thus easy to find on the website www.rijksoverheid.nl. 2) A reference has also been added to the website www.zwangerenwerk.nl by the Netherlands Institute for Human Rights. 3) In addition, an information campaign was launched which aims to increase awareness of discriminatory behaviour. 4) Finally, employers and employees were called upon to monitor the Institute's recommendations.

In 2017, a separate action plan against pregnancy discrimination⁷ was set up containing further measures in the field of enforcement; knowledge and awareness; and reporting and registration.

Equal pay

Several concrete actions are mentioned in the Action Plan. 1) Commissioned by the Ministry of Social Affairs and Employment and the Ministry of Education, Culture and Science (which includes emancipation), Statistics Netherlands (*CBS*) has updated the study 'Gelijk loon voor gelijk werk' [Equal pay for equal work]. November 2018 saw the publication of 'Monitor loonverschillen mannen en vrouwen, 2016' [Monitor of wage gap between men and women, 2016]. This was presented to the Dutch House of Representatives at the same time as the Implementation plan against labour market discrimination 2018-2021. 2) The Action Plan announced that the Netherlands Institute for Human Rights, jointly with both ministries, would carry out research into equal pay at colleges. That research was published in January 2016.⁸ At the end of 2016, on request from the parties to the collective agreement, the labour market fund for higher professional education (*HBO*) (*Zestor*) organised a meeting to inform the institutions of the outcomes, and to tell them how they could prevent salary discrimination in their organisation. On 28 November 2017, the Netherlands Institute for Human Rights published a new study, this time about unequal pay between men and women

⁴ <https://wetten.overheid.nl/BWBR0003299/2011-12-03>

⁵ <https://wetten.overheid.nl/BWBR0006502/2015-07-01>

⁶ <https://www.rijksoverheid.nl/documenten/kamerstukken/2014/05/16/kamerbrief-actieplan-arbeidsmarktdiscriminatie-en-kabinetsreactie-ser-advies>

⁷ <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/03/22/kamerbrief-actieplan-zwangerschapsdiscriminatie>

⁸ <https://mensenrechten.nl/nl/publicatie/36318>

who work for insurance organisations.⁹ Previously, the legal predecessor of the Netherlands Institute for Human Rights, the Committee on Equal Treatment, conducted a similar study in the hospital sector (2011). The three studies show a comparable picture: employers do not consciously choose unequal pay on grounds of gender. Rather, this has developed as such in practice, in which pay was not consistently based on the value of the work that an employee undertook: remuneration criteria which are not neutral, play a role. Very often that is more to the detriment of women, than to the detriment of men. At the end of 2017, in light of these results, the Netherlands Institute for Human Rights launched a campaign to bring the issue of unequal pay to the attention of employers. The campaign, entitled '*Grip op Gelijk Loon*' [Grip on Equal Pay], includes an online test for employers and HR consultants. This enables them to see which pitfalls exist in their organisation. In addition, they can pose questions and request a checklist to help them set up a more neutral remuneration policy.¹⁰ 3) The government draws attention to initiatives that are cited in recommendations by the Social and Economic Council, such as the wage guide and quick scan, and the development by employee organisations of special salary negotiation courses for women. Employer and employee organisations are invited to draw attention to these initiatives.

In 2018, the new Action Plan against labour market discrimination 2018-2021 was set up. This also paid attention to equal pay, among other things, by subsidising a programme geared towards motivating and informing women and employers, implemented by Women Inc.

Women at the top

The government aims to increase the number of women in executive positions. The target figure scheme in the Management and Supervision (Public and Private Companies) Act (*Wet bestuur en toezicht, Wbt*) aims to achieve a balanced spread of men and women appointed to executive positions at 'large' NVs and BVs. A balanced spread means at least 30% of the executive positions are occupied by women and 30% by men. If the positions are not spread evenly, a justified motivation must be provided in the management report ('apply or explain'). In 2013, the *Wbt* formulated 2016 as the maturity date of the target figure scheme. With effect from 2017 that scheme was extended to 2020, as the target had not been achieved.

