

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Nineteenth Report, including the Ninth Report on the 1988 Additional Protocol

for the period

1 January 2001 - 31 December 2004

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Report

For the period 1 January 2001 to 31 December 2004, made by the Government of the Netherlands in accordance with Article 21 of the 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 34, they have been declared applicable.

In accordance with Article 23 of the Charter, copies of this report have been communicated to:

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

ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

Paragraph 1: Reasonable daily and weekly working hours

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

Question A

Please indicate what statutory provisions apply in respect of the number of working hours, daily and weekly and the duration of the daily rest period.

No new developments (see the Netherlands' 11th Report, page 1).

Question B

Please indicate what rules concerning normal working hours and overtime are usual in collective agreements, and what is the scope of these rules.

Table 1. Average weekly working hours by economic sector (weighted according to numbers of employees)*

	Average working hours
Sector	
Agriculture	37.40
Manufacturing	37.43
Energy	38.01
Construction	37.33
Wholesale/retail, hotel & catering	37.57
Transport and communication	37.31
Business services	37.04
Total average working hours	37.25

* Table 1 contains the latest data available. The lifetime of the collective agreements on which the information is based varies.

Table 2. Average working hours per week by economic sector (number of collective agreements)

	Sector							Total
	Agri-culture	Manufac-turing	Energy	Construc-tion	Wholesale /retail, hotel & catering	Transport & communi-cation	Business services	
< 35.5 hrs/week	0	0	0	0	5	1	2	8
35.5 - 36.5 hrs/week	1	8	0	2	7	2	26	46
36.5 - 37.5 hrs/week	1	2	0	1	5	3	2	14
37.5 - 38.5 hrs/week	3	11	1	1	10	3	15	44
38.5 - 39.5 hrs/week	0	0	0	0	0	3	0	3
> 39.5 hrs/week	0	0	0	0	2	4	4	10
Total	5	21	1	4	29	16	49	125

Table 3. Number of contracted hours and number of hours' overtime per week by sector (only salaried employees, not the self-employed; paid and unpaid overtime combined)

Sector	Average no. contracted hours per week		Average no. hours' overtime per week	
	2000	2002	2000	2002
Food, beverage and tobacco industry	37.3	33.4	6.4	11.1
Metal industry	37.1	38.3	6.3	9.6
Construction	38.4	39.1	6.9	10.4
Department stores & supermarkets	26.2	20.1	5.1	7.6
Road transport	37.6	42.5	13.7	21.1
Banking	34.9	33.0	6.3	7.9
IT & computer services	37.4	36.5	9.0	17.1
Primary education	28.2	28.5	6.8	10.2
Secondary education	30.5	31.6	5.9	12.7
Higher education	33.1	32.2	6.7	6.6
Hospitals	31.4	31.0	7.7	9.2
Nursing homes/homes for the elderly	28.4	25.0	5.6	6.2
Agriculture & fisheries	34.8	33.5	4.0	11.3
Hotel & catering	28.6	22.9	12.0	8.9
Public sector	35.7	35.4	5.6	8.6
Total average	33.7	32.3	6.5	9.5

Source: TNO Work and Employment, May 2003

NB The figures in Table 3 are derived from large-scale spot checks in 2000 and 2002; figures from this source are estimates and may contain inaccuracies.

Question C

Please indicate the average working hours in practice for each major professional category.

Table 4. Working hours of employees, excl. overtime (as at 31 December 2003)

	Annual (hours)	Weekly (hours)	Leave and short-time working (days)
Agriculture & fisheries	1,350	30.0	24.4
Manufacturing & construction	1,584	36.1	32.9
extractive industries	1,706	38.4	31.2
manufacturing	1,573	35.5	30.5
public utilities	1,626	36.4	30.2
construction	1,602	37.5	38.7
Commercial services	1,325	29.2	22.9
wholesale/retail	1,272	28.2	22.7
hotel & catering	1,023	22.2	16.0
transport & communication	1,480	32.7	24.4
financial institutions	1,513	33.3	24.9
business services	1,347	29.7	23.3
Non-commercial services	1,271	27.7	20.9
public administration	1,525	33.2	23.5
education	1,329	29.1	21.9
health care and social services	1,123	24.4	18.6
culture and other services	1,265	27.9	22.3
All employees	1,356	30.0	24.0
of which			
full-time employees	1,721	38.4	29.5

Source: Statistics Netherlands (CBS), *Statistical Yearbook 2005*

Question D

Please indicate to what extent working hours have been reduced by legislation, by collective agreements, or in practice during the reference period and, in particular, as a result of increased productivity.

