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EUROPEAN SOCIAL CHARTER

11th National Report on the implementation of

the European Social Charter

submitted by

THE GOVERNMENT OF THE NETHERLANDS

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
for the period 01/01/2013 - 31/12/2016

Report registered by the Secretariat

on 23 January 2018

CYCLE 2018

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Thirtieth Report

for the period 1 January 2013 - 31 December 2016

Report

For the period 1 January 2013 to 31 December 2016, 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.

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 Professionals (VCP)
- Confederation of Netherlands Industry and Employers (VNO-NCW) and MKB Nederland

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Report in respect of the Kingdom in Europe

Article 2 – All workers have the right to just conditions of work

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

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 2§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 factual information, in particular: average working hours in practice for each major professional category; any measures permitting derogations from legislation regarding working time.

No new developments.

Article 2§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.*

No new developments

Article 2§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, if appropriate.*

No new developments

Article 2§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.*

No new developments

Article 2§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 provide pertinent figures, statistics or any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.*

No new developments

Article 2§6

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.*

No new developments

It should be noted for the record that the text of the Committee's conclusion on article 2, paragraph 6 is not entirely correct. It appears to suggest that, under article 7:655 of the Civil Code, a written contract that is the outcome of negotiations between employer and employee and contains the compulsory particulars must exist within a month of the start of the work. However, this provision is not about a contract between employer and employee. Article 7:655 of the Civil Code (Annex 1) provides that the employer must supply the information referred to in that article within a month of the date on which the work starts. This is therefore an obligation of the employer which generally follows the conclusion of an employment contract negotiated with an employee.

Article 2§7

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: the hours to which the term 'night work' applies.*

No new developments

Negative conclusions of the European Committee of Social Rights

about the previous (26th) report of the Netherlands

Paragraph 1 - Reasonable working time

A. The Committee concludes that the situation in Netherlands is not in conformity with Article 2§1 of the Charter, on the ground of the exclusion of certain categories of workers from the statutory protection against unreasonable working hours.

The Working Hours Act (Arbeidstijdenwet) regulates the maximum daily and weekly working hours for workers aged 18 and over. Separate rules exist for younger workers, just as they do for female workers who are pregnant or have just given birth.
Different standards have been laid down for special categories of work in the Working Hours Decree (Arbeidstijdenbesluit). The standards and derogations are based on and comply with the European Working Time Directive (2003/88/EC). The directive permits such exceptions.

Exceptions must be possible in special cases and special situations. The 26th report mentions a limited category of exceptions for whom no concrete working time standard applies (volunteers, professional sports people, scientific researchers, musicians and performing artists, and senior staff). The following can be said about this.

(1) The exceptions were made after extensive consultation with the social partners and the representative organisations concerned.
(2) The absence of a specific working time standard does not mean that the Working Hours Act does not apply to them. Under this Act, employers have a duty to put in place a good policy on working time and to take account of the employee's personal circumstances in this connection (section 4:1 Working Hours Act). This is supplemented by the Working Conditions Act (Arbeidsomstandighedenwet), which obliges employers to organise the work in such a way that the health of employees is not adversely affected (section 3, Working Conditions Act).
(3) Although no statutory working time standards exist, this does not mean that the subject has not been regulated at all, for example by agreements made within the occupational group concerned (e.g. medical specialists), whether under collective agreements or otherwise.
(4) There are good reasons for making an exception for these occupational groups:
    - Volunteers do their work voluntarily. In addition, the exemption is limited in the sense that volunteers aged 16 and 17 may not perform work between 23.00 and 06.00 hrs.
    - Professional athletes do not perform their work under the terms of an employment contract that sets out how many hours a day and week they are required to work. Instead, they deliver a given performance at a given moment after long hours of training.
    - The same is true of professional musicians and performing artists. They deliver a contractual stage performance and spend much of the rest of their time studying, practising, travelling or simply waiting around, in other words activities that are not suitable for timekeeping or for the imposition of an external standard. Another reason is that it is hard to draw a line between what is required contractually and what is done voluntarily.
    - Scientific research staff also carry out many secondary activities (such as study, work exchanges and conference visits) and here too it is difficult to distinguish between what is required contractually and what is voluntary. This type of work too does not lend itself to reconciliation with a fixed working time regime.

- Finally, there are the employees in the higher income brackets. The Working Time Directive is intended to provide protection for those who have little or no say over when they work and rest. Those who can determine their own working times and thus have 'autonomous decision-taking powers' within the meaning of the Directive do not need the protection of the Directive. Article 17, paragraph 1 (a) of Directive 2003/88/EC allows for an exception to be made in their case. The Dutch legislature decided, after proper consultation, to equate the group of autonomous employees with those workers on a pay scale who are in receipt of a wage three times the minimum wage or more.

These exceptions have been part of Dutch working times legislation for many decades and no indications have been received from any quarter that this policy results in excessive daily or weekly working hours.

Paragraph 2 – Public holidays with pay

B. The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§2 of the Charter, on the ground that work performed on a public holiday in the hotel and catering industry is not adequately compensated.

Dutch law does not provide for a right to a day off on a given public holiday. This depends on the employment contract or collective agreement that has been concluded. The collective agreement for the hotel and catering industry, which was in force from 1 August 2012 to 1 January 2014, provided that employees who work on a public holiday are entitled to one hour's time off in lieu of each hour worked on a public holiday within 6 months. In case this is not possible, those required to work on a public holiday were entitled to extra pay. This extra pay was a bonus equal to 50% of the normal wage. The hotel and catering industry has not concluded a collective agreement since 1 January 2014 and has therefore not made any arrangements for extra leave or pay for working on public holidays. In contract catering, however, workers received a bonus of 100% of the hourly pay for working on a public holiday.

Both these case involve an agreement between employees' and employers' organisations under which the latter have agreed to compensation of this kind. In the view of the Netherlands, it is very important for the social partners to be free to reach whatever agreements they consider reasonable and in their joint interests.

Paragraph 3 – Annual holiday with pay

C. The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§3 of the Charter on the ground that the employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

Under article 7:634 of the Civil Code, employees in the Netherlands are entitled to paid holiday amounting to four times the agreed number of working hours per week. Employers are obliged to give employees the opportunity each year to take the leave to which they are entitled by law. In the Netherlands, however, employees are allowed to carry over their leave entitlement to the following year, but should, in principle, take this leave within six months of the end of the year in which the entitlement was accrued. Dutch employees therefore have the

freedom to decide whether to take their leave in the year in which the entitlement is accrued or to carry it over to the following year.

The Civil Code (article 7: 638) provides that leave should, in principle, be taken when employees wish, unless this has been regulated differently by employment contract or collective agreement (as in the education sector and the construction industry). Even if an employer has 'compelling reasons' why the preferred period of leave is undesirable, the law provides that the employee must in any event be allowed to take off two consecutive weeks or two one-week periods.

Nonetheless, the employee's wishes prevail. If an employee wishes to take two consecutive weeks' leave, the employer will therefore generally permit this. However, employees may also spread their leave over a number of shorter periods, which is in keeping with the recuperative function of holiday leave.

The Netherlands considers it very important for employees to have freedom of choice. Employees can best decide for themselves when they most need to take leave. As they themselves decide whether or not to carry over holiday entitlement to the following year (a decision in which employers do not, in principle, play any part), this ensures that employees' right to leave is adequately protected.

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

D. The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 of the Charter, on the ground that workers performing dangerous or unhealthy work are not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

This negative conclusion, which repeats what the Committee has said previously, was dealt with by the Netherlands in relation to the 26th report. In brief, the Netherlands argued as follows:

- It is not possible to identify occupations that are intrinsically dangerous or unhealthy. Whether a particular kind of work is dangerous or unhealthy depends on a variety of factors, of which the nature of the occupation is just one.
- In occupations which could involve dangerous or unhealthy work, arrangements to obviate the risks are made either in collective agreements or at the level of the individual enterprise. What level of risk is reasonable and how work can be done safely are matters to be determined in mutual consultation.
- One element of such arrangements may be that workers performing dangerous work are entitled to extra compensation or extra leave.
- However, from the government's perspective the need to minimise the dangerous or unhealthy aspects of work is certainly just as important. This is why employers have a duty under the Working Conditions Act to perform a risk assessment and evaluation to identify dangerous and/or unhealthy elements of the work and indicate how the risks in question can be prevented.
- It should also be noted that, with the exception of the Minimum Wage Act, the Netherlands has no legislation dealing with levels of pay. The Dutch government considers this to be a subject for negotiation between the social partners and, as a matter of principle, does not wish to intervene in this area. The same applies to the length of paid annual leave, as the government has confined itself to providing in the Civil Code for the minimum standard of

four weeks as laid down in the Working Time Directive (2003/88/EC). Provision for additional leave entitlement or compensatory arrangements for special kinds of work may be made in collective agreements.

For this reason, the Netherlands does not consider it necessary to introduce statutory measures relating to the payment of extra wages and/or extra leave for dangerous or unhealthy occupations.

Paragraph 5 – Weekly rest period

E. The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§5 of the Charter on the ground that, in certain sectors, there are insufficient safeguards to prevent that workers may work for more than twelve consecutive days before being granted a rest period.

Section 5:5 of the Working Hours Act provides that employers must organise work in such a way that employees have a minimum rest period of 36 consecutive hours in each period of 7 consecutive days. Alternatively, a period of 14 days may be taken as the reference period. In such a case, there must be 72 hours of rest, which may be divided into periods of at least 32 hours. This means that employees may not work more than 11 days in a row. Requiring employees to work a longer period than that constitutes a breach of the act. The provision in the Working Hours Act is in accordance with EU Directive 2003/88/EC.

An exception to this rule applies in the case of offshore mining. A separate arrangement allows for employees to work rotas of 14 days on/14 days off, which are customary in the offshore industry.

Another exception is made for the maritime shipping and fishing sectors, as there would be little point in having crew spend a weekly rest period on board their ship. Nor is such an arrangement customary in these sectors. The working hours rules for these sectors, which are contained in the Working Hours (Transport) Decree, are based on international legislation (ILO C186, ILO 188) and the EU directives based on them and do not include a provision for weekly rest periods. Usually, a period at sea is followed by an equally long rest period ashore. This is arranged in agreements between the social partners.

Questions of the European Committee of Social Rights

about the previous (26th) report of the Netherlands

Paragraph 1 – Reasonable working time

a. The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

On-call service requires workers to be present at the place of work awaiting a possible call. All time during a period of on-call service counts as working time.
The following rules apply to on-call service:

- The normal rules governing daily and weekly rest periods etc. do not apply if the nature of the work is such that it has to be performed in on-call service either regularly or to a considerable extent.
- On-call service is possible only in the case of a collective scheme (i.e. a collective agreement or company scheme).
- An employee may not be on call more than 52 times in a 26-week period.
- An employee may not be on call for more than 48 hours a week on average in a 26-week period.
- Before and after on-call service there must be an uninterrupted rest period of 11 hours.
- Each 7-day period must include 90 hours of rest consisting of one 24-hour period and six 11-hour periods.
- During such a 7-day period, the 11-hour rest period may, if necessary, be shortened once to 10 hours and once to 8 hours, provided that the reduced hours are added to the following 11-hour rest period.

Paragraph 2 – Public holidays with pay

b. The Committee asks whether there are any collective agreements that do not recognise the right to public holidays with pay.

There are no collective agreements in the Netherlands that do not recognise the right to public holidays.

c. The Committee also asks whether the circumstances under which an employee might be required to work on a public holiday are identified and restricted, either by law or collective agreements, and asks for relevant examples in this respect.

There is no general law in the Netherlands that regulates working on public holidays. Nor, therefore, is there any universal provision stipulating the conditions on which an employer may request an employee to work on a public holiday. This is often regulated in collective agreements. Generally, it is agreed that employees should not be required to work on public holidays. Nonetheless, in some sectors the employers' and employees' organisations do reach agreement on working on public holidays. In some sectors such as healthcare, the police and fire services, utility companies and transport, production or service has to continue even on public holidays. Ultimately, an employer may oblige an employee to work on public holidays only if this is necessary because of the nature of the work and provision for this has been made in the employment contract (section 5:6 of the Working Hours Act). These arrangements ensure that workers in the Netherlands can be required to work on Sundays and

public holidays only if they themselves have agreed to this.

d. The Committee asks the next report to clarify, with reference to relevant examples, what the range of bonuses paid in addition to the regular wage is.

A survey of the largest collective agreements in the Netherlands shows that almost all collective agreements include provisions for a bonus for working on a public holiday, usually a percentage of the hourly pay. Generally, the amount of the bonus is the same for all public holidays. The average bonus under the collective agreements that provide for this is 98% (i.e. in addition to the standard hourly pay). The agreed bonuses vary from 45% to 250% of hourly pay. Some collective agreements provide for bonuses under 100% of hourly pay, more than half for bonuses amounting to exactly 100% and a minority for bonuses in excess of 100%.

e. The Committee asks the next report to confirm that, when an employee is granted time off in lieu for each hour worked on a public holiday, this means that he/she is entitled to the usual wage for the time worked and to compensatory time off equivalent to the time worked (1 hour worked = 1 hour time off at another date).

Employees may not always take extra leave for working on a public holiday. The survey examined whether the collective agreements that provide for a bonus for working on a public holiday arrange for payment in cash or in time off (leave). Half of the collective agreements provide for the bonus to be paid out solely in cash and make no provision for the employee to opt for extra leave. In around one-third of the collective agreements the bonus is paid in either cash or time off in lieu. A small number of the collective agreements provide for the bonus to be paid in both cash and time off in lieu. In this last case, the provision is for working on a public holiday which falls on a weekday. Examples of the agreements made in such cases are: 'The bonus will be paid in cash or as time off in lieu' (collective agreement for the food industry) and 'National public holidays falling on a weekday: 100% and a day off in lieu' (collective agreement for DHL Logistics).

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Appendix to Article 4§4
This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Appendix to Article 4§5
It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.

Article 4§1

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

No new legislation entered into force in the period from 1 January 2013 to 31 December 2016. However, a bill was passed by the House of Representatives on 20 December 2016 which lowered the age at which people become entitled to the (full) adult minimum wage from 23 to 21 years. This change in the law takes effect on 1 July 2017. As per 1 July 2017 the age limit to entitlement to full/ adult wage has been lowered to 22, after two years (1 July 2019) it will be lowered to 21 years, unless it transpires in the meantime that this has had a significant adverse impact on employment.