Various measures were needed to boost its progress. The following can be stated about these measures:

- The results achieved for engaging more female executives, are monitored by means of a new Company Monitor at the request of the government.
- In 2018, the Minister of Education, Culture and Science, together with the chairman of the Confederation of Netherlands Industry and Employers (VNO-NCW), had discussions with relevant executives who represented the business community and important stakeholders.
- Together with the Minister of Social Affairs and Employment, the Minister of Education, Culture and Science asked the Social and Economic Council to issue recommendations on measures that would be most effective to stimulate progression of females to executive positions in the business community, and which measures would have the highest degree of acceptance.

These recommendations also concern the progression of employees with non-western backgrounds. The recommendations are expected in the autumn of 2019. In consequence, the government will present a new package of measures.

⁹ <https://publicaties.mensenrechten.nl/file/5a37d8cc-8e5e-4981-9af1-3e93837c8038.pdf>

¹⁰ Annex 3 with a Letter to Parliament relating to the government's approach and progress report on the National action plan against discrimination dated 26 April 2018; Progress report on Action Plan against Labour Market Discrimination and Action Plan against Pregnancy Discrimination (<https://www.rijksoverheid.nl/documenten/rapporten/2018/04/26/bijlage-3-voortgang-maatregelen-actieplan-arbeidsmarktdiscriminatie-en-actieplan-zwangerschapsdiscriminatie>)

Research

Since 2010, Statistics Netherlands (CBS) has been commissioned by the Ministry of Social Affairs and Employment, to conduct research every two years into the difference in pay between men and women. Statistics Netherlands consistently does this based on figures of 2 years previously. The most recent research was published on 22 November 2018.¹¹ The data used for this was dated 2016.

Statistics Netherlands has researched pay differences both within the government and in the business community. This research included both the uncorrected difference as well as the corrected difference. The uncorrected difference is the difference in pay when no account is kept of other factors that could influence the hourly wage level. The *corrected pay gap* is the difference that remains after account is kept of known factors that are strictly associated with remuneration. In its research, Statistics Netherlands examined the following factors:

- Employee characteristics: gender, age, national origin, education (level and pathway), working experience, occupational disability, household situation and partner's income;
- Employer characteristics: sector, number of employees, percentage of women, profitability, establishment region;
- Job features: professional level, profession, type of contract, full-time/part-time, kind of employment relationship, providing leadership, management position.

In 2016, the uncorrected difference at the government was 8% and in the business community it was 19%. In 2016, the corrected difference at the government was 5% and in the business community it was 7%. Since 2008, the wage gap has reduced both at the government and in the business community.

Labour market participation

In 2017, 72.9% of the women aged 15-64 who were not studying were working, whereas 84.8% of the men in this category were working. Labour participation increased both for women and for men after the crisis years. For women, the increase was slightly more than for men, so the difference in labour participation reduced further. The majority of women in the Netherlands work on a part-time basis. Whereas, in 2017, men worked an average of 39 hours per week, for women that was 28 hours per week. The average working hours for women has indeed increased. Two years earlier, this amounted to 27 hours per week and ten years earlier it was 26 hours

Rules on shifting the burden of proof in cases where pay discrimination is alleged on grounds of sex.

Netherlands legislation has incorporated rules on shifting the burden of proof. All provisions have the same meaning.

Equal treatment Act, article 10§1: "If a person who considers that he has been wronged through discrimination as referred to in this Act establishes before a court facts from which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that the action in question was not in breach of this Act."

Equal treatment (Men and Women) Act, section 6a: "If a person who believes that he/she has suffered discrimination as referred to in this Act adduces facts at law that give rise to suspicion that such discrimination has indeed taken place, the other party must prove that no contravention of this Act has occurred."

¹¹ Statistics Netherlands, Monitoring pay differences between men and women, 2016, <https://www.cbs.nl/nl-maatwerk/2018/47/monitor-loonverschillen-mannen-en-vrouwen-2016>

Statistical date on the gender pay gap

The gender pay gap has dropped noticeable in the reference period, compared with 2011 (-3 pp). Data is given for enterprises employing 10 or more employees. The difference between average gross hourly earnings of male and female employees as % of male gross earnings.