During the reference period there was no appreciable change in the number of weekly working hours, as stipulated in the various collective agreements (see Table 4).

Question E

1. Please describe, where appropriate, any measures permitting derogations from legislation in your country regarding daily and weekly working hours and the duration of the daily rest period (see also Article 2 paras. 2, 3 and 5).
2. Please indicate the reference period to which such measures may be applied.
3. Please indicate whether any such measures are implemented by legislation or by collective agreement and in the latter case, at what level these agreements are concluded and whether only representative trade unions are entitled to conduct negotiations in this respect.

1/2/3: No new developments (see the Netherlands' 15th Report, page 1).

Question F

If some workers are not covered by provisions of this nature, whether contained in legislation, collective agreements or other measures, please state what proportion of all workers is not so covered (see Article 33 of the Charter).

No new developments.

Paragraph 2 : Public holidays with pay

*"With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:
to provide for public holidays with pay;"*

Question A

Please indicate the number of public holidays with pay laid down by legislation, stipulated by collective agreement or established by practice during the last calendar year.

No new developments.

Question B

1. Please indicate what rules apply to public holidays with pay according to legislation, collective agreements or practice.
2. Please describe, where appropriate, whether measures permitting derogation from legislation in your country regarding daily and weekly working hours have an impact on rules pertaining to public holidays with pay.

No new developments (see the Netherlands' 15th Report, page 2).

Question C

If some workers are not covered by provisions of this nature, whether contained in legislation, collective agreements, or other measures, please state what proportion of all workers is not so covered (see Article 33 of the Charter).

No new developments (see the Netherlands' 15th Report, page 2).

Paragraph 3 : Annual holidays with pay

*"With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:
to provide for a minimum of two weeks annual holiday with pay;"*

Question A

1. Please indicate the length of annual holidays under legislative provisions or collective agreements; please also indicate the minimum period of employment entitling workers to annual holidays.
2. Please describe, where appropriate, whether measures permitting derogation from statutory rules in your country regarding daily and weekly working hours have an impact on rules pertaining to the duration of annual holidays.

No new developments.

Question B

Please indicate the effect of incapacity for work through illness or injury during all or part of annual holiday on the entitlement to annual holidays.

Sick days can be classified as holiday leave only if employer and employee agree this in writing in advance, and only in relation to leave exceeding the statutory minimum leave for the current year (cf. Civil Code, Art. 7:637).

See under “Answers to questions or requests for information from the European Committee of Social Rights”, specifically the answer to question 1.

Question C

Please indicate if it is possible for workers to renounce their annual holiday.

Employees have the right to cash in any leave entitlement over and above the statutory minimum for the current year if they so wish (cf. Civil Code, Art. 7:640 para. 2). This right extends to any leave entitlement saved from previous years.

See under “Answers to questions or requests for information from the European Committee of Social Rights”, specifically the answer to question 1.

Question D

Please indicate the customary practice where legislation or collective agreements do not apply.

No new developments.

Question E

If some workers are not covered by provisions of this nature, whether contained in legislation, collective agreements or other measures, please state what proportion of all workers is not covered (see Article 33 of the Charter).

No new developments.

Paragraph 4 : Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

*"With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:
to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;"*

Question A

Please state the occupations regarded as dangerous or unhealthy. If a list exists of these occupations, please supply it.

No new developments.

Question B

Please state what provisions apply under legislation or collective agreements or otherwise in practice as regards reduced working hours or additional paid holidays in relation to this provision.

No new developments (see the Netherlands' 15th Report, page 4).