Sliding scale as of 1/7/2017

Age	**Sliding scale**
21 years	85%
20 years	70%
19 years	55%
18 years	47.5%
17 years	39.5%
16 years	34.5%
15 years	30%

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

No new developments.

3) Please provide pertinent figures on national net average wage[1] (for all sectors of economic activity and after deduction of social security contributions and taxes; this wage may be calculated on an annual, monthly, weekly, daily or hourly basis); national net minimum wage, if applicable, or the net lowest wages actually paid (after deduction of social security contributions and taxes); both net average and minimum net wages should be calculated for the standard case of a single worker; information is also requested on any additional benefits such as tax alleviation measures, or the so-called non-recurrent payments made available specifically to a single worker earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living; the proportion of workers receiving the minimum wage or the lowest wage actually paid.
Where the above figures are not ordinarily available from statistics produced by the States party, Governments are invited to provide estimates based on ad hoc studies or sample surveys or other recognised methods.

The net average annual disposable income from employment was €39,000 in 2014, according to Statistics Netherlands (CBS). After correction for differences in the size and composition of households, this figure can be used to calculate the average income of a one-person household. According to the CBS, the standardised disposable income was €26,400 in 2014.

The statutory minimum wage is index-linked every six months on the basis of average rises in contractual pay under collective agreements. The statutory gross minimum wage on 1 January 2017 was €1,551.60 per month (€358.05 per week and €71.61 per day). Besides the statutory minimum wage, employees are entitled to holiday allowance. This is 8% of gross annual pay. All employees aged 23 and over are entitled to the statutory minimum wage and statutory holiday allowance. Employees under the age of 23 are entitled to the statutory minimum youth wage. This is determined for each age group as a percentage of the statutory minimum wage. The percentage varies from 30% for 15-year-olds to 85% for 22-year-olds. The percentages will change on 1 July 2017 (see section 4§1, at 1)).

According to the Ministry of Social Affairs and Employment's own calculations based on 2014 figures, the annual disposable income of a single worker who earns the minimum wage is €15,773. This is after application of the general tax credit, employed person's tax credit and healthcare benefit. Also taken into account is an average payment for healthcare premium and excess. However, the figure does not take account of income support for tenants, as this is dependent on the amount of the rent. A detailed calculation can be found in the answers to the Committee's questions following the previous report (see section 1 (a)).

[1] The concept of wage, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities. The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. The national net average wage is that of a full-time wage earner, if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as manufacturing industry or for several sectors.

Article 4§2

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

No new legislation entered into force in the period from 1 January 2013 to 31 December 2016. Legislation to regulate the right of employees earning the statutory minimum wage to payment of overtime will enter into force on 1 January 2018.

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

No new developments.

3) Please provide pertinent figures, statistics (estimates, if necessary) or any other relevant information, in particular: methods used to calculate the increased rates of remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.

No new developments.

Article 4§3[2]

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

No new developments

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

No new developments

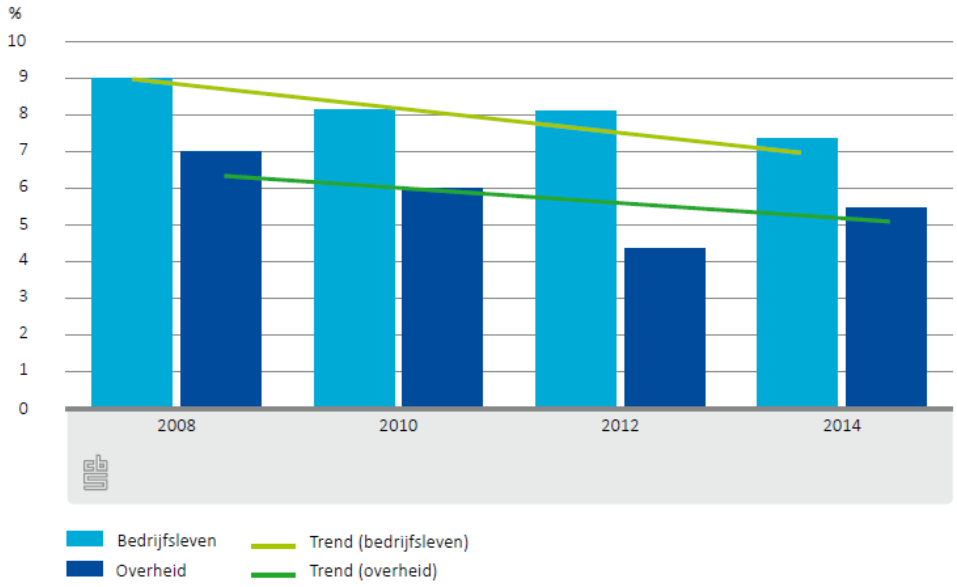
3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

A 2016 CBS survey of the gender pay gap shows that in the previous six years the adjusted pay differentials decreased to 7% in the private sector and 5% in the public sector.

[2.1 Adjusted pay disparity between women and men in 2008, 2010, 2012 and 2014]

[2] States party that have accepted Article 20 of the European Social Charter (revised) do not have to reply to questions on Article 4§3, but must take account of these questions in their answers on Article 20.

2.1 Gecorrigeerd beloningsverschil tussen vrouwen en mannen in 2008, 2010, 2012 en 2014



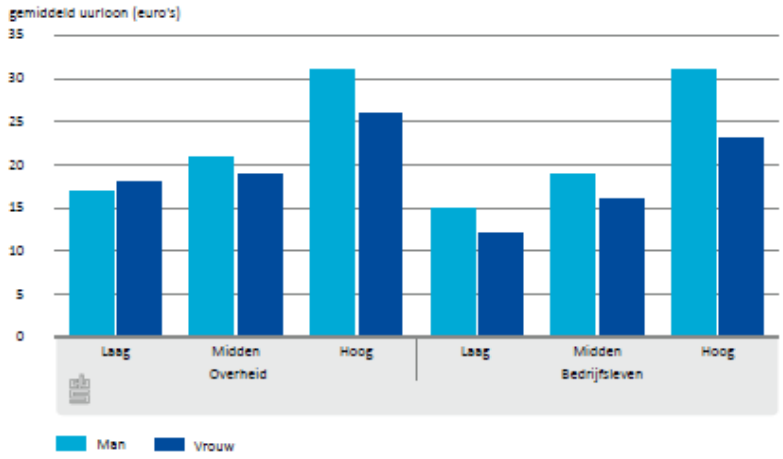
[Private sector Trend (private sector)
Public sector Trend (public sector)]
Source: CBS, 2016.

This adjusted gender pay gap is the pay differential between men and women having comparable backgrounds, for example the sector in which they work, age, education, type of contract and whether they have a managerial position.

The survey shows that if average hourly earnings are broken down by educational attainment and gender, the differentials are greatest among the more highly educated.

[3.2.2 Average hourly wage by sector, sex and level of education in 2014
average hourly wage in euros]

3.2.2 Gemiddelde uurloon naar sector, geslacht en opleidingsniveau in 2014



[MenWomen]
Source: CBS, 2016.

Article 4§4

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

As a result of the entry into force of the Work and Security Act (*Wet werk en zekerheid*), the system of notice periods for termination of employment has changed and a notice period has been introduced for fixed-term contracts. Since 1 January 2015 employers who have employees on fixed-term contracts of six months or longer have been required to inform them in writing no later than one month before the termination date as to whether or not their contract will be renewed and, if so, on what conditions. This obligation to give notice does not apply if it has been agreed in writing in an employment contract that the contract will end at a time not designated by a particular calendar date, for example a contract concluded for the purpose of replacing a sick employee. If an employer fails to give an employee notice of termination or continuation of employment, as the case may be, it will owe the employee compensation amounting to one month's salary (or proportionate compensation in the case of late notice of termination). See article 7:668 of the Civil Code.

The duration of the employment contract determines the length of the notice period. Dutch law provides for an preventive dismissal assessment in cases where employees disagree with the termination of their employment. This means that an employer may, in principle, terminate an employment contract only after obtaining the consent of the Employee Insurance Agency (UWV) or if it has grounds for requesting the courts to set aside the employment contract. A change introduced on 1 July 2015 is that an employer may deduct the time required by the proceedings before the Employee Insurance Agency from the notice period it is required to observe. When a court sets aside an employment contract, it will observe the notice period when determining the date of termination of the employment contract. It will deduct the period of the court proceedings from the notice period unless the termination is due to a seriously culpable act or omission on the part of the employer. However, the remaining notice period must always be at least one month (see article 7:672 (4) and article 7:671b (8) Civil Code. This change has been made because article 4, paragraph 4 of the ESC requires that a reasonable period of notice must always be observed. In such cases a month is deemed to be a reasonable period.[3] Another change as of 1 July 2015 is that if a party terminates an employment contract earlier than legally permissible, its obligation to pay compensation is replaced by a system under which the employer or employee concerned owes compensation equal to the pay for the period during which the contract would have remained in effect had it been terminated in the normal manner. This applies both when termination takes place earlier than allowed and when no notice whatever is given.

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

Change in the law, see section 4§4, at 1.

Article 4§5

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

[3] Parliamentary Papers II, 2013/14, 33 818, no. 3, p. 110.

Since 1 January 2017 the statutory provisions dealing with deductions from or set-offs against wages, namely articles 7:631 and 7:632 of the Civil Code have been amended and a new section 13 of the Minimum Wage and Minimum Holiday Allowance Act (*Wet minimumloon en minimumvakantiebijslag*) has entered into force. As a result of these changes, deductions from and set-offs against the statutory minimum wage are no longer possible. The aim is to ensure that employees can use the statutory minimum wage as they see fit and also that they do actually receive this wage. Deductions from or set-offs against wages in excess of the statutory minimum wage are still possible provided that the requirements of articles 7:631 and 7:632 of the Civil Code are fulfilled.

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

The SZW Inspectorate is responsible for enforcing the provisions barring deductions from and set-offs against the statutory minimum wage. As these changes only entered into force on 1 January 2017, no information can yet be given about the enforcement of this provision.

Negative conclusions of the European Committee of Social Rights

about the previous (= 26th) report of the Netherlands

Paragraph 1 – Decent remuneration

A. The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Charter on the grounds that:

- *It has not been established that the statutory minimum wage ensures a decent standard of living;*
- *The reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.*

- Indexation of the statutory minimum wage takes place every six months. This involves adjusting the minimum wage by reference to the average change in contractual pay in the private and public sectors. The semi-public sector is treated for this purpose as belonging to the private sector. If contractual pay is found to be falling, the minimum wage may be left unchanged but may not be reduced as a result of indexation. This indexation mechanism is designed to ensure that the minimum wage keeps pace sufficiently with changes in wages and that the disposable income of employees earning the minimum wage is adequately safeguarded. The level of social assistance is based on the statutory minimum wage. CBS data show that the average net disposable income of a single worker was €26,400 in 2014. As the CBS does not publish data on the net minimum wage, the Ministry of Social Affairs and Employment has itself calculated the (net) disposable income of a single worker on a minimum wage (for a breakdown of the figures, see the answer to paragraph 1 (a) of the Committee's conclusions).

  The disposable annual income of employees earning the minimum wage was €15,773 (in 2014). This amounted to 60% (rounded) of the average disposable income of a single-person household and was thus right on the limit of the 60% figure which the Committee applies as its standard criterion. Owing to the tax burden and the allowances available to employees earning the minimum wage, the Netherlands complies with the principle that the net minimum wage should be at least 50% of the average net wage. This does not take account of any additional housing benefit.

- As mentioned in the previous report, the minimum youth wage for workers under the age of 23 is designed to promote employment for people in this age group and thus lower youth unemployment. However, the minimum youth wage was reviewed again in the Netherlands during the reporting period. On 21 April 2016 the government announced that it was giving 22-year-olds the right to the adult statutory minimum wage and was increasing the minimum wage for young people aged between 18 and 21.[4] The relevant Bill has been passed by parliament and will enter into force on 1 July 2017. The age at which workers become entitled to the adult minimum wage will be reduced still further to 21 as of 1 July 2019. The following table sets out the percentages of the minimum wage applicable to the worker according to age.

[4] Parliamentary Papers II, 2016/17, 29 544, no. 716.

Table: minimum youth wage percentages[5]

Age	Minimum youth wage as of 1/7/2017	Minimum youth wage as of 1/7/2019
16 years	34.5%	**34.5%**
17 years	**39.5%**	**39.5%**
18 years	**47.5%**	**50%**
19 years	**55%**	**60%**
20 years	**70%**	**80%**
21 years	**85%**	**100%**
22 years	**100%**	**100%**
23 years	**100%**	**100%**

This will better reflect the changes in the socioeconomic position of young people and strike a better balance between the efforts to promote labour market participation and low unemployment on the one hand and enable young people to support themselves on the other.

Paragraph 2 – Increased remuneration for overtime work

B. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§2 of the Charter, on the ground that workers may be asked to work extended hours without any of these counting as overtime and therefore not remunerated at an increased rate.*

The Committee refers in its conclusions to the Working Hours Act (*Arbeidstijdenwet*) and infers from it that the Netherlands is not in conformity with article 4, paragraph 2, of the European Social Charter. However, the Working Hours Act determines how many hours' work an employee may perform in a given period and not what remuneration should be paid for overtime.

The right to overtime pay is generally based on the provisions of collective agreements between the social partners, who are also, in principle, responsible for enforcing them. Wages are determined through a process of collective bargaining between employers and employees in which the state does not generally intervene, save in exceptional circumstance. The principle that an employee receives extra remuneration if he performs work outside normal working hours is supported by the fact that overtime arrangements in collective agreements which comply with the formal statutory requirements are declared universally applicable. These provisions are enforced by the social partners themselves. For example, some social partners have together established collective enforcement organisations such as the Foundation for Compliance with Collective Agreements for Temporary Agency Workers. It is therefore also up to the social partners to enforce the provisions granting workers the right to overtime pay.