Unadjusted gender pay gap, Source Eurostat

2015	16.1%
2016	15.6%
2017	15%

Question of the European Committee of Social Rights with respect to article 20

about the previous report of the Netherlands (2010)

a) *The Committee asks to provide information on the number of cases alleging gender discrimination including pay discrimination taken before the courts.*

Anyone who feels that they are a victim of discrimination can ask the National Institute Human Rights to examine their complaint of discrimination and give an opinion. The request must concern issues relating to work, or the provision of goods or services, such as education, living, leisure, care, financial services, transport or social protection. In addition, one of the grounds for non-discrimination from the equality legislation must apply. This concerns grounds which may not form the basis of discrimination: race, gender, nationality, civil status, sexual orientation, political opinion, religion or beliefs, age, disability or chronic illness, working hours, and type of contract (permanent or temporary).

28% of the opinions of the Institute in 2018 were related to gender discrimination (including pay discrimination).

Table : Requests, opinions and rulings, 2016-2018

Requests submitted	463		416		510	
Requests considered	448		432		517	
Evidently unfounded	135	30%	116	27%	131	25%
Withdrawn after settlement	31	7%	29	7%	33	6%
Withdrawn other	26	6%	25	6%	34	7%
Closed	105	23%	101	23%	170	33%
Opinion	151	34%	161	37%	149	29%
No discrimination	68	45%	83	52%	86	58%
Discrimination	83	55%	78	48%	63	42%
Followed up on by measures	73%		87%		77%	

Article 24 - The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
- b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Appendix to Article 24

1. It is understood that for the purposes of this article the terms “termination of employment” and “terminated” mean termination of employment at the initiative of the employer.

2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:

- a. workers engaged under a contract of employment for a specified period of time or a specified task;
- b. workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;
- c. workers engaged on a casual basis for a short period.

3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:

- a. trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;
- b. seeking office as, acting or having acted in the capacity of a workers' representative;
- c. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- d. race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- e. maternity or parental leave;
- f. temporary absence from work due to illness or injury.

4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate

to national conditions.

Information to be submitted

Article 24

1) Please describe the general legal framework, including decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Book 7, Title 10 of the Civil Code and the Regulation of Termination of Employment (Ontslagregeling) is the legal framework.

Generally speaking, a contract of employment can be terminated:

1) Automatically by operation of law

If an employment contract is subject to termination by operation of law, termination occurs automatically and, in principle, without notice. Accordingly, there are no notice periods.

However notification applies. No later than one month prior to a temporary contract expiring, in principle, the employer must inform the employee whether the contract will be extended or not. If this obligation is not observed, the employer owes the employee a compensation equal to one month's salary. If not notified in time, this has no consequences for termination of the employment contract.

Employment contracts terminate by operation of law in the following situations:

a. the employment contract was concluded for a specific term and that term has expired

Fixed-term employment contracts terminate automatically at the end of the term agreed by the parties. The only exception to this is when the employer and employee have agreed that prior written notice is required to end the contract, but this is rare. It is not possible to conclude one fixed-term contract after another indefinitely. To protect employees, the law prescribes that after multiple consecutive fixed-term contracts have been concluded an open-ended (permanent) employment contract ensues. This occurs automatically in the following two situations:

- the employer and employee have concluded successive fixed-term employment contracts covering a period totalling more than 24 months; or
- the employer and employee have concluded a series of three fixed-term employment contracts and they then conclude a fourth.

A series of employment contracts is deemed to have been interrupted if there is an interval of more than six months between two fixed-term contracts.