Question C

If some workers are not covered by provisions of this nature, whether contained in legislation, collective agreements or other measures, please state what proportion of all workers concerned is not covered (see Article 33 of the Charter).

No new developments (see the Netherlands' 15th Report, page 4).

Paragraph 5 : Weekly rest period

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

Question A

1. Please indicate what provisions apply according to legislation, collective agreements or otherwise in practice as regards weekly rest periods.
2. Please indicate whether postponement of the weekly rest period is provided for these provisions and, if so, please indicate under what circumstances and over what period of reference.
3. Please indicate, where appropriate, whether measures derogating from statutory rules in your country regarding daily and weekly working time have an impact on rules relating to the weekly rest period.

No new developments (see the Netherlands' 15th Report, page 4).

Question B

Please indicate what measures have been taken to ensure that workers obtain their weekly rest period in accordance with this paragraph.

No new developments (see the Netherlands' 15th Report, page 4).

Question C

If some workers are not covered by provisions of this nature, whether contained in legislation, collective agreements or other measures, please state what proportion of all workers is not covered (see Article 33 of the Charter).

No new developments (see the Netherlands' 15th Report, page 4).

Please indicate, for Article 2 as a whole, the rules applying to workers in atypical employment relationships (fixed-term contracts, part-time, replacements, temporaries, etc.).

No new developments (see the Netherlands' 15th Report, page 4).

Comments on the negative conclusions of the European Committee of Social Rights with regard to Article 2, paragraph 1 and 4

paragraph 1

- a. The Committee notes from the Dutch report that there have been no changes during the reference period as regards statutory provisions on daily and weekly working time.

...

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§1 of the Charter as the “flexibility regulations” of the Working Hours Act do not contain sufficient guarantees for collective bargaining in order to protect workers.

The Working Hours Act refers to two sets of norms: standard norms and negotiated norms. The latter may not be exceeded. Negotiated norms may only be applied by the employer with the consent of and following consultation (collective bargaining) with the employee representative body. Without such agreement between employer and employees the standard norms apply. Standard and negotiated norms cover the same matters. The scope of negotiated norms is slightly broader than that of the standard norms and slightly longer working hours or shorter rest periods are allowed. The conditions attached to standard and negotiated norms, such as rules for overtime or exceptions to the prohibition of work on Sundays, are the same.

The Working Hours Act is intended to give the social partners joint responsibility with regard to setting norms for working hours and rest periods, within the limits that are acceptable from the point of view of worker protection. This approach was chosen because in the collective bargaining process many elements may be involved when it comes to setting norms in these areas. The level at which consideration can best be given to individual elements may be different for the various sectors. The Working Hours Act therefore allows employers to reach agreement with works councils about the application of negotiated norms, unless provisions on working hours and rest periods have already been included in a collective agreement, making the application of certain negotiated rules at company level impossible: company-level agreements should therefore not be contrary to collective agreements.

The Working Hours Act also contains several obligations with respect to the implementation of corporate policy, information dissemination, consultation and employee participation. The position of the works council in reaching agreements with the employer concerning the application of negotiated norms is stronger than that stipulated in the Dutch Works Council Act. An agreement must be reached. Without such an agreement negotiated norms cannot be applied. Nor does the employer have the option of seeking the agreement of the works council in a different way from that prescribed in the Act.

This system also has benefits for employees, such as the opportunity to adjust their working hours and rest periods in the event of unforeseen personal circumstances. Attention is drawn to the memorandum “*Op weg naar een meer productieve economie*” (“On the way to a more productive economy”) published recently by the Labour Foundation. In this document, the Foundation points to the process of decentralisation in negotiating terms and conditions of employment, whereby decision-making is deliberately shifted to lower levels with a view to flexibility and customisation. One of the topics examined is the management of working hours as a means of matching manpower supply and demand, for instance through effective rosters that take into account both the dynamic nature of the labour process and the working hours that employees want.

paragraph 4

b. The Committee recalls that the Netherlands is a Contracting Party to the 1961 Charter and it can only reiterate that as long as risks remain in certain occupations, the obligation imposed by Article 2§4 retains its urgency. It therefore again asks the Government to ensure protection of the workers concerned by the measures foreseen by this provision of the Charter.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 as there is no provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations.