However, a Bill passed by the House of Representatives on 20 December 2016 gives workers the right to remuneration for overtime at the level of the statutory minimum wage. This Bill was also passed by the Senate in 2017 and will enter into force on 1 January 2018. Under the new legislation workers earning the minimum wage are entitled to a proportionate remuneration for hours that they work in excess of their agreed working hours. This means

[5] Parliamentary Papers II, 2016/17, 34 573, no. 3, p. 13.

that workers earning the minimum wage are always entitled to overtime pay proportionate to the extra hours worked. The SZW Inspectorate enforces these provisions and can impose fines (and demand back pay for employees) where an employer fails to comply with the Minimum Wage and Minimum Holiday Allowance Act.

Paragraph 4 – Right to a fair remuneration

C. The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§4 of the Charter on the grounds that:

- *notice periods are not reasonable;*
- *no notice of termination is required during the probationary period*

In its conclusions the Committee refers to the arrangement for notice of termination with the consent of the Employee Insurance Agency or the setting aside of the employment contract by the courts. The Committee concludes that the Netherlands is in breach of paragraph 4 of article 4 of the ESC as in some situations where a contract was set aside by a court no notice period was given or no fair compensation awarded under article 7:685 of the Civil Code. However, the system to which the Committee refers has been changed by the Work and Security Act (*Wet werk en zekerheid)* since 1 July 2015. Under article 7:669 of the Civil Code, an employer may terminate an employment contract if it has reasonable grounds for doing so. If the employee does not agree to the termination, the employer is required either to request the consent of the Employee Insurance Agency or, depending on the grounds for termination, apply to the limited jurisdiction sector of the district court for the contract to be set aside, The preventive dismissal assessment by the UWV or the court has therefore been retained. Where dismissal is on economic grounds (redundancy) or due to long-term incapacity for work, the employer must apply to the Employee Insurance Agency for consent (article 7:671a Civil Code). Once consent has been granted, the employer may terminate the employment contract, taking account of the notice period. If the reasons for termination of the contract concern the person of the employee, the employer must apply to the courts for the contract to be set aside (article 7:671b of the Civil Code). If the court grants the employer's application, it must take account of the notice period when determining the date on which the contract is to end (unlike the situation before 1 July 2015). The notice periods have remained the same. A new provision is that the period of the proceedings before the Employee Insurance Agency or the courts may be deducted from the notice period (unless the termination is due to a serious culpable act or omission on the part of the employer). However, the remaining notice period must always be at least one month (see articles 7:672 (4) and 7:671b (8) Civil Code). This change has been made because article 4, paragraph 4 of the ESC provides that a reasonable period of notice must always be observed. In such cases a month is deemed to be a reasonable period.

Another change made by the Work and Security Act is the introduction of a right to a transition payment in the Civil Code. This statutory entitlement replaces the compensation that the courts could award prior to 1 July 2015 on the basis of the limited jurisdiction sector's standard formula for redundancy payments (which had no statutory basis). This transition payment is owed in the event of dismissal or non-renewal of a fixed-term contract, where employment has lasted for at least 24 months, and is dependent on the duration of the employment. The amount of the transition payment is prescribed by law (see also the answers to the Committee's questions in respect of paragraph 4 (c)).

As noted previously, another change as of 1 July 2015 is that where a party terminates an employment contract earlier than legally permissible, its obligation to pay compensation is replaced by a system under which the employer or employee concerned owes compensation equal to the pay for the period during which the contract would have remained in effect had it been terminated in the normal manner. This applies both when termination takes place earlier than allowed and when, without justification, no notice whatever is given (compare articles 7:672 and 7:677 of the Civil Code).

The provision on the inclusion of a probationary period in an employment contract has also been tightened up in the Work and Security Act. Since 1 January 2015 probationary periods may not be included in fixed-term contracts of six months or less. The maximum probationary period that may be agreed for employment contracts of between six months and two years is one month. Employment contracts valid for two years or more may include a probationary period of up to two months. GIven the short duration of a probationary period (a maximum of two months), a notice period is not considered proportionate. In addition, short-term contracts (six months or less) may not include a probationary period owing to the uncertainty this might cause. Where contracts have been entered into for a longer term, either party may terminate the contract during the probationary period without needing to observe the ordinary rules on notice of termination. This can also be to the employee's benefit since he or she is also not bound by these ordinary termination rules during the probationary period.

Questions from the European Committee of Social Rights

about the Netherlands' previous report (26th)

Paragraph 1 – Decent remuneration

a. The Committee asks that the next report provide data on the net average wage and the net minimum wage paid to a single worker without children, as well as more precise information and data on supplements and benefits available to such worker.

As noted in the previous section, CBS data show that the average net disposable income of a single worker in 2014 was €26,400 per year. As the CBS does not publish data on the net minimum wage, the Ministry of Social Affairs and Employment has itself calculated the net disposable income of a single worker earning the minimum wage.

The following calculation of net disposable income[6] based on figures from 2014 shows:

Table: Calculation of the disposable income of a single worker earning the minimum wage in 2014

Minimum annual wage (including minimum holiday allowance)	19,316
Taxable income	18,936
Tax after deduction of the general tax credit and the employed person's tax credit	2,724
Net income	16,213
Healthcare insurance premium (including average excess)	1,304
Healthcare benefit	865
Disposable income (without housing benefit)	**15,773**

The credits and benefits available to a childless single worker are mainly the general tax credit and employed person's tax credit (in relation to income tax) and the healthcare benefit and housing benefit. These benefits are dependent on the claimant's income. As the question of whether housing benefit is awarded and, if so, how it is calculated depends on whether the worker rents accommodation and the amount of the rent, this benefit has not been included in the calculation of the disposable income of a single worker earning the minimum wage.

b. The Committee notes from EUROSTAT (Monthly minimum wages, country-specific information) that the Government may decrease the statutory minimum wage in certain enterprises or sectors in case of severe economic adversity. It requests that the next report provide information on this point.

The Minimum Wage and Minimum Holiday Allowance Act does indeed make it possible for the minister, at the request of employees' and employers' organisations, to set a lower minimum wage for certain categories of staff in an enterprise or sector (section 10 of the Minimum Wage and Minimum Holiday Allowance Act). This may be done where the future of the enterprise or sector is in serious jeopardy. Nonetheless, consultations between employees' and employers' organisations must first be held in the sector concerned to explore other possible solutions of a less drastic nature. The minister has not exercised this power since the 1970s.

[6] The amounts used in the calculation were not rounded up or down. As the amounts in the example are rounded, there may be small differences.

Paragraph 4 – Right to a fair remuneration

c. The Committee requests that the next report provide information on the system currently debated, under which severance pay would be provided for by statute, and grounds for termination would be examined after termination.

Under the Work and Security Act, severance pay has indeed been regulated in the Civil Code since 1 July 2015. Book 7 of the Civil Code provides for three forms of severance pay. First, severance pay for early termination of the employment contract is regulated in articles 7:672 (9) and 7:677 (4) of the Civil Code. Other matters now included by statute are transition payments (article 7:673 Civil Code) and fair compensation (articles 7:681, 7:681b, 7:682, and 7:683 Civil Code). The statutory transition payment replaces the compensation which the courts could award prior to 1 July 2015 on the basis of the limited jurisdiction sector's standard formula for redundancy payments (which had no statutory basis). A transition payment is owed if an employment contract has been in effect for more than two years. The payment is equal to one-sixth of the monthly salary for each six-month period that the contract was in effect during the first ten years and to one-quarter of the monthly salary for each subsequent six-month period (i.e. half a month's salary for each year of service after the tenth year of service). This payment is, in principle, always due in the event of dismissal, unless there has been a serious culpable act or omission by the employee (such as theft or other serious offence). A transition payment is also due if temporary employment is terminated by the employer after at least 24 months or is continued on the initiative of the employer after a termination by operation of law (unless a subsequent employment contract that takes effect within six months has been concluded before the end of the first employment contract). If there has been a serious culpable act or omission by the employer, the court may award the employee additional fair compensation.

As noted in the report in respect of paragraph 4§4 (1), the preventive dismissal assessment has been retained in Dutch dismissal law.
The employer is required to ask the Employee Insurance Agency (UWV) for consent to terminate the employment contract if the proposed termination is on economic grounds (redundancy) or due to long-term incapacity for work (after sickness lasting two years). If the proposed dismissal is on personal grounds, a preventive assessment is made by the limited jurisdiction sector of the district court. The ground for dismissal is therefore not assessed retrospectively; the assessment continues to be preventive and is carried out either by the Employee Insurance Agency or by the limited jurisdiction sector (in exceptional cases, the assessment of a proposed dismissal on economic grounds may be carried out in advance by an independent committee established under the terms of a collective agreement).

If the Employee Insurance Agency has authorised termination of the employment contract, the employee may still apply to the courts for judicial review of this decision (see article 7:682 in conjunction with article 7:686a (4) of the Civil Code). The employer may also apply for judicial review of a decision by the Employee Insurance Agency to refuse consent to terminate an employment contract.

These changes have been introduced by the Work and Security Act and mostly entered into force on 1 July 2015.

d. It notes, however, that derogations by collective agreement or regulation are allowed, and asks the next report to provide information on such derogations in practice.

The Committee refers in this connection to the derogations that may be made by collective agreement for a successive contracts clause (i.e. a provision setting out how successive fixed-term contracts become an open-ended contract of employment (see article 7:668a Civil Code). Article 7:668a has also been amended by the Work and Security Act. Under the new provision:

- three successive fixed-term contracts may be agreed;
- the maximum duration of a successive contracts clause is reduced from three to two years;
- the interval within which contracts are deemed to be successive is extended from three to six months; derogation from this provision by collective agreement is no longer possible; and
- derogation by collective agreement from the maximum term and maximum number of contracts is subject to conditions: namely that unlimited derogations from the number of fixed-term contracts and the term are no longer possible, that any derogations are permitted only subject to conditions and that derogation in respect of the interval is no longer possible unless the work is of a seasonal nature.

This means that after two years successive fixed-term contracts are followed by an open-ended contract. As noted, the possibility of derogating by collective agreement is subject to conditions. This means that derogation by collective agreement from the maximum number of employment contracts and maximum duration is possible only in the case of employment agency secondment contracts (after the period referred to in article 7:691 of the Civil Code) or if the intrinsic nature of the business operations makes this necessary for certain positions, but even then the number of contracts in a period of four years or less may not exceed six. Derogation by collective agreement from a successive contracts clause is also possible with respect to employment contracts designated in the collective agreement which have been entered into exclusively or mainly for the purpose of the employee's education. Finally, article 7:668a, paragraph 13 of the Civil Code provides that the length of the intervals between fixed-term contracts may be reduced by collective agreement to not to less than three months. This is possible only for jobs that can be performed for only nine months or less a year due to climatological or natural circumstances and cannot be performed continuously by the same worker for a period of more than nine months a year.

As article 7:668a in its pre-amendment form remained in force for current collective agreements until twelve months after the entry into force of the Act (i.e. until 1 July 2016), no clear picture can yet be given of the developments in practice. However, a sample survey of collective agreement provisions by the Ministry of Social Affairs and Employment in 2016 examined 90 collective agreements. The survey found that derogations have been agreed in a number of collective agreements. Forty-eight of these collective agreements included provisions in conformity with the new successive contracts clause (i.e. no derogation). However, 40 of the collective agreements (covering 60% of the workers) included derogations from the successive contracts clause for one or more categories of worker or situations. The most common reason for derogation is education (25 collective agreements), followed by nature of the job (19 collective agreements). The table below shows for what categories and situations derogations are made from the successive contracts clause.

Table Successive contracts clause

agreed provision	number of collective agreements[1]	% of workers
agreements about successive contracts clause in collective agreement		
- no, nothing about successive term clause	20	14
- yes, reference to the legislation (implicit agreements)	28	46
- yes, explicit agreements	42	41
nature of any explicit agreements		
- in keeping with old successive contracts clause	5	7
- in keeping with new successive contracts clause	35	30
- derogations for all workers	2[A]	4
derogation for certain categories/situations[2]	40	60
- education	25	40
- employment agency workers	2	6
- persons entitled to state pension (AOW)	15	34
- certain jobs / job groups	19	30
- seasonal work	6	3
- project work	3	4
- research	5	5
- other reason	5	18
derogation from a particular part of the successive contracts clause[2]	30	46
- derogation relating to contracts	21	28
- derogation relating to number of years	27	44
- derogation relating to length of interval	6	3

[1] Only collective agreements with an expiry date after 31/12/2015. Total number is 90. Number of workers as a percentage of the total number covered by the sample: 4.8m.

[2] As collective agreements may contain provisions on a number of different aspects, the total may differ from the sum of the individual aspects.

[A] GVB and Uitzendkrachten ABU.

e. It also asks for information on the notice period applicable when the fixed-term contract is terminated before expiry.

The following applies to fixed-term employment contracts. First, an employer may terminate a fixed-term contract early if this possibility has been agreed in writing (article 7:667 Civil Code). If this is the case, the contract may be terminated early by either party (in other words, by the employee as well). If early termination has been agreed, such termination is subject to all provisions applicable to termination, including periods of notice, the preventive assessment by the Employee Insurance Agency, the collective agreement dismissal committee or the limited jurisdiction sector of the district court, and the provisions prohibiting termination. This means that if an employer wishes to terminate a contract early and this has been contractually agreed, the employer must observe the usual periods of notice. If an employment contract is terminated early without the possibility of early termination having been contractually agreed, the other party is owed compensation equal to the monetary amount of the employee's pay for the period during which the contract would have lasted if it had ended by operation of law. This amount may be reduced by the limited jurisdiction court, but to no less than the monetary equivalent of three months' pay. The employee may request the limited jurisdiction court to set aside the notice of termination (article 7:677 (4) Civil Code).

f. The Committee asks the next report to provide information on notice periods and/or compensation applicable to any other causes of termination of employment, such as bankruptcy; exemptions to termination bans (mutual agreement; end of business activity; and refusal to perform alternative work); death of the employer; and termination of employment contracts of five years and more of duration (Article 7:684 of the Code)).