A collective labour agreement (CAO) may contain arrangements that deviate from the statutory successive contract rules. For example, the various CAOs for temporary employment agency workers permit more than three successive fixed-term employment contracts. CAOs often contain provisions that either prevent prior periods of employment through temping agencies counting towards a series of successive employment contracts or regard them as a single contract in the series, regardless of the actual number.

b. a condition subsequent in the employment contract is fulfilled

A condition subsequent in an employment contract is an agreement that the contract will terminate automatically if a particular event occurs. As a rule, courts rarely accept conditions subsequent in employment contracts. In certain circumstances they will consider a condition subsequent lawful. Three requirements must be met for that to happen:

- the condition subsequent may not contravene the closed system of employment termination law;
- the determination as to whether the condition subsequent has been met may not be based on the subjective judgment of the employer or the employee;
- the employment contract will, in fact, become devoid of substance if the condition subsequent is met.

An example of a judgment in which the Dutch Supreme Court accepted a condition subsequent was a case involving a physician who was employed by a doctors' partnership where the work was carried out in a particular hospital. The physician's employment contract included a provision terminating the contract automatically should the physician be denied access to the hospital. The court accepted this condition because the partnership had no control over the hospital's decision-making and after such a decision the employment contract did, in fact, become devoid of substance.

c. the temporary employment clause in a temporary employment contract takes effect

A contract of temporary employment between a temporary employment agency and a temporary worker is an employment contract. The contract may include a 'temporary employment clause', which prescribes that the contract will end automatically when the recipient – i.e. the company where the employee works – informs the agency that it no longer requires the services of the temporary employee. The clause is therefore a condition subsequent that is explicitly specified in the law. Under the law, a temporary employment clause loses validity if the employee has worked for the agency for more than 26 weeks. However, it is possible to include an extension of that term in a CAO, and the various CAOs for temporary employment agency workers have done just that. As a result, temporary workers face the prospect of their temporary employment contract terminating automatically because the recipient employer no longer requires their services.

The temporary employment clause may not be included in ordinary employment contracts. It is a lawful arrangement only in contracts for temporary employment.

d. the employee dies

Under the law, an employment contract terminates when the employee dies. The employer is required to pay a lump-sum death benefit to the employee's surviving relatives. The death benefit is equal to the deceased's most recent monthly salary. The employer is permitted to reduce the death benefit by the amount of the benefit which the surviving relatives receive in relation to the employee's death under a mandatory health or occupational incapacity insurance policy.

2) By mutual agreement (by means of a termination agreement or a settlement agreement)

An employer and employee can terminate an employment contract by mutual agreement, which is expressed in a termination agreement, or settlement agreement. There are no specific provisions of law governing termination agreements, which means that the general rules of contract law apply. Under these rules, a contract arises when one party accepts another party's offer to enter into a

contract and the latter receives the former's acceptance. Until that time, the offer may be withdrawn.

Because termination of employment has major consequences for the employee, the employer may not assume that an employee has consented to termination of his/her employment. According to case law, courts require clear and unambiguous statements from employees. This means that employers are under an obligation to investigate in some cases. They may not proceed merely on the basis of an employee's indicated agreement because, for example, the person concerned may be a poor Dutch speaker or may have given consent while in a highly emotional state.

An employee may ask the court to annul a termination agreement if his/her true intent is not reflected in the statement indicating acceptance of the termination proposal. This is a case of defective consent. The law recognises four types of defective consent: duress, fraudulent misrepresentation, abuse of circumstances and error. If, for example, an employer were to falsify annual figures to persuade an employee of the financial necessity of terminating his/her contract, this would be deemed fraudulent misrepresentation. Abuse of circumstances is, for example, when an employer takes advantage of an employee's dependence or lack of experience. It is also possible for an employer to invoke error due to misrepresentation, for example if the parties agreed on a specific severance payment and included it in the termination agreement while the employee already had a new job lined up and the employer was unaware of the fact. The courts rarely allow such claims.

If the employment contract is terminated by mutual consent by means of an agreement, then the employee has the right, without giving any reasons, to terminate the agreement within fourteen (14) days of the date on which the agreement was concluded, by a written statement addressed to the employer. It is not permitted to agree on a clause that excludes or restricts this. Such a clause is null and void.