Under Section 3 of the Working Conditions Act unsafe or unhealthy working conditions must be improved, primarily by means of measures that will eradicate the problem at source, preferably the removal of any dangerous machinery or substances. If this is not possible, other measures must be taken, such as using ventilation or changing the way work is organised. For instance, the solution to work that is too strenuous, stressful or tiring lies in modifying the organisation of work or working methods, through job rotation, different ways of working with colleagues, adaptation of the workplace, etc. If all other possible measures are not adequate and/or feasible, personal protective equipment must be provided by the employer.

All known health and safety risks are thus the subject of legislation which – if properly respected by employers – offers employees the best possible protection. In order to monitor employers' compliance with the legislation, the Labour Inspectorate has been given the necessary jurisdiction, including a whole range of enforcement instruments. All these measures are aimed at risk prevention and satisfy the requirements of Article 3 of the Charter.

Reduced working hours or additional paid leave – to compensate for hazardous work – not mitigate the consequences of exposure to hazardous working conditions. The Dutch government therefore does not consider this to be the right approach and takes the view that preventing hazardous situations is the only appropriate solution. Consequently, the government does not wish to change its policy of preventing risks, nor is this a subject for discussion for the two sides of industry.

Furthermore, it is a fact that in its previous discussions on this provision of the Charter, the Governmental Committee has repeatedly stated that prevention of risks is preferable to compensation in the form of reduced working hours or additional leave. The Governmental Committee has also noted several times that Article 2 para. 4 of the Charter is obsolete, which is also apparent from the changed wording of the corresponding provision in the Revised Charter. On 29 November 2005 the Dutch Parliament passed the bill approving the European Social Charter (Revised). Once a few legal formalities have been completed, the Revised Charter will be ratified by the Netherlands during the first half of 2006.

With that in mind, the Dutch government would like to emphasise that Dutch legislation on health and safety at work imposes such strict requirements that further rules on reduced working hours or additional paid leave are unnecessary.

Answers to the questions or requests for information by the ECSR

paragraph 3

1. The Committee notes from the Dutch report that the legislation on annual holidays was amended outside the reference period (in 2001). It asks that the next report contain full details on the new legislation.

The legislation on annual leave was amended by Act of 30 November 2000 (Bulletin of Acts and Decrees 2000, 545) and by Act of 30 November 2000 (Bulletin of Acts and Decrees 2000, 546) as follows (entry into force on 1 February 2001):

1. The primary rule governing statutory leave is that employees build up entitlement to leave during the periods in which they are entitled to salary (Civil Code, Art. 7:634). In very few cases do employees build up entitlement to leave while not being entitled to salary (cf. Civil Code, Art. 7:635). One new aspect is that, in these exceptional cases, employee and employer can draw up a written agreement stating that fewer or no leave days are built up. An agreement of this kind can, however, only cover leave days exceeding the statutory minimum laid down in Art. 7:634 of the Civil Code.
2. Special leave (e.g. emergency leave) or absence (e.g. on account of sickness) may be classified as holiday leave at the employer's request in certain cases (cf. Civil Code, Art. 7:636 para. 1). This exchange cannot be agreed in advance, but only when the emergency leave or absence arises, and only with the employee's consent. The statutory minimum leave for the current year may not be included in any such classification.
3. Maternity or adoption leave may not be classified as holiday leave (cf. Civil Code, Art. 7:636 para. 2).
4. Sick days can be classified as holiday leave only if employer and employee agree this in writing in advance, and only in relation to leave exceeding the statutory minimum leave for the current year (cf. Civil Code, Art. 7:637).
5. Taking leave: The position of employees with regard to being able to take leave has been strengthened (cf. Civil Code, Art. 7:638). Employers must allow their employees to take the minimum leave to which they are entitled each year. Employers may not depart from this rule, even if in their view there are compelling reasons for doing so. Employees also have more say in fixing the main period of consecutive leave. Except in the case of a holiday shut-down period, employers must respect their employees' wishes in this regard, unless important business considerations militate against it. In that case, the employer is in any case obliged to ensure that the employee can take a period of consecutive leave of two weeks, or – with the employee's consent – two one-week periods. Employers also have an obligation to respond promptly to their employees' requests for leave. If an employee has communicated his preferences and the employer is unable to approve them, he must give compelling reasons for this refusal within two weeks; otherwise the leave will be assumed to have been scheduled in accordance with the employee's wishes. It is not possible to depart from this two-week period other than by written agreement, and any such exception may only apply to leave days due to the employee over and above the statutory minimum. Employers must allow employees to take their leave in days or hours if they so wish, unless there are compelling reasons not to do so.
6. "Cashing in" leave hours/days: Employees have the right to cash in any leave entitlement over and above the statutory minimum for the current year if they so wish (cf. Civil Code, Art. 7:640 para. 2). This right extends to any leave entitlement saved from previous years.