The Committee refers to various grounds on which employment may be terminated:

- Bankruptcy: In the event of bankruptcy the trustee in bankruptcy requests the delegated judge to set aside the employment contract (section 68 (2) Bankruptcy Act). No preventive dismissal assessment is carried out by the Employee Insurance Agency or the limited jurisdiction sector of the district court. Although the trustee in bankruptcy is required to observe the statutory notice periods, the maximum period of notice is six weeks (section 40 of the Bankruptcy Act). After dismissal, employees are entitled to make use of the pay guarantee scheme, which provides for the Employee Insurance Agency (UWV) to assume responsibility for payment of salary entitlement (a maximum of 13 weeks for arrears of pay prior to dismissal, and a maximum of one year's past holiday allowance and pay during the period of notice up to a maximum of six weeks). The transition payment is not owed if the employer has been declared bankrupt (article 7:673c (1) Civil Code).
- Consent of the employee: Employees can indeed consent in writing to dismissal. Since 1 July 2015 employees are allowed a period of 14 days during which they may withdraw their written consent without giving reasons. Although no transition payment will be owed if employee and employer conclude a joint agreement for termination of their contract, the concept of the payment will still have a consequential effect as the parties will generally take the amount of the transition payment as the basis for conclusion of the agreement.
- Termination of the enterprise's business operations is an economic ground for dismissal. An employment contract can therefore be terminated if the Employee Insurance Agency has given its consent. The provisions prohibiting termination do not apply in such a situation. The underlying idea is that the additional protection afforded by the prohibitions on termination will no longer serve any purpose if the enterprise ceases to exist (unless an employee is on pregnancy and maternity leave). The usual periods of notice must still be observed when termination occurs on this ground. Employees are also, in principle, entitled to a transitional payment (provided the employment contract has been in force for at least 24 months).
- What is meant by the exception to the special termination prohibitions for 'refusal to perform alternative work' is unclear. The Supreme Court has held that since employees are required to perform their duties properly they must in general respond positively to reasonable proposals by their employer regarding a change in their terms and conditions of employment, such as a change of position (Supreme Court, 26 June 1998, *NJ* 1998/767 *Van der Lely v. Taxi Hofman*). However, refusal to do so does not generally warrant an exception to the termination prohibitions. Summary dismissal is possible only for a compelling reason, for example because the employee persistently refuses to obey reasonable orders or instructions given to him by or on behalf of the employer (articles 7:678, paragraph 2(j) in conjunction with article 7:677, paragraph1 in conjunction with article 7:670a, paragraph 2 (c) Civil Code). Failure to obey what is in itself a reasonable order does not necessarily constitute a compelling reason. It is assumed in the case law that the employer may not generally demote an employee unless he or she is not suitable or lacks the necessary skills for the job in question (see, for example, Sneek District Court, limited jurisdiction sector, 9 October 1957, *NJ* 1957/651). Moreover, an employee who is prevented by sickness from performing the contracted work is, in principle, obliged to accept suitable work offered by the employer (see article 7:660a Civil Code). The limited jurisdiction sector may set aside an employment contract at the employer's request if the employee refuses to meet these obligations, provided that the employer has served the employee with written notice demanding performance of the obligations and can submit an

expert's statement (see article 7:671b Civil Code).
- Death of the employer: an employment contract is not ended by the death of the employer unless the contract provides otherwise (article 7:675 Civil Code). A fixed-term contract may be terminated early, subject to the termination prohibitions (listed in article 7:672 Civil Code). The normal termination rules apply in the case of open-ended employment contracts.
- Under article 7:684 of the Civil Code, if an employment contract has been entered into for a period of more than five years or for the duration of the life of a particular person, the employee is entitled to terminate the contract after five years by giving six months' notice. Only the employee has this power. Early termination by the employer is subject to the ordinary rules on termination of employment contracts.

g. It also asks for information on notice periods and/or compensation applicable to workers excluded from the scope of the general law, such as tenured civil servants; contractual staff of the State, Provinces, Municipalities, Water Boards; domestic workers; and teachers.

The provisions on employment contracts in the Civil Code are not applicable to persons employed by a public body such as the state or a province, municipality or water authority. The only exceptions are where an act of parliament or bye-law provides otherwise or the parties have agreed differently (article 7:615 Civil Code). If this is the case, the ordinary rules on termination of employment contracts apply. If the provisions of the Civil Code do not apply to such persons, the rules on termination of employment contract in their own legal status regulations.
In the case of teachers, the rules depend on whether they have been appointed by a public body or a private institution. The ordinary termination rules apply with respect to teachers employed under a contract governed by the provisions of the Civil Code. With respect to teachers who are employed by a public body and do not have an employment contract, separate legal status regulations apply.
The legal status of persons appointed as civil servants is regulated in the Central and Local Government Personnel Act (*Ambtenarenwet*) and the General Civil Service Regulations (*Algemeen Rijksambtenarenreglement/ARAR*). Under article 95 of the General Civil Service Regulations, the employment of a civil servant who has been appointed on a temporary basis may be terminated early provided that the following notice periods are observed:
a. three months if the civil servant has been employed for an uninterrupted period of at least twelve months when notice of termination is given;
b. two months if the civil servant has been employed for an uninterrupted period of at least six months but less than twelve months when notice of termination is given;
c. one month if the civil servant has been employed for an uninterrupted period of less than six months when notice of termination is given.

In the case of civil servants with a permanent appointment, an entirely separate system of rules governs dismissals (see article 81 and chapter X of the General Civil Service Regulations). This means that a civil servant can be dismissed only on a ground expressly included in the relevant set of civil service regulations.

If there is a reorganisation and it proves impossible to find another suitable job for a civil servant, a three-month period of notice generally applies (article 96 of the General Civil Service Regulations). A bill to normalise the legal status of public servants was passed by parliament in November 2016 with a view to achieving the greatest possible uniformity in the

legal status of public and private sector workers, both generally and in relation to dismissal. Work is currently in progress on a bill to bring the legislation into line with the bill to normalise the legal status of public servants. The changes are scheduled to enter into force as of 1 January 2020 (Parliamentary Papers *II*, 2016/17, 32 550, no. 60).

An exception to the preventive dismissal assessment by the Employee Insurance Agency applies in the case of domestic workers who perform services generally on less than four days a week exclusively or almost exclusively for the benefit of the household of the natural person by whom they are employed (article 7:671 (1) Civil Code). In other respects, the ordinary rules on notice periods and transition payments in the Civil Code apply to domestic workers.

Paragraph 5 – Limits to deduction from wages

h. In order to examine whether the conditions and the extent to which deductions from wages can be made is prescribed in a clear and precise manner by legislation, regulation, collective agreement or arbitration so as to serve this aim, it asks the next report to indicate whether the following grounds for deduction are subject to limits:

- *Special mandates to make payments under Article 7:631, paragraph 1 of the Code;*
- *Contributions to funds, insurance and schemes under Article 7:631, paragraph 3 of the Code;*
- *Refund of training time and fees under related case law;*
- *Instalments and rent owed to the employer under Article 7:632, paragraph 2 of the Code;*
- *Attachment under Article 6:135a of the Code and Article 475a and further of the CCP.*

The various limits on set-offs against and deductions from wages will be dealt with below in the order set out above:

- if an employee authorises his or her employer to make payments from wages, the limit of the statutory minimum wage applies as of 1 January 2017 (article 7:631 of the Civil Code and section 13 of the Minimum Wage and Minimum Holiday Allowance Act). However, if the employee has authorised deduction of the costs of accommodation, the employer may still deduct them from the statutory minimum wage up to the amount of the rent, subject to a limit of 25% of the statutory minimum wage. Another permissible deduction from the statutory minimum wage is for the compulsory health insurance premium and insurance to cover the compulsory excess. The deduction for healthcare insurance may not exceed the estimated average nominal premium (fixed at €1,241 per year in 2017). However, the employee must have given authorisation for this purpose. This follows from articles 2a, 2b and 2c of the Minimum Wage and Minimum Holiday Allowance Decree (*Besluit minimumloon en minimumvakantiebijslag*).

- the limit of the statutory minimum wage does not apply to contributions to pension funds and insurances that comply with the requirements of the Pensions Act (*Pensioenwet*) or funds and savings schemes that fulfil the requirements of the Funds and Savings Schemes Decree (*Besluit fondsen en spaarregelingen*). However, the employer then has an obligation to pay these amounts to the fund or insurance concerned. These funds and insurances must also fulfil various requirements set out in the Pensions Act and the Funds and Savings Schemes Decree. The statutory minimum wage limit does apply, however, if the fund or the insurance does not fulfil these requirements.

- Under case law the repayment of training costs is also subject to a limit. First, the study agreement must include a provision for the amount to be repaid to decrease in proportion to the length of time the employment continues during the period in which the employer is deemed to benefit from the knowledge and skills gained by the employee during his or her studies (as held in the judgment of the Supreme Court of 10 June 1983, NJ 1983, 796, paragraph 3.1). This repayment obligation may not conflict with the Minimum Wage and Minimum Holiday Allowance Act (the employee's pay may not fall below the statutory minimum wage as a result of the repayment obligation).

- As noted previously, the limit applicable to rent since 1 January 2017 has, in principle, been the statutory minimum wage (section 13 of the Minimum Wage and Minimum Holiday Allowance Act). As regards accommodation costs the employee may sign a written authorisation for deduction of not more than 25% of the statutory minimum wage for payment to the landlord, provided that the landlord is a housing association or is accredited on the basis of standards agreed in a collective agreement (article 2a of the Minimum Wage and Minimum Holiday Allowance Decree). This guarantees that the accommodation is of a sufficient standard. If the landlord does not fulfil this requirement, no deduction for rent may be made from the statutory minimum wage.

- After employment ends, the limit applicable under article 135 of Book 6 of the Civil Code is the amount of income exempt from attachment. This attachment-exempt amount is regulated in article 475a et seq. of the Code of Civil Procedure. It is the minimum income that employees must be left with so that they are able to support themselves. The attachment-exempt amount is an individual limit and depends on the person's costs of maintenance. However, the rule of thumb is 90% of the general social assistance criterion (see article 475d of the Code of Civil Procedure).

i. It also asks for information on which criteria are used to determine the damages owed to the employer in connection with employment under Article 7:632, paragraph 2 of the Code.

Damages owed to the employer may be deducted from pay only if they are connected with the employment. For example, Leeuwarden Court of Appeal held that an employer was not allowed to deduct damages owed in respect of a contract of sale and purchase (Leeuwarden Court of Appeal, 20 January 2009, JAR 2009/73). Employment-related damages occur where an employee has caused damage to his or her employer and the loss can be recovered from the employee under article 7:661 of the Civil Code. The principle which applies here is that an employee is not liable for the damage caused unless it is a consequence of intent or deliberate recklessness on the part of the employee. As of 1 January 2017, damages may not be set off against the statutory minimum wage during employment.

j. It then asks to indicate limits applied to other grounds for deductions such as criminal or disciplinary fines; maintenance claims; compensation for wages in kind; assignment of wages; or decline in business.

Under article 7:632 of the Civil Code, there are only five grounds for deductions during employment:

a. damages owed by the employee to the employer;
b. fines owed by the employee to the employer under article 7:650 of the Civil Code;
c. any monetary advances on wages paid by the employer to the employee, provided there is evidence in writing;
d excess wages paid by the employer to the employee, and
e. the rent of a dwelling or other accommodation or of a plot of land or the charge for hiring implements, machinery and tools which are used by the employee in his or her own business and have been let or hired by the employer to the employee by written agreement.

The limit of the statutory minimum wage has applied to these five grounds for deduction since 1 January 2017. This means that any fines which an employee owes to his or her employer on the basis of a penalty clause may not be deducted from wages if the employee would as a result be paid less than the statutory minimum wage. It is unclear what is meant by 'maintenance claims'. The statutory minimum wage may be paid only in money; payment in kind may not be treated as part of the statutory minimum wage. The assignment of wages or a decline in business are never grounds for paying less than the minimum wage. The SZW Inspectorate is responsible for enforcing the provisions on the payment of the statutory minimum wage and, where necessary, imposes an administrative fine on the employer and orders it to arrange the back payment of wages where there has been a breach of the Minimum Wage and Minimum Holiday Allowance Act.

Where pay is higher than the statutory minimum wage, the general rule is that if an employer is bound by the provisions of the collective agreement – either because it has itself concluded the collective agreement or because it is bound through its membership of an employers' organisation or the provisions of the collective agreement have been declared universally applicable by the Minister of Social Affairs and Employment – it may not pay a wage which is lower than the wage agreed in the provisions of the collective agreement. If it does so, it is acting in breach of the law and the employee (or the trade union acting independently) may bring an action to recover back wages (see, for example, Gelderland District Court, 25 June 2015, ECLI:NL:RBGEL:2015:4171 (*FNV v. Vérian*). If the wages are not paid or not paid in time, the employee is entitled to a statutory increase by virtue of article 7:625 Civil Code. Even when business conditions are very unfavourable, an employer is bound to apply the provisions of the collective agreement (see Amsterdam District Court, 23 February 2015, ECLI:NL:RBAMS:2015:899).

In a situation in which wages are higher than the statutory minimum wage and no collective agreement is applicable to the employment relationship, a unilateral reduction of pay by the employer is still subject to conditions. The employer may unilaterally alter terms and conditions of employment, such as the wage amount, if provision for this has been made in the employment contract and the alteration is of such importance to the employer that its interests should override those of the employee, according to standards of reasonableness and fairness (article 7:613 Civil Code). The burden of proof rests on the employer. However, it has been assumed in lower court decisions that when an employee's wages are reduced this provision can hardly ever be successfully invoked because pay is the most essential aspect of an employment contract (see, for example, Midden-Nederland District Court,12 June 2013, ECLI:NL:RBMNE:2013:CA2717).

k. It asks for the limits applied in case grounds for deductions from wages conflict with each other.

Article 7:632 (2) of the Civil Code and section 13 of the Minimum Wage and Minimum Holiday Allowance Act provide that the employer may not make deductions from the minimum wage. Another provision is that where attachment and deduction coincide, attachment takes precedence. The amount that the employer is required by law to withhold for the purpose of attachment is deducted from the maximum that it can set off against the employee's pay (article 7:632, paragraph 3 Civil Code).

l. The Committee asks the next report to indicate any safeguards preventing employees from waiving their right to limitation of deductions from wages under Article 4§5 of the Charter.

Any clause which grants an employer a broader right of set-off is, in principle, voidable (see article 7:632 Civil Code). This means that the underlying notice of set-off is also voidable. If deductions have been made from wages in breach of article 7:632 of the Civil Code, the employee concerned may recover the part of the wages wrongly withheld, together with interest at the statutory rate and the statutory increase. In addition, pursuant to section 13 of the Minimum Wage and Minimum Holiday Allowance Act, amounts may not be deducted from the statutory minimum wage during employment. The SZW Inspectorate is responsible for supervising compliance with these provisions under administrative law and may impose an administrative fine and demand back payment of wages if the employer has acted in breach of the Minimum Wage and Minimum Holiday Allowance Act.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

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.*

No new developments

Questions from the European Committee of Social Rights

about the previous (26th) report of the Netherlands.

a. The Committee asks that the next report provide a full and up-to-date description of the situation.