3) By termination or dissolution

The main rule is that the employer cannot terminate the employment contract legally without the employee's written consent. The employee has the right to revoke his consent within fourteen (14) days. The possibility for the employee to give consent to termination of the employment contract by the employer is without prejudice to the possibility of the parties to conclude a termination agreement to terminate the employment contract, which ends the employment contract with mutual consent.

If the employee does not give written consent or if the employer and employee fail to agree on the conditions under which they may mutually agree to terminate the employment contract, the dismissal proposed by the employer must be assessed prior to termination of the employment contract taking place. This preventive assessment is, depending on the grounds of dismissal, carried out by the Employee Insurance Agency or the subdistrict court.

By incorporating the most concrete standards possible into legislation, it was envisaged to prevent dismissal becoming a legal matter and to encourage legal certainty.

In summary, the grounds for dismissal are as follows: (a) commercial circumstances, (b) long-term illness, (c) frequent absenteeism, (d) incapacity for the stipulated work, other than as a result of illness, (e) imputable acts or omissions of the worker, (f) refusal to work due to conscientious objection, (g) a damaged working relationship; (h) other circumstances which prevent an employer from being required to continue the employment contract, where such grounds relate to special cases which are not attributable to the grounds mentioned above.

Redundancies related to commercial circumstances or after long-term incapacity for work will be assessed in advance by the Employee Insurance Agency. Proposed dismissals due to alleged dysfunction, imputable acts or omissions of the employee, other reasons attributable to the employee's person, or because of a damaged working relationship, are assessed by the subdistrict court. The employer does not have any freedom of choice for either of the procedures for redundancy.

After obtaining consent from the Employee Insurance Agency, the employer may terminate the employment contract with the employee with due observance of the applicable period of notice. If the employment contract is terminated after obtaining consent from the Employee Insurance Agency (*UWV*), the employer may deduct the time of the procedure at the *UWV* from the period of notice. The employer must always observe a period of notice of one month.

If the subdistrict court dissolves the employment contract, it determines the end of the employment contract at the time when it would have ended upon termination. This period is shortened by the procedural time at court, except in the event of serious imputable acts or omissions on the part of the employer, on the understanding that at all times (except in the case of serious imputable acts or omissions by the employee) a period of one month applies.

Termination of the employment contract without the employee's prior consent or without consent from the *UWV* will result in a termination subject to annulment. In that case, the employee may request the subdistrict court to annul the termination.

In order to create as much legal certainty as possible, so that recourse to the courts is not necessary, in principle, the law requires the employer to pay a transition payment upon termination of an employment contract which lasted at least 24 months. On termination of an employment contract or if the employment contract is not extended after expiry by operation of law, the employer is liable for a transition payment if the employment contract has existed for at least two years. The initiative for termination or non-extension, in principle, must be taken by the employer. This transition payment is intended, on the one hand, to compensate for the dismissal and, on the other, to enable the employee to facilitate the transition to another job by means of the financial resources involved. The amount of the transition payment depends on the salary and duration of the employment contract and is calculated as follows: for the first 120 months of the employment contract, the transition payment is equal to one-sixth of the monthly salary for every six-month period that the employment contract has lasted and equal to one-quarter of the monthly salary for every subsequent six-month period. Costs related to measures aimed at encouraging the finding of another job in the event of dismissal or imminent dismissal, may be deducted from the transition payment. The main rule is that these costs can only be deducted with consent from the employee.

If the termination of the employment contract is the result of serious imputable acts or omissions on the part of the employer, then the employee will be compensated for this, so too to prevent such acts or omissions in future. In such case, the subdistrict court may grant the employee a fair compensation in addition to the transition payment. It is up to the court to determine the level of fair compensation in a manner and at a level that is consistent with the exceptional circumstances of the case.

After refusal by the *UWV* to grant permission for termination of the employment contract, the employer may nonetheless request the subdistrict court to dissolve the employment contract. After consent by the *UWV*, the employee may, after actual termination by the employer, apply to the subdistrict court for the employment contract to be restored. Orders by the subdistrict court may be brought before the Court of Appeal and in cassation before the Supreme Court.