7. Unused leave entitlement lapses after a period of five years (cf. Civil Code, Art. 7:642).
8. On changing jobs, an employee can cash in his remaining leave entitlement. He may then take the unused leave entitlement to the new employer, in the form of entitlement to unpaid leave. In the event that this entitlement to unpaid leave exceeds the statutory minimum leave for the current year, the employee may exchange it for some other entitlement deriving from employment (cf. Civil Code, Art. 7:641).

The relevant Bulletins of Acts and Decrees concerning the new legislation on leave are appended (annexes 1 and 2).

Annexe 1: Act of 30 November 2000 amending title 7.10 (contract of employment) of the Civil Code with regard to annual leave and parental leave (Bulletin of Acts and Decrees 2000, 545).

Annexe 2: Act of 30 November 2000 amending a few provisions of the Act of 30 November 2000 amending title 7.10 (contract of employment) of the Civil Code with regard to annual leave and parental leave (Bulletin of Acts and Decrees 2000, 546).

2. Having noted observations submitted by the Netherlands' Trade Union Confederation (FNV) that Section 640§2 of Book 7 of the Civil Code permits workers to forgo the minimum annual holiday under certain circumstances, the Committee asks to receive the Government's comments in this respect. It recalls that this provision of the Charter does not permit the waiving of the annual leave, even with the consent of the worker.

The Federation of Dutch Trade Unions (FNV) is of the opinion that the statutory regulation in the new Article 7:640 para. 2 of the Civil Code, in so far as this offers the option of cashing in leave days, is contrary to Article 7 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ L 307 of 13 December 1993). The FNV's objection concerns the ability to cash in leave days saved that were part of the statutory minimum leave entitlement in any previous year. In the FNV's view, these days cannot be cashed in because of their statutory nature. The Dutch government is of the opinion that any statutory leave days not taken by employees in any given year lose their statutory character in the following year and, consequently, may be cashed in. The statutory regulation concerning entitlement to paid leave guarantees that employees build up statutory minimum leave each year of up to four weeks. This statutory leave cannot be cashed in during the current year! Employees' annual entitlement of up to four weeks' paid leave is thus guaranteed by law.

In the opinion of the Dutch government, the relevant statutory provision is therefore in accordance with the aforementioned European Directive and with Article 2, para. 3, of the Charter.

The difference of opinion with FNV in this respect was referred to the European Court of Justice by the Court of Appeal in The Hague in a judgment of 3 March 2005 in the form of a request for a preliminary ruling. The European Court of Justice has not yet ruled on this aspect of the new legislation on leave.

ARTICLE 3 – THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

Paragraph 1 : Issue of safety and health regulations

"With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake: to issue safety and health regulations;"

Question A

1. Please list the principal legislative or administrative provisions issued in order to protect the physical and mental health and the safety of workers, indicating clearly:

- a. their material scope of application (risks covered and the preventive and protective measures provided for), and
- b. their personal scope of application (whatever their legal status – employees or not – and whatever their sector of activity, including home workers and domestic staff).