No new developments.

b. The Committee would like to receive the Government's comments on this situation (system of collective bargaining), in particular as regards measures or initiatives taken by the Government, the Social and Economic Council or the social partners in order to increase the union density and/or to strengthen the legitimacy of the trade unions in the process.

Recruiting members is a matter for the trade unions themselves. What is even more important is gaining and retaining sufficient support among working people for the collective agreements the unions have negotiated. This requires continuous efforts by the unions (and the employers), and an active approach on the part of the social partners in fulfilling their own responsibility for the terms and conditions of employment and generating support. This can be achieved in two ways:

- by ensuring that collective agreements allow sufficient scope for a customised and flexible approach. Such results not only increase the support base but also help to improve the functioning of the labour market.
- by maximising the involvement of all workers in the sector concerned, members and non-members alike.

It is up to the parties to determine the substance of the collective agreement.
Many efforts are already being made to increase the support for collective agreements. Modernising the system of collective agreements and maximising support for them are mainly tasks for the social partners themselves. This is up to them and it is of great importance that the broaden the scope of the initiatives they take in this respect. The government asked the Social and Economic Council (SER) for an advisory opinion on this matter.

c. The Committee would like to know what the result of these consultations was, and if further measures were taken in order to ensure protection against acts of anti-union discrimination.

The SER acknowledged in its 2013 opinion that support is not guaranteed and that economic developments, the individualisation of society and a low level of union density may well cause an ongoing debate about the role and value of collective agreements and support for them.This requires parties to collective agreements to engage in continuous consultation to achieve a result that can rely on support from the union rank and file and others concerned. Various measures, examples of which have been described by the SER, have been and are being taken for this purpose. These are consistent with the specific circumstances of and developments within the business or sector concerned. The extent to which these measures can be developed together depends on many factors. Trust and a shared vision of the future are essential. Customising the approach to specific situations and circumstances is one way of broadening the support base. This method has been applied for a great many years but is still in development. The trade unions are increasingly giving non-members the opportunity to participate in the collective bargaining process (by providing information and holding polls

and referendums, mainly online). Encouraging non-members to be actively involved in the collective bargaining process requires a major commitment, particularly in the sectors concerned, not only in terms of staffing but also financial resources. Although involving non-members is an obvious move, it presents the trade union movement with a dilemma. If non-members are involved in the collective bargaining process in almost the same way as members, there is less incentive for people to join a union. If union membership declines, this calls into question the extent to which the unions can claim to be representative.

d. The Committee recalls that criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1 (2000) France). It asks whether this is the case in the Netherlands.

The Netherlands has no formal provision regulating the extent to which trade unions must be representative. To participate in the collective bargaining process, a trade union obviously needs to have one or more members within the sector which is the subject of negotiations. As parties are free to determine their negotiating partners, however, it is up to the other parties involved in the collective bargaining process (mainly the employers' organisations but also other trade unions) to decide whether to admit a trade union or other aspiring participant to the negotiations.

e. The Committee would like to receive detailed and up-to-date information on the scope rationae personae, in particular in relation to the treatment of nationals of other contracting parties in respect of membership of trade unions and enjoyment of the benefits of collective bargaining.

Section 14 of the Collective Agreements Act provides that employers must also apply the provisions of the collective agreement on terms and conditions of employment to workers who are not union members or are members of other unions.

Article 6 – The right of workers to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Appendix to Article 6§4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 6§1

1) Please describe the general legal framework applicable to the private as well as the public sector. 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.

No new developments

Article 6§2

1) Please describe the general legal framework applicable to the private as well as the public sector. 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 collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

No new developments

Article 6§3

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant 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, in particular on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, inter alia, compulsory arbitration.

No new developments

Article 6§4

1) Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.

By law of December 14, 2014 the Netherlands have revoked the restrictions with respect to the right to strike. This means civil servants now have a right to strike, laid down by law (Kingdom Act of 3 December 2014, published in the Bulletin of Acts and Decrees on 15 January 2015, no. 11).

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

Not applicable

3) Please provide pertinent figures, statistics or any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.

Labour strikes, 1993-2016 (Source: CBS Statline)

Subjects	Disputes	Working days lost	Workers involved
Perioden	*absoluut*	*x 1000*	
1993	12	44.7	20.7
1994	17	47.4	21.8
1995	14	691.5	55.0
1996	12	7.4	8.1
1997	17	14.6	7.2
1998	22	33.2	30.8
1999	24	75.8	58.9
2000	23	9.4	10.3
2001	16	45.1	37.4
2002	16	245.5	28.6
2003	14	15.0	10.8
2004	12	62.2	104.2
2005	28	41.7	29.0
2006	31	15.8	11.3
2007	20	26.4	20.7
2008	21	120.6	51.9
2009	25	4.6	3.6
2010	21	59.2	14.1
2011	17	22.0	47.1
2012	18	219.4	89.6
2013	24	19.4	4.5
2014	25	40.9	10.2
2015	27	47.6	42.4
2016	25	19.2	11.1

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Questions from the European Committee of Social Rights

about the previous (26th) report of the Netherlands

Paragraph 1 – Joint consultation

a. The Committee asks that the next report provide a full and up-to-date description of the situation.

No new developments. The system has not changed.

b. The Committee would like to be fully informed as regards the practical implementation of the reforms in question at central, sectoral and company level.

No new developments.

Paragraph 2 – Negotiation procedures

c. The Committee requested information regarding the implementation of the new regulations on exemption from extension orders concerning sectoral collective agreements. The Committee notes that the report does not provide the information requested and reiterates its question.

The policy on declarations of universal application was modified in 2007 in such a way that the mere fact that a company or part of a sector has its own collective agreement is not a sufficient reason to warrant a dispensation by the Minister from a universal application decision. This change was made because companies had found that having their own collective agreement was a way of circumventing a universal application decision. Applicants for a dispensation must now show they cannot reasonably be required to apply the provisions of a collective agreement declared to be universally applicable. This can be done by presenting factors that are specific to the individual undertaking.

d. The Committee asks that the next report provide a full and up-to-date description of the situation in law and in practice on the collective bargaining procedures in the Netherlands.

The adoption of this stricter criterion for declarations of universal application has meant that the procedures can take longer as the minister must exercise due care in hearing both sides of the case. Moreover, dispensation decisions can be challenged by objection and review procedures. As a result, the authorities were involved on a number of occasions during the reporting period in legal proceedings that were appealed up to the level of the highest administrative court (the Council of State). The case law shows that the authorities have applied this dispensation policy with due care.

Paragraph 3 – Conciliation and arbitration

e. The Committee asks that the next report provide a full and up-to-date description of the situation.

Mediation proceedings before the joint sectoral committee (a bipartite committee consisting

of representatives of employers and employees) were obligatory until 2013, when they became voluntary. Where a dispute occurs between a company and a works council, the parties can now take their case directly to the courts. But they can also first bring the case before the joint sectoral committee.

f. The Committee asks that the next report indicate the modalities and consequences of this new amendment to the Works Council Act.

This change has resulted in a very marked drop in the number of mediation proceedings before the joint sectoral committees.

g. The Committee would like to know if conciliation, mediation and/or arbitration procedures are instituted in case of conflicts in the public sector.

Yes. There is a joint sectoral committee for the public sector.

Paragraph 4 – Collective action

h. The Committee wishes to receive updated information on any new developments and case law of the courts with regard to this situation.

In the Netherlands collective action is regulated by case law. In its Enerco judgment (2014), the Supreme Court interpreted the right to strike in broad terms and held that the trade unions are, in principle, free to decide on the nature of collective action, provided that the action they take can reasonably be assumed to be useful in furthering the exercise of their right to collective bargaining. In its Amsta judgment (2015) the Supreme Court ruled that although criteria such as 'timely notice' and 'first having exhausted all other possibilities' may still be applied, they are no longer sufficient in themselves to determine whether collective action is lawful. They may therefore be taken into account, but only in the context of a decision on whether or not article G of the ESC (serious social grounds) is applicable. In short, collective action may be restricted only by article G of the ESC and not by rules laid down in previous cases.

Article 21 – The right of workers to be informed and consulted within the undertaking

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.
2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

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

Various changes have been made to the Works Councils Act (*Wet op de ondernemingsraden*) with effect from 19 July 2013.

- These changes, which were prompted by a wish to modernise the provisions of the Act and bring the law into line with developments in practice, are as follows:
- The funding of the system for training works council members has been changed. The Act now provides that training must be of a proper standard and that training costs should be directly borne by the undertaking.
- The duty to provide information has been expanded. An undertaking that forms part of an

international group of undertakings must in future provide all contact information so that workers' representatives in the Netherlands can contact the parent company abroad in good time about decisions that affect the Dutch undertaking.
- The rules for holding works council elections have been changed. The requirement that a list of independent candidates can be submitted only if accompanied by a given number of signatures has been scrapped.
- The dispute settlement rules have been changed. The statutory obligation to present workers' participation disputes for mediation to a joint sectoral committee (consisting of representatives of central employers' and employees' organisations) before taking legal action before the courts has been dropped. However, a joint sectoral committee can still be consulted on a voluntary basis.

These changes have been made for the following reasons:
- The funding of the training system has been changed in keeping with the recommendations of an advisory report of the Social and Economic Council (SER), produced jointly by employers, employees and the SER's independent members.
- The duty to provide information has been expanded in response to a parliamentary motion.
- The rules on works council elections have been changed as a result of an amendment made by the House of Representatives.
- The disputes procedure has been changed to bring it into line with current practice.

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

As a result of the amendment of 19 July 2013 to the Works Council Act, the Social and Economic Council is now explicitly responsible for promoting worker participation. The Committee for the Promotion of Worker Participation (CBM) has been established by the SER for this purpose. The key function of the CBM is broadly to promote worker participation and the standard of such participation in undertakings. It is also responsible for disseminating information about worker participation and changes to it.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the percentage of workers out of the total workforce which are not covered by the provisions granting a right to information and consultation either by legislation, collective agreements or other measures.

No new developments since the previous report. No specific information about this is available.

Questions from the European Committee of Social Rights

about the Netherlands' previous report (26th)

a. The Committee requests that the next report contains an up-to-date description of the legal framework guaranteeing the workers' right to be informed and consulted.

The most recent version of the Works Councils Act is translated by the SER and can be found by the following link: https://www.ser.nl/en/publications/.../works-councils-act

b. The Committee asks that the next report provide information as regards the practical implementation of the new legislation on the right of workers to be informed and consulted.

No change has been made since the late 1990s to the Dutch legislation on the question of who is covered by the Works Councils Act. There is therefore no new legislation (other than the above-mentioned items from 2013, which have already been fully implemented).

c. The Committee asks if legal remedies are available to workers.

The Works Councils Act contains a number of sections or subsections that enable works councils to protect their rights:

- Under section 23, subsection 3 a works council can apply to the limited jurisdiction sector of the district court if the undertaking does not respond seriously to a proposal made by the works council (by virtue of the works council's right of initiative). However, no appeal lies against the court's judgment.
- Section 26 deals with the right of works councils to appeal against decisions made by the undertaking under section 25, subsection 5 in respect of which the works council has a right to give an advisory opinion.
- Section 27, subsections 5 and 6 deal with how the right of the works council to be consulted can be enforced.
- Under section 31, subsection 1 the works council can apply to the limited jurisdiction sector of the district court if it considers that its right to be informed is not being observed.

d. The Committee recalls that there must be sanctions for employers who fail to fulfil their obligations under this Article (Conclusions 2005, Lithuania). The Committee asks if such sanctions against employers are instituted in the Netherlands.

The Dutch system makes no provision for sanctions under public law for failures by employers to fulfil their obligations under the Works Councils Act. Enforcement is effected by private parties bringing proceedings before the civil courts. Disputes between an employer and the works council about the manner in which the Works Councils Act is applied can be referred to a separate court known as the Enterprise Division). This court has the power to overturn decisions by the employer.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a. to the determination and the improvement of the working conditions, work organisation and working environment;
b. to the protection of health and safety within the undertaking;
c. to the organisation of social and socio-cultural services and facilities within the undertaking;
d. to the supervision of the observance of regulations on these matters.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.
2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Appendix to Article 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

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 employees who are not covered by Article 22, the proportion of the workforce who is excluded and the thresholds below which employers are exempt from these obligations.

No new developments

Questions from the European Committee of Social Rights

about the Netherlands' previous report (26th)

a. The Committee would like to receive information on the practical implementation of this new legislation.

The *Risk Identification & Assessment Support Centre* has been incorporated into the organisation of the Labour Foundation since 1 January 2011. The Support Centre carries out the social partners' task of determining whether a risk identification and assessment tool fulfils the requirements. Trade associations wishing to have their assessment tool recognised for the purpose of gaining an exemption must submit an application to the Support Centre. The Support Centre consists of a working group of the Labour Foundation and an executive secretariat that comes under the Netherlands Organisation for Applied Scientific Research (TNO).
The Support Centre is publicly funded.

Enclosed is a recent survey of the Support Centre's activities involving risk identification and assessment tools in the third quarter of 2016 (Annex 2).

b. The Committee recalls that where such services and facilities have been established, the workers should participate in their organisation (Conclusions 2007, Armenia). The Committee requests more information on how this right is ensured at the company level in case sociocultural services and facilities are organised by the employer.

The Working Conditions Act (Arbeidsomstandighedenwet) requires employers and employees to work together to implement working conditions policy in undertakings. This is dealt with in chapter 3 of the Act, which is entitled 'Cooperation, consultation, special rights of works councils, workers' representatives and the workers concerned, and expert assistance arrangements'.
This can cover all subjects, for example the organisation of in-company occupational health and safety, possibly including staff welfare work. Naturally, employers involve their employees in the process of choosing and setting up an in-company occupational health and safety service and its procedures. Provisions of the Working Conditions Act that are particularly applicable are sections 12, 13 and 14. The English text of the Act can be found at https://www.arboineuropa.nl/en/legislation/wetgeving-in-het-engels

c. The Committee recalls that there must be sanctions for employers who fail to fulfil their obligations under this Article (Conclusions 2003, Slovenia). The Committee asks if such sanctions are instituted in the Netherlands.