Termination procedure (involving UWV),
Source: UWV, 2019

UWV procedure	2016	2017	2018
Settled termination applications	9,940	5,537	3,857

Conclusion of non-conformity of the European Committee of Social Rights with respect to article 24

about the previous report of the Netherlands (2010)

- l) *The Committee holds that the situation in the Netherlands is not in conformity with the Charter as the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.*

The age at which an individual is entitled to receive statutory old age pension is specified in the General Old Age Pension act (AOW). Many collective labour agreements and individual employment contracts contain provisions stipulating that the contract ends automatically when the employee reaches the pensionable age. This is permitted under the Equal treatment in Employment Act (age discrimination), which states that dismissal which 'relates to the termination of an employment relationship because the person concerned has reached the pensionable age under the AOW, or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties' is not prohibited (section 7, paragraph h 1 b).

The objective justification of this distinction is given in the explanatory note to the Equal Treatment Act (*Wet Gelijke behandeling*). Dismissal on reaching a certain age is intended to ensure that, without regard to the person, an objective criterion can be maintained on which the employee leaves the labour market without it being necessary to determine whether the person concerned still qualifies.

In most cases, the employment contract ends, because there is an employment termination at retirement age clause in the contract. An employment termination at retirement age clause is a clause contained in the individual employment contract or a collective labour agreement, which stipulates that the employment contract automatically ends by operation of law upon reaching the statutory retirement age (AOW). It is therefore a termination date pre-emptively agreed to by the parties when entering the employment contract. It does not concern termination of the employment at the employer's initiative. The employer therefore does not have to terminate the employment contract.

If no employment termination at retirement age clause is included in the employee's employment contract and the employee reaches the statutory retirement age or continues to work thereafter, the employer may terminate the employment contract without preventive dismissal assessment, with due observance of the prevailing statutory period of notice. This is possible if the employment contract was entered into prior to reaching the statutory retirement age and no other agreement has been reached in writing. On grounds of age, the Equal Treatment Act allows for distinction if there is an objective justification for the distinction. The objective justification for this age distinction, is that employees who have reached the statutory retirement age are not comparable in all respects with employees who have not reached that age. For employees who have reached the statutory retirement age, the need to provide for their own subsistence by means of employment no

longer applies. They are entitled to claim a General Old Age Pension (AOW) as a basic income, often supplemented by a pension benefit. This justifies that a less strict regime relating to labour law is maintained for pensioners. This facilitates working after the statutory retirement age and is a legitimate purpose. Eliminating obstacles for the employer for that purpose, is dignified and necessary. (*Parliamentary Papers*, 2014-2015, 34 073, no. 3. p. 12).

Question of the European Committee of Social Rights with respect to article 24
about the previous report of the Netherlands (2010)

a) *The Committee asks whether the law provides for the possibility of reinstatement in case employees are dismissed without valid reason.*

Yes, this is stipulated in Article 7:682 of the Civil Code.

Moreover, in its ruling of 25 January 2019, the Supreme Court ended the uncertainty whether the employer or the court of appeal is meant to reinstate the employment agreement after wrongful dissolution. The Supreme Court indicated that, in principle, the court of appeal “orders” the employer to reinstate the employment agreement, but that the law does not block the court of appeal from directly reinstating the employment agreement. If an employee wants the court of appeal to directly reinstate him or her without the need of any further action by the employer, the court of appeal must be specifically asked to do so.

Article 25 - The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Appendix to Article 25

1. It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.
2. It is understood that the definition of the term "insolvency" must be determined by national law and practice.
3. The workers' claims covered by this provision shall include at least:
 - a. the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;
 - b. the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;
 - c. the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.
4. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

Information to be submitted

Article 25

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply any relevant statistics or other information where possible on the amount of such claims, whether there is a ceiling on payments, the time taken between presentation of claims and payment of the amounts due and the overall percentage of employees' claims that are honoured by a guarantee institution and/ or because those concerned are privileged creditors.

With reference to letter ESC 52/2019 (The Netherlands) of 27 May 2019, no information is requested.