Dutch legislation (chapter 7 of the Working Conditions Act) sets out the sanctions that can be imposed if an employer infringes the provisions of the Act by failing to provide healthy and safe working conditions for employees. The main sanction is an administrative fine.
If an employer commits a repeat offence, the inspector may once again draw up a fine report. If this happens within 24 months of the original offence, the new fine may be increased by 50%. If the employer commits the same offence a third time within 48 months, an official report is drawn up and the Inspectorate orders the work to be halted.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26
It is understood that this article does not require that legislation be enacted by the Parties.
It is understood that paragraph 2 does not cover sexual harassment.

Article 26§1

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

No new developments

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 awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

'Sustainable Employability' Programme
https://www.arboportaal.nl/onderwerpen/themas/psychosociale-arbeidsbelasting

Article 26§2

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

No new developments

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 awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

'Sustainable Employability' Programme
https://www.arboportaal.nl/onderwerpen/themas/psychosociale-arbeidsbelasting

Negative conclusion of the European Committee of Social Rights

about the previous (26th) report of the Netherlands

Paragraph 2 – Moral harassment

A. The Committee concludes that the situation in Netherlands is not in conformity with Article 26§2 of the Charter on the ground that it has not been established that employees are effectively protected, in law or in practice, against moral (psychological) harassment.

Section 1, subsection 3 (e) of the Working Conditions Act (*Arbeidsomstandighedenwet*) deals with psychosocial stressors at work. Psychosocial stressors in the workplace are defined as forms of direct or indirect discrimination, including sexual harassment, aggression and violence, bullying and pressure of workload, which cause stress in the workplace.

Questions from the European Committee of Social Rights

about the Netherlands' previous report (26th)

Paragraph 1 – Sexual harassment

a. *The Committee asks that the next report provide updated information on the preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment, in particular those taken in consultation with social partners with a view to informing workers about the nature of the behaviour in question and the available remedies.*
b. *The Committee asks the next report to provide information on the activities, specifically related to sexual harassment, that will have been undertaken in the framework of this programme.*

Under the Working Conditions Act, employers have a duty of care in respect of the health and safety of their employees. This includes implementing a policy to prevent or, if that is not possible, minimise psychosocial stressors at work. Section 1, subsection 3 (e) of the Working Conditions Act defines psychosocial stress at work as sexual harassment, aggression and violence, bullying and workload pressure, which cause stress in the workplace.
A four-year 'Sustainable Employability' Programme was launched in 2014 to raise awareness and promote measures to tackle in organisations and businesses. The start of the programme coincided with the preparations for the EU campaign on work-related stress, which was also designed to raise awareness. This has provided an opportunity for the Dutch Focal Point of the European Agency for Safety and Health at Work (EU-OSHA) and the Ministry of Social Affairs and Employment to work together on this subject.
Various activities have been initiated and implemented during the four-year period. These include:

- public campaigns
- networking sessions
- talks with industries and sectors
- development of tools
- dissemination of research findings and practical knowledge
- cooperation with the Dutch Focal Point in the context of the European Campaign.

One of the subjects dealt with in the part of the campaign dealing with unwanted behaviour was sexual harassment. The campaign has used posters, radio spots and practical guidance to draw attention to this subject. See
http://www.duurzameinzetbaarheid.nl/125263/Factsheet_Ongewenst_Gedrag.pdf?v=0

Various other campaigns dealing with psychosocial stressors at work as a whole have also dealt with the subject of sexual harassment. In cooperation with the Dutch Focal Point of the EU-OSHA, campaign partners have been deployed to spread the message. A good practice competition was held in the Netherlands. The winner of the competition subsequently received a European award as well.

Here is a link to a site providing information about the 2014-2015 European Campaign on which the Netherlands and EU-OSHA collaborated: https://hw2014.osha.europa.eu/en.
See also http://www.campagne.arboineuropa.nl/nl/materiaal/tools/tools-nl and

http://www.duurzameinzetbaarheid.nl/124618/WegwijzerSeksueleIntimidatie.pdf?=0, and the self-inspection tool provided by the Inspection and Information Service of the Ministry of Social Affairs and Employment (the SZW Inspection Service): http://werkdrukenongewenstgedrag.zelfinspectie.nl/thema/seksuele-intimidatie

Finally, reference should be made to the website of the Ministry of Social Affairs and Employment (SZW) at https://www.arboportaal.nl/onderwerpen/seksuele-intimidatie, where information on this subject can also be found.

c. The Committee asks the next report to clarify what protection, if any, is provided to victims of sexual harassment against retaliation for upholding their rights.

Like bullying, discrimination, aggression and workload pressure, sexual harassment is treated as a psychosocial stressor in the Working Conditions Act. Under this Act employers are obliged to pursue a policy designed to prevent or minimise psychosocial stressors at work. They also have an obligation to provide information about the dangers of psychosocial stressors in the workplace and about the measures they have taken to prevent and minimise them.
Of course, employees can also raise matters of harassment with the works council and/or a confidential adviser. They have the same right if they believe they are being penalised for asserting their rights.
Other ways in which employees can assert their rights are to lodge a complaint with the Netherlands Institute for Human Rights under the Equal Treatment Act (*Algemene Wet Gelijke Behandeling*) or institute proceedings before the civil courts under the Civil Code (*Burgerlijk Wetboek*). This also applies if they are being treated unfairly for asserting their rights.

d. The Committee asks the next report to provide comprehensive and updated information on the relevant case law concerning sexual harassment, including information on the damages awarded, and to clarify whether reinstatement is possible when employees have been forced to resign because of the sexual harassment.

Relevant case law can be found on the website: jure.nl

Paragraph 2 – Moral harassment

e. *The Committee asks the next report to provide updated information on the preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular those taken in consultation with social partners with a view to informing workers about the nature of the behaviour in question and the available remedies.*

f. The Committee asks the next report to provide information on the activities, specifically related to moral harassment, that will have been undertaken in the framework of this programme.

See answer to Article 26, paragraph 1
See also the Moral Harassment, Intimidation and Discrimination at Work Fact Sheet
http://www.duurzameinzetbaarheid.nl/125263/Factsheet_Ongewenst_Gedrag.pdf?v=0
and the Unwanted Behaviour Plan of Action.
http://www.duurzameinzetbaarheid.nl/175098/KoersKaart_Ongewenst_Gedrag.pdf?v=0

g. The Committee asks the next report to clarify how moral harassment is defined and prohibited.

In the Netherlands, bullying (moral harassment) falls under the catch-all concept of psychosocial stressors. So, there is no specific definition as such; it is behaviour that falls within the parameters specified in section 1, subsection 3 (e) of the Working Conditions Act. The website at https://www.arboportaal.nl/onderwerpen/pesten provides information about aspects of moral harassment (forms of bullying, applicable legislation, what employers, employees and colleagues can each do to prevent bullying and a list of useful tools for tackling bullying). Under the Working Conditions Act, employers have a duty to implement a policy designed to prevent or minimise psychosocial stressors at work. They are also obliged by law to provide information about the dangers of psychosocial stressors at work and the measures they have taken to prevent or minimise them. Identifying and evaluating the risks of the work can also play a role in this. The same is true of the structure of co-determination and consultation and the presence of experts within the undertaking and any special counsellor.

h. It asks in particular what legal remedies, if any, are available to victims of harassment.

Under section 32 of the Working Conditions Act, employers who know, or could reasonably be expected to know, that their actions could jeopardise the health of their employees may be held criminally liable.
Under the Equal Treatment Act and the Civil Code (articles 7:658; 6:162 and 6:106), victims of harassment may also bring civil proceedings claiming damages from the perpetrator or compelling the employer to take other measures. There is a general prohibition of 'any form of verbal, non-verbal or physical conduct with sexual overtones that has the purpose or effect of violating a person's dignity, especially if it creates an intimidating, hostile, insulting, humiliating or hurtful situation.'

*i. It also asks for specific information **on** any specialised bodies that register and investigate complaints of harassment, such as mediation services and advice centres.*

The Netherlands Institute for Human Rights is a specialised body. Employers are required to implement a policy on unwanted behaviour in relation to both employees and outsiders with whom the undertaking comes into contact. Employees' representatives should also be involved. The establishment of a complaints procedure and complaints committee (including, for example, the company medical officer and an organisational expert), and the appointment of a special counsellor can be of assistance in tackling, registering and investigating complaints in the workplace.

j. The Committee furthermore asks the next report to indicate whether employers can be held liable towards persons working for them who are not their employees (sub-contractors, self-employed persons, etc.) and have suffered psychological harassment on their business premises or from employees under their responsibility.

Yes, employers are responsible for the safety and health of their employees. Under section 3, subsection 2 of the Working Conditions Act, this principle also extends to the policy on preventing psychosocial stressors at work. Employers also have a duty of care towards people

in their employ.

k. It also asks whether the liability of employers towards workers (whether they are employees or not) also applies in cases of psychological harassment suffered by persons not working for them (such as customers, visitors, etc.).

The employers' duty to prevent or minimise bullying extends to any contacts their employees may have with outsiders such as customers and visitors.

l. The Committee asks the next report to provide more detailed information and examples of case law concerning remedies that are available to employees who suffered from harassment at work, compensation awarded for material and moral damages before civil or administrative courts and reinstatement in the event of unlawful dismissal.

Relevant case law can be found on the website at jure.nl

Article 28 – Right of worker representatives to protection in the undertaking and facilities to be afforded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28
For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice"

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.*

No new developments

Questions from the European Committee of Social Rights

about the Netherlands' previous report (26th)

a. The Committee asks the next report to indicate whether adequate compensation proportionate to the damage suffered by the workers' representative who is dismissed is granted.

Article 7:670 of the Civil Code provides that members of the works council are protected from dismissal. Only in special cases may a works council member be dismissed, namely:

- closure of the undertaking or part of the undertaking in which the works council member is employed;
- redundancy on economic grounds;
- the conduct of the works council member giving grounds for summary dismissal (e.g. fraud or theft).

The dismissal may not be connected with the employee's membership of the works council. It follows, therefore, that the amount of any compensation that is awarded cannot be connected with works council membership. If an employee is nonetheless dismissed on account of works council membership, this constitutes a culpable act on the part of the employer. The courts may then order the employer to pay substantial compensation.

b. The report indicates that in case a works council may be required to convene outside working hours or attending the meetings may require disproportionate amount of travelling time, the works council members may be compensated in the form of either monetary remuneration or time off in lieu. The Committee asks for a more detailed description of how this works in practice.

The basic principle is that time spent on works council business counts as working time. However, the works council is bound to arrange as far as possible for its work to be performed during normal working hours. If this is impossible, the member must be paid or compensated for the extra time. This can be done in various ways, for example by temporarily adjusting the employment contract, by recording and paying the extra hours as overtime or by granting time off in lieu. Works council members may also treat the following activities as works council business for this purpose, namely preparing for meetings, keeping in contact with the people they represent, getting information online, in journals and from consulting in-house and external experts and taking training courses in works council-related matters. Once again, they should be either paid for these hours or given time off in lieu. Payment for overtime is made in accordance with the normal definition of wages within the company or sector concerned.

c. As the amendment (to the Works Councils Act, which came into force on 19 July 2013) was adopted outside the reference period, the Committee would like to be fully informed in the next report on the practical implementation of the new legislation in question

Under the previous Act, training was partly subsidised by a small tax paid by every employer with more than 50 employees. This has been abolished. Under the new Act, the employer and the works council have to negotiate between them the costs and budget for training and education. The costs are borne by the employer. The new Act, however, also explicitly states that works council members are entitled to at least five days of training and education 'of

sufficient quality'. As a result of this change, works councils have shifted from comprehensive standard training to more focused training.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix to Articles 28 and 29
For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

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

No new developments. The Collective Redundancy (Notification) Act (*Wet melding collectief ontslag*), which has been in force since 1 March 2012, is described on pages 38 and 39 of the 26th report.

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

No new developments.

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

Not applicable.

Questions from the European Committee of Social Rights

about the Netherlands' previous report (26th)

a. The Committee recalls that with a view to fostering dialogue, all relevant documents must be supplied before consultation starts, including the reasons for redundancies, planned social measures (designed in particular to facilitate the redeployment of the workers concerned), the criteria for being made redundant and information on the order of the redundancies (Conclusions 2005, Lithuania). The Committee asks what rules apply in this regard.

Information for and consultation of the trade unions

Employers have an obligation to give written notice of any planned collective redundancy to the trade unions concerned. They must give reasons for the planned collective redundancy, together with the relevant business data, so that trade unions can form an opinion on the necessity for and reasonableness of the plans.

When giving notice, the employer must provide the following information as accurately as possible (section 4, subsections 1 and 2 of the Collective Redundancy (Notification) Act):

- the reasons for the planned collective redundancies;
- the number of employees it plans to make redundant, together with a breakdown by occupation or position, age and sex, as well as the number of people usually employed;
- the date or dates on which it plans to terminate the employment contracts;
- the criteria to be applied in selecting employees to be made redundant;
- the method for calculating any redundancy payments;
- the manner in which it intends to terminate the employment contracts with its employees.

The consultations must always address ways and means of avoiding collective redundancies or reducing the number of workers affected and of mitigating the consequences by recourse to accompanying social measures aimed at redeploying or retraining the workers the employer intends to make redundant (section 3, subsection 2 of the Collective Redundancy (Notification) Act).

Information for and consultation of the works council

Under the Works Councils Act, employers are required to consult in writing not only the trade unions but also the works council if the planned decision concerns a matter referred to in section 25, subsection 1 of that Act. This is true, for example, if the planned redundancies are a consequence of a proposal to terminate the undertaking's activities – or a substantial part of them - or to carry out a major downsizing of the undertaking. The works council has a right to provide advice in relation to such planned decisions. Under section 25, subsection 3 of the Works Councils Act, the works council must be supplied with the following information:

- a statement of the reasons for the decision;
- a statement of the expected consequences of the decision for people employed in the undertaking;
- the proposed measures for dealing with these consequences (e.g. the proposed social measures).

b. The Committee recalls that consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there

must at least be some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met (Statement of Interpretation on Article 29, Conclusions 2003). The Committee asks what rules apply in this regard.

Non-compliance with the obligation to consult the trade unions
If the employer proceeds with collective redundancies without having complied with its obligations under the Collective Redundancy (Notification) Act) (i.e. if it has not given notification or has not consulted the relevant trade unions and the works council), the redundancies can be overturned. An employee may apply to the limited jurisdiction sector of the district court for an order quashing the notice of termination or the termination agreement (section 7 of the Collective Redundancy (Notification) Act).

In addition to the sanctions explicitly included in the Collective Redundancy (Notification) Act, a trade union may apply to the courts under the general principles of civil law for an order requiring the employer to fulfil its obligations under the Act. It may, for example, seek an order under article 6:162 of the Civil Code that the employer must answer questions raised in the context of the consultations. An individual employee may also apply to the courts for an order directing an employer to comply with its obligations under the Collective Redundancy (Notification) Act, for example because the failure is a breach of its duties as a 'good employer' (article 7:611 Civil Code) or constitutes a tort (wrongful act).
It should also be noted that Dutch law on dismissal provides for a preventive assessment. Before an employer can terminate an employment contract, it must apply for consent to the Employee Insurance Agency (UWV) (or a committee which has been established on the basis of a collective agreement and may give consent in place of the Employee Insurance Agency). If an employer plans to dismiss an employee on commercial grounds, the Employee Insurance Agency or the committee concerned will not process the application until:
- the employer has complied with the duty of notification, and
- it is apparent from a written statement by the employer that it has consulted the relevant trade unions and the works council.

On this point, see section 6, subsection 6 of the Collective Redundancy (Notification) Act.

In certain cases the employer can request the limited jurisdiction sector of the district court to set aside an employment contract for commercial reasons. The court may grant such a request only if it has checked whether the request is connected with a planned collective redundancy (as referred to in section 3, subsection 1 of the Collective Redundancy (Notification) Act) and, if so, whether it has been accompanied by a written statement by:
- the Employee Insurance Agency in which it confirms that the notification obligation has been fulfilled, and
- the employer in which it confirms that the relevant trade unions and the works council have been consulted.

The only circumstance in which the Employee Insurance Agency, the committee or the courts may decide that the employer's obligation to consult the relevant trade unions and the works council is not applicable is where the employer shows that compliance with this obligation would jeopardise either the redeployment of the workers to be made redundant or the jobs of the other employees in the undertaking concerned (section 6, subsection 2 and section 6a, subsection 2 of the Collective Redundancy (Notification) Act).

Non-compliance with the obligation to consult the works council
If the employer fails to fulfil its obligations under the Works Councils Act, for example because it has not asked the works council for an advisory opinion or supplied it with the requisite information, the works council may request the limited jurisdiction sector of the district court to order the undertaking to fulfil these obligations (section 36, subsection 2 of the Works Councils Act). In its ruling, the court may then impose an obligation on the undertaking to perform certain acts, for example providing certain information. Undertakings are bound to comply with such an obligation (section 36, subsection 5 of the Works Councils Act).

If its decision is at odds with the advice given by the works council, the undertaking is obliged to suspend implementation of the decision until one month after the day on which the works council was informed of the decision (section 25, subsection 6 of the Works Councils Act). This month can be used by the works council to consider whether to appeal to the Enterprise Division against the decision (section 26 of the Works Councils Act). The works council may also appeal to the Enterprise Division against a decision where facts or circumstances have come to light that would have resulted in a different advisory opinion if they had been known to the works council at the time when it gave its advice.

The Enterprise Division deals with applications with all due speed. If it finds the appeal to be well founded, it may:
- require the undertaking wholly or partly to retract the decision and reverse any specified consequences of the decision;
- bar the undertaking from performing acts to implement the decision or parts of it.

See section 26, subsection 5 of the Works Councils Act.

Report in respect of Caribbean part of the Netherlands

ARTICLE 1: THE RIGHT TO WORK

Negative conclusions of the European Committee of Social Rights:

A. The Committee concludes that the situation in Netherlands in respect of the special Caribbean municipalities is not in conformity with Article 1§1 of the 1961 Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

B. The Committee concludes that the situation in the Netherlands, in respect of the special Caribbean municipalities, is not in conformity with Article 1§2 of the 1961 Charter on the ground that it has not been established that the protection against discrimination in employment is adequate.

C. The Committee concludes that the situation in the Netherlands in respect of the special Caribbean municipalities is not in conformity with Article 1§3 of the 1961 Charter on the ground that it has not been established that free placement services operate in an efficient manner.

Answer to A/B/C:
The islands of Bonaire, St Eustatius and Saba − the BES islands − have been part of the country of the Netherlands since 10 October 2010 and are known as the Caribbean Netherlands or the Caribbean part of the Netherlands. The old country ordinances of the Netherlands Antilles were initially adopted at the time of the constitutional reform in 2010. A five-year period of legislative restraint was announced in order to gain experience of the new situation. Following an evaluation, the government announced that when introducing statutory measures it would continue in the years ahead to take account of the islands' absorptive capacity. Any unjustified differences that were found to exist would be removed, but restraint would be observed. The islands need time to implement the legislation that has already been introduced. Agreements are made with the islands about what legislation should be introduced or amended and about strengthening or improving implementation in practice. An example is the support currently being provided by the municipality of Leiden (with funding from the Ministry of Social Affairs and Employment) for efforts to put public employment services on a professional footing in Caribbean part of the Netherlands. This meets the wishes of the Committee as set out in conclusion C.

As regards the Committee's conclusion B, the Netherlands notes that this warrants a more detailed discussion of the law applicable on the BES islands than is contained in previous reports. The answers to the Committee's questions show that the legislation applicable in the Caribbean part of the Netherlands to the equal treatment of men and women in relation to employment contracts is in keeping with article 1 of the European Social Charter.

Questions of the European Committee of Social Rights

paragraph 1 Policy of full employment
None of the questions raised by the Committee in its previous conclusions (Conclusions (XX-1 (2012)), such as monitoring of employment policies or evaluation of employment policies' effectiveness are addressed in this report.

1. *The Committee asks the next report to provide information on the action taken and progress made as a result of these initiatives.*

Only limited statistical information is currently available. However, statistics on the employment market are now kept. The number of jobs in the Caribbean part of the Netherlands grew from 8,870 in 2011 to 10,840 in 2015. The arrangements for monitoring the job programmes implemented by the public bodies using so-called 'integrated funds' from central government are still being put in place.

2. *The Committee asks the next report to indicate whether there are other active labour market measures available to jobseekers, besides the above-mentioned project.*

The public bodies of Bonaire, St Eustatius and Saba are responsible for helping people to find employment. As a result, labour market policy and job placement policy differ from island to island. There are examples of situations in a which a public body promotes job placement by means of a form of wage cost subsidy. Support is also provided through job coaching.

3. *The Committee also wishes to receive information on the number of beneficiaries in the different types of active measures, and on the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed.*

The net employment rate is 68.9% on Bonaire, 67.8% on St Eustatius and 59.3% on Saba. On this point, see *https://www.cbs.nl/nl-nl/nieuws/2015/24/beroepsbevolking-op-caribisch-nederland-vaker-een--voltijd---baan*
More detailed information about the scope of the various labour market instruments is not available at present.

4. *The Committee asks data as regards expenditure on active labour market policies (as a percentage of GDP).*

Conclusive data on expenditure on active labour market policies is not available.

5. *The Committee asks the next report to also indicate whether employment policies are monitored and how their effectiveness is evaluated.*

The biennial Manpower Survey provides information about changing levels of unemployment. The 2014 edition of the survey gives a figure of 6.4% for Bonaire, 8.8% for St Eustatius and 2.5% for Saba. As noted above at 1.1, the arrangements for monitoring the jobs programme implemented by the public bodies using the so-called 'integrated funds' are still being put in place.

paragraph 2 Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee reiterates its questions re ***1. Prohibition of discrimination in employment***

6. The Committee asks next report to provide information on them (banning sex discrimination in employment)

Article 1614aa, paragraph 1 of Book 7a of the BES Civil Code declares articles 646 to 649 of Book 7 of the Dutch Civil Code to be applicable *mutatis mutandis*. Exceptions to this provision are article 646, paragraph 2, second sentence, 648, paragraph 3 and 649, paragraph 3 of Book 7 of the Dutch Civil Code.

Under article 7:646, paragraph 1 of the Dutch Civil Code, employers may not discriminate between men and women when entering into a contract of employment, providing training for employees, determining the terms and conditions of employment, deciding on promotion or terminating a contract of employment. Paragraph 11 of this article provides that a clause in breach of paragraph 1 is null and void.

Article 7:647 of the Dutch Civil Code has been repealed.

Under article 7:648, paragraph 1 of the Dutch Civil Code, employers may not discriminate between employees on the basis of a difference in working hours in the conditions subject to which a contract of employment is entered into, extended or terminated, unless such discrimination is objectively justified. Under paragraph 2 of this article, any provision that is contrary to the provisions of paragraph 1 is null and void. Paragraph 4 also states that employers may not penalise an employee for having invoked the provisions of paragraph 1 either at law or otherwise or for having provided assistance in this connection.

Under article 7:649, paragraph 1 of the Dutch Civil Code, employers may not discriminate between employees as regards their terms and conditions of employment on the basis of whether an employment contract is temporary or otherwise, unless such discrimination is objectively justified. Under paragraph 2 of this article, any provision that is contrary to the provisions of paragraph 1 is null and void. Paragraph 4 of this article provides that employers may not penalise an employee for having invoked the provisions of paragraph 1 either at law or otherwise or for having provided assistance in this connection.

Paragraph 2 of article 7a:1614aa of the BES Civil Code provides that where an employer terminates an employment contract in breach of the articles referred to in paragraph 1 or on the grounds that the employee has invoked the provisions of paragraph 1 either at law or otherwise or has provided assistance in this connection, the termination is voidable. Paragraph 3 of article 7a:1614aa of the BES Civil Code states that if an employee does not invoke this ground for annulment within two months of the termination of the employment contract, this right lapses. Paragraph 4 provides that any claim in connection with the annulment is subject to a limitation period of six months from the date on which termination took effect. Finally, paragraph 5 provides that a termination as referred to in paragraph 2 does not make the employer liable to pay compensation.

7. The Committee asks if there is any upper limit on the compensation that may be awarded in cases of discrimination, including those in which employees have been

dismissed having filed complaints of discrimination.

Article 7: 681, paragraph 1 (c) of the Civil Code deals with termination of an employment contract in circumstances where a prohibition against discrimination or of victimisation or penalisation has been breached. In such a case, the limited jurisdiction sector of the district court may, at the employee's request, set aside the termination or direct the employer to pay fair compensation. There is no limit on the amount of compensation that may be awarded.

8. The Committee asks what the situation is in this respect (the burden of proof should not rest entirely on the complainant, but should be the subject of a shift in disputes relating to an allegation of discrimination in matters covered by the Charter)

Article 7:646, paragraph 12 of the Dutch Civil Code provides that where a person who believes that he or she has suffered discrimination as referred to in this article adduces facts at law that give rise to a suspicion that such discrimination has indeed taken place, the other party must prove that no contravention of the provisions of this article has occurred.

9. The Committee asks what the situation is in this respect (ruling in court).

No information about this is available.

10. The Committee asks the next report to present details of the legislation prohibiting discrimination in employment in the Caribbean part since the constitutional reform of 2010 and provide information on its implementation.

There has been no new legislation since 10 October 2010.

2. Prohibition of forced labour

11. The Committee reiterates its request to include up-to-date information about the points raised in this Statement of Interpretation and in particular with regard to the supervision of the work of prisoners that should be in accordance with the principle of non-discrimination which is enshrined in the Charter with regard to pay, duration of work and other working conditions, and social welfare (in relation to occupational accidents, unemployment, illness and retirement).

First of all the State notes that it does not, in general, regard prison work as 'forced or compulsory labour'.

- With regard to prison work in the Caribbean part of the Netherlands the State notes the following.
- The working conditions under which prisoners work for a private employer are governed by the same law (the Labour Code) as the working conditions for ordinary employees.
- The facility offers accommodation, food and healthcare.
- Prisoners are also compensated for any personal injury they suffer during their stay in the facility. If prisoners are unable to participate in work, they are compensated for this.
- Taking into account all the circumstances, the State concludes that the work in question complies with the requirements of the ILO Convention and human rights standards.

12. *Forced labour within the family environment and in family-run businesses: The Committee reiterates its request to include the relevant information on these points in the next report.*
    In particular, it asks whether inspection visits can be made to the homes of private individuals who employ domestic workers and whether domestic foreign workers are entitled to change employer if they are abused or whether they lose their right of residence when they leave their employer.

In 2015 the Labour Inspectorate carried out inspection visits to check compliance with the occupational health and safety laws for aliens employed as domestic workers in the BES islands. A total of 31 inspection visits were made in the period from 1 March to 1 September 2015. In almost all cases the inspections revealed that the accommodation of aliens on Bonaire and Saba was in order. On St Eustatius the accommodation of live-in domestic workers leaves something to be desired. This is, in fact, closely connected with the current standard of the housing on St Eustatius. The deductions for board and lodging for live-in domestic workers are generally reasonable. In some cases the remuneration was found to be below the statutory minimum hourly wage. During the term of the inspection project, the Labour Inspectorate discovered five cases in which domestic workers might have been exploited. These five cases were reported to the police (KPCN) and the Public Prosecution Service. Besides reporting signs of exploitation to the police and the Public Prosecution Service in connection with human trafficking, the Labour Inspectorate took enforcement action in the case of serious offences. It issued a total of five written warnings. This mainly concerned situations in which the legislation on work and rest periods and/or remuneration had not been observed. In two of these cases, the victim went on to lodge an official complaint with the police. In one of these two cases, the police removed the domestic worker from the household where the exploitation was taking place.

In the third case, the victim – an alien – was given the opportunity by the SZW (Social Affairs and Employment) Unit to find other employment and actually succeeded in this. This put an end to the exploitative situation. Under the BES Employment of Aliens Act, any new application by the exploiter for a employment permit will be refused. The fourth case involved a domestic worker whose probationary period had not yet expired. The employer was informed of his statutory obligations and given a warning for contraventions of the BES Minimum Wage Act and the BES Labour Act 2000. In the fifth case, the victim has been asked to consider lodging a criminal complaint.

The SZW Unit regularly prepares fact sheets on preventing exploitation in the BES islands. These fact sheets, which are posted on the website, inform employers, migrant workers and the general public about the rights and duties of employers and employees. See http://www.rijksdienstcn.com/rijksdienstcn.com/up1/ZekdlykJY_SZW_Brochure_HulpInDeHuishouding_NL.pdf. For more information about the work of the Labour Inspectorate, see https://www.rijksdienstcn.com/sociale-zaken-en-werkgelegenheid/arbeidsinspectie

Combating human trafficking is given high priority by the Public Prosecution Service (OM), the police (KPCN) and the Labour Inspectorate. The Labour Inspectorate reports any and all suspicions of labour exploitation to the Public Prosecution Service and the police. In addition, the SZW Unit and the Immigration and Naturalisation Service (IND) Unit of the National Office for the Caribbean Netherlands (Rijskdienst Caribisch Nederland,RCN) provide information to both employers and employees about rights and duties in connection with remuneration, working and rest periods and related subjects.

The Public Prosecution Service, the police, the Immigration and Naturalisation Service, Social Affairs and Employment (SZW), the Guardianship Council, the Royal Military and Border Police (Kmar) and the Bonaire public body signed a covenant establishing a human trafficking and people smuggling register on 29 June 2017 to give extra impetus to their joint efforts to tackle human trafficking and people smuggling. The partners concerned can report any evidence of human trafficking and people smuggling to the competent police officers. These reports are recorded in the register. If multiple reports are received, an investigation may be instituted against one or more suspects. This will help to improve the information available on human trafficking and people smuggling offences and make it possible to adopt an intelligence-led approach to investigations.

In the event of labour exploitation, the worker concerned has no entitlement to a residence permit (or a change in a residence permit) for employment with another employer. The basic rule is that where employment ceases, the residence permit can be cancelled since the condition on which it was granted is not – or can no longer be – fulfilled. The situation is different if a employment permit has already been issued for the person concerned to take up employment with another employer.

In cases of labour exploitation, applicants are entitled to apply for renewal of their residence permit and have it altered to 'continued residence' (on humanitarian grounds). Such applications are assessed on a strictly individual basis. This is done pursuant to article 5.24 of the BES Entry and Expulsion Decree. The criterion applied by the Minister of Justice and Security in such cases entails determining whether, in view of special individual circumstances, the person concerned cannot be required to leave the BES islands.

If labour exploitation also involves human trafficking, a temporary residence permit may be issued on request with a view to the prosecution and trial of the alleged perpetrators, in so far as the presence of the victim is required for this purpose.
The residence permit is then issued subject to a limitation connected with the prosecution of human trafficking, as referred to in article 5.2, paragraph 1 (k) of the BES Entry and Expulsion Decree. The procedure and conditions have been described in chapter 14 of the BES Entry and Expulsion Circular. This residence permit is of a temporary nature pursuant to article 5.3, paragraph 2 (d) of the BES Entry and Expulsion Decree.

In such circumstances, any biological and adoptedminor children of the victim who actually belong to the victim's family may also be permitted to remain during the prosecution and trial of the perpetrators. Their residence is then dependent on the victim's residence. This applies by analogy to any witness/complainant who does not yet have a valid right of residence, but not to his or her children. In such a case, the witness/complainant obtains, on request, a residence permit subject to a different limitation, namely 'limitation as specified in Minister's decision'.
Once the criminal prosecution and trial of the perpetrators has ended (or a decision has been made not to prosecute) the victim or, as the case may be, the witness/complainant and, where applicable, any minor children of the victim who have been allowed to remain should leave the public bodies.
Here too, however, they may apply for a permit for 'continued residence' on humanitarian grounds. Once again, such applications are assessed on a strictly individual basis. This is done pursuant to article 5.24 of the BES Entry and Expulsion Decree.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

13. Requirement to accept the offer of a job or training: the Committee reiterates its request to include relevant information about the points raised in this Statement of Interpretation in the next report, including with regard to the remedies available to the persons concerned in order to challenge decisions to suspend or withdraw unemployment benefits.

The main unemployment benefit is the 'Cessantia' benefit. This is a lump sum benefit which an employer is required to pay in the event of involuntary redundancy. Payment of this benefit is a statutory obligation which can, if necessary, be enforced before the courts. Unemployed persons may, in due course, become eligible for benefit depending on their income and capital. Decisions on benefits are made by the Minister of Social Affairs and Employment, subject to the possibility of objection and appeal.

14. The Committee requests that the next report state the measures taken by the Government to ensure that employers have due regard to the privacy of employees in the organisation of work and to ensure that any intrusion into their privacy is prohibited and, if necessary, punished.

Chapter 6 (on legal protection) of the BES Personal Data Protection Act applies here, including the provisions on sanctions.

1. If any person suffers harm as a consequence of acts concerning him which infringe the provisions laid down by or under this Act the following paragraphs apply, without prejudice to other statutory provisions.
2. The injured party is entitled to fair compensation for harm other than financial loss.
3. The responsible party is liable for the loss or harm resulting from non-compliance with the provisions referred to in paragraph 1. The processor is liable for such loss or harm in so far as it was a consequence of his actions.
4. The responsible party or processor may be wholly or partially discharged from this liability if he can prove that the loss cannot be attributed to him.

paragraph 3 Free placement services

15. The Committee asks confirmation that these (employment) services are free of charge.

No charge is made for job placement services.

16. The report does not provide any information on performance indicators. The Committee considers that these indicators are essential in order to assess the operation of employment services. It therefore asks that the next report contain information on the following points, for the different years of the reference period:

a) number of job-seekers and unemployed persons registered within public employment services
b) number of vacancies notified to these services;
c) number of persons placed via these services;
d) placement rate (i.e. percentage of placements compared to the number of notified vacancies);
e) average time taken by the these services to fill a vacancy;
f) placements by these services as a percentage of total employment in the labour

market;

g) respective market shares of public and private services (where they exist).

The municipality of Leiden is currently working with the public bodies to assist them in putting public employment services on a professional footing. One of the express aims of this project is to be able in the future to provide the information desired by the Committee.

17 The Committee asks further information on private employment agencies (where they exist) and how they are licensed, operate and co-ordinate their work with public employment services.

The BES Manpower Services Act (*Wet op het ter beschikking stellen arbeidskrachten BES*) is the framework for such services. The provision of manpower services to third parties requires a permit from the executive council.

ARTICLE 1 ADDITIONAL PROTOCOL: RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATIONS WITHOUT DISCRIMINATION ON GROUNDS OF SEX

Negative conclusion of the European Committee of Social Rights:

The Committee concludes that the situation in the Netherlands, in respect of the special Caribbean municipalities, is not in conformity with Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that the right to equal treatment in employment without discrimination on grounds of sex is not adequately guaranteed in law and in practice.

Given the Committee's negative conclusion, the Netherlands believes it necessary to describe in more detail than in previous reports the law that is applicable in the BES islands. It is evident from the following answers to the Committee's questions that the legislation in force in the BES islands with regard to the equal treatment of men and women in relation to employment contracts (article 1614aa, paragraph 1 of Book 7a of the BES Civil Code) is in keeping with article 1 of the 1988 Additional Protocol to the above-mentioned Charter.

Questions of the European Committee of Social Rights

The Committee reiterates all its questions raised in its previous conclusion:

1. *The Committee asks the next report to present details of the legislation prohibiting discrimination on the ground of sex in employment in Bonaire, Sint Eustatius and Saba since the constitutional reform of 2010 and provide information on its implementation.*

Article 1614aa, paragraph 1 of Book 7a of the BES Civil Code declares articles 646 to 649 of Book 7 of the Dutch Civil Code to be applicable mutatis mutandis. Exceptions to this provision are articles 646, paragraph 2, second sentence, 648, paragraph 3 and 649, paragraph 3 of Book 7 of the Dutch Civil Code.

Under article 7:646, paragraph 1 of the Dutch Civil Code, employers may not discriminate between men and women when entering into a contract of employment, providing training for employees, determining the terms and conditions of employment, deciding on promotion or terminating a contract of employment. Paragraph 11 of this article provides that a clause in breach of paragraph 1 is null and void.

Article 7:647 of the Dutch Civil Code has been repealed.

Under article 7:648, paragraph 1 of the Dutch Civil Code, employers may not discriminate between employees on the basis of a difference in working hours in the conditions subject to which a contract of employment is entered into, extended or terminated, unless such discrimination is objectively justified. Under paragraph 2 of this article, any provision that is contrary to the provisions of paragraph 1 is null and void.

Under article 7:649, paragraph 1 of the Dutch Civil Code, employers may not discriminate between employees as regards their terms and conditions of employment on the basis of whether an employment contract is temporary or otherwise, unless such discrimination is objectively justified. Under paragraph 2 of this article, any provision that is contrary to the provisions of paragraph 1 is null and void.

In addition, paragraph 2 of article 7a:1614aa of the BES Civil Code provides that where an employer terminates an employment contract in breach of the articles referred to in paragraph 1 or on the grounds that the employee has invoked the provisions of paragraph 1 either at law or otherwise or has provided assistance in this connection, the termination is voidable. Paragraph 3 of article 7a:1614aa of the BES Civil Code states that if an employee does not invoke this ground for annulment within two months of the termination of the employment contract, this right lapses. Paragraph 4 provides that any claim in connection with the annulment is subject to a limitation period of six months from the date on which the termination took effect. Finally, paragraph 5 provides that a termination as referred to in paragraph 2 does not make the employer liable to pay compensation.

2. *It asks in particular if direct and indirect discrimination are prohibited by the law.*

Yes. Employers are prohibited by law from directly discriminating between men and women

when entering into a contract of employment, providing training for employees, determining the terms and conditions of employment, deciding on promotion or terminating a contract of employment.
The statutory prohibition against direct discrimination includes a prohibition against harassment and sexual harassment (see article 7:646, paragraph 6, Dutch Civil Code).

Under paragraph 10 of article 7:646 of the Dutch Civil Code, the prohibition against discrimination does not apply to indirect discrimination that is objectively justified and serves a legitimate goal, provided that the means for achieving that goal are appropriate and necessary.

3. The Committee asks whether a shift in the burden of proof applies to all gender discrimination cases.

Yes. Article 7:646, paragraph 12 of the Dutch Civil Code provides that where a person who believes that he or she has suffered discrimination as referred to in this article adduces facts at law that give rise to a suspicion that such discrimination has indeed taken place, the other party must prove that no contravention of the provisions of this article has occurred.

4. The Committee requests information on sanctions and remedies, in particular whether there is a limit to the amount of compensation that may be awarded.

In accordance with the articles mentioned above, a provision in an employment contract or collective agreement that breaches the statutory prohibition of direct discrimination is null and void.

Furthermore, an employer may not penalise an employee for having invoked the statutory prohibition against direct and indirect discrimination either at law or otherwise or for having provided assistance in this connection (see, inter alia, article 7:648, paragraph 4, and article 7:649 of the Dutch Civil Code).

The BES Civil Code also provides that an employer may not terminate an employment contract while the employee is taking statutory pregnancy and maternity leave and that any such termination will be null and void.

Finally, under paragraph 2 of article 1614aa, Book 7a, of the BES Civil Code, where an employer terminates an employment contract in breach of the articles referred to in paragraph 1 of this article or on the grounds that the employee has invoked the provisions of paragraph 1 either at law or otherwise, the termination is voidable. Paragraph 5 of this article also states that termination of the employment contract does not make the employer liable to pay compensation.

5. The Committee further requests information on sex discrimination cases (including claims for equal pay for work of equal value) brought before the courts or any other bodies.

No information about this is available.

6. The Committee asks also the next report to specify whether equal pay is explicitly provided for in legislation, whether there are methods for comparing jobs and pay

and whether legislation permits, in equal pay cases, comparisons of pay and jobs to be made outside the undertaking/company directly concerned and under what circumstances.

Article 7:649, paragraph 1 of the Dutch Civil Code provides that employers may not discriminate between employees with respect to their terms and conditions of employment. Employees must themselves compare their terms and conditions of employment with those of their colleagues or employees in other businesses. Employees can bring civil actions to enforce their right to equal pay.

7. *Finally, the Committee asks whether any exceptions to the prohibition of discrimination on grounds of sex apply in respect of certain occupations and what they are.*

Yes. Article 7:646, paragraph 2 of the Dutch Civil Code provides that derogation from article 1 is permitted for the purposes of entering into a contract of employment or providing training only if the discrimination is based on a characteristic that is connected with the person's sex and is an essential and determining occupational requirement owing to the nature of the specific occupational activities or the context in which they are performed, provided that the object is legitimate and the requirements are proportionate to the object.

8. *The Committee asks what protection measures are applied specifically to pregnant women and women who have recently given birth, particularly as regards maternity leave.*

Statutory pregnancy and maternity leave has been extended from 12 to 16 weeks from 1 January 2017. In addition, it has been possible to obtain reimbursement of the costs of baby layette items under the special benefits scheme since 1 January 2016.

9. *The Committee asks the next report to provide detailed information on the position of women in employment and training. It asks in particular for the next report to provide statistics on the male and female employment and unemployment rates and pay differentials between women and men.*

The percentage of men in employment on the BES islands is slightly higher than that of women. On Bonaire and St Eustatius over 70 percent of men and approximately 65 percent of women are in work. No such difference exists on Saba, where about 60 percent of both men and women are in employment.

The number of people in employment in the public and private sectors on the BES islands in 2014 totalled 10,120, of whom 4,270 were men and 4,570 were women. The average annual wage is USD 25,090, with men earning more on average (USD 27,350) than women (USD 23,370).

10. *The Committee asks for detailed information in the next report on the positive measures to promote equal opportunities taken in Bonaire, Sint Eustatius and Saba since the constitutional reform of October 2010.*

Central government has introduced various general measures designed to strengthen the position of mothers, particularly single mothers, such as:

- the introduction of child benefit on the BES islands on 1 January 2016;
- the introduction of provisions for reimbursing the costs of baby layette items under the special benefits scheme, as mentioned previously;
- other special benefits measures, such as reimbursement of the costs of a baby bed and fan (for households with young children);
- strengthening of childcare provision (using funds from the 'integrated approach' on a project basis).
- the provision from 2017 onwards of an extra €1 million for benefits in kind for children in poverty.