2. Please specify the rules adopted to ensure that workers under atypical employment contracts enjoy the same level of protection as other workers in an enterprise.

During the reference period there were no new developments concerning the structure and scope of application of the relevant legislation. There were, however, a few amendments and additions to the legislation, specifically:

- adoption of a single act of parliament governing products and commodities, involving amendment of the Commodities Act, repeal of the Dangerous Equipment Act (WGW), the combination of the Decree on Lifts and the Lifts Decree, and merger of the decrees relating to the safety of machinery and personal protective equipment (Bulletin of Acts and Decrees 2003, 315);
- replacement of the work safety report by a supplementary risk identification and assessment for companies that use large quantities of hazardous substances (Bulletin of Acts and Decrees 2004, 69);
- harmonisation of the construction safety, health and welfare rules in the Building Decree and the Working Conditions Decree to eliminate duplicate legislation and create clarity for construction employers and employees (Bulletin of Acts and Decrees 2002, 582);
- incorporation of safety, health and welfare legislation for the mining industry into the Working Conditions Decree, thus combining the relevant legislation in one decree (Bulletin of Acts and Decrees 2002, 652);
- amendment of the recirculation ban on carcinogenic substances, incorporating a more practical obligation into safety, health and welfare regulations (Netherlands Government Gazette, 2004,134);
- drafting of a new Radiological Protection Decree (Bulletin of Acts and Decrees 2001, 397), amendment of the Nuclear Facilities, Fissile Material and Ores Decree (Bulletin of Acts and Decrees, 2002, 407) and various corresponding ministerial orders, thereby implementing Council Directive 96/29/Euratom laying down basic safety standards;
- review of certification of asbestos firms. The Ministry of Social Affairs and Employment designates certification bodies that certify companies for the identification and removal of asbestos. Employees who remove asbestos will have to be certified in their own right in future. This system will come into operation in 2005.

During the reference period there were a number of developments that affect the structure of safety, health and welfare legislation. Firstly, early in 2004 the Social and Economic Council (SER) advised the government on the organisation of expert assistance within companies and how to ensure a more tailored approach. This led to the law being amended on 1 July 2005. Secondly, around the same time the government commissioned an advisory report from the SER on the broader application of safety, health and welfare legislation to the self-employed without any employees. The associated amendments to the 1998 Working Conditions Act likewise became effective as of 1 July 2005. Thirdly, in October 2004 the government asked the SER for advice on evaluating the 1998 Working Conditions Act. This evaluation took full account of the views of the social partners. The objective is to achieve a more effective policy in companies, thereby improving health and safety at work. Based on the SER's recommendations in July 2005, preparations are once again under way to amend the law.

Apart from primary and secondary legislation, there were a few developments in the field of safety, health and welfare during the reference period. These include the launch of two programmes (2003-2007) to step up policies on occupational safety and hazardous substances.

- Programme to improve occupational safety: the aim is to reduce the number of occupational accidents by 10-15% in specifically selected companies and sectors. Risk management systems have been developed and safety improvement projects implemented. The aim of these projects is to improve the safety culture within companies and raise safety awareness among employers and employees. Good practices will be developed that can serve as an example to other companies. The programme will run for five years (2003- 2007).
- Programme to improve hazardous substances safety policy: the aim is for the government and industry to carry out joint initiatives with a view to achieving an effective hazardous substances policy at company level that will help control the exposure of workers to hazardous substances. This means that sectors and product chains (from raw materials to end user) will draw up and implement an action plan. Early in 2004 the employers' association VNO/NCW and five ministries signed a hazardous substances voluntary agreement focusing on an integrated approach to occupational, environmental and consumer protection in relation to hazardous substances. Other chains and sectors are free to sign up as well. On 29 April 2004 ten sectoral organisations formally became a party to this agreement.
- Conclusion of voluntary agreements on health and safety at work. During the reference period several of these voluntary agreements were concluded, with various initiatives being developed at sectoral level to give shape to policies on safety, health and welfare and sickness absence. These are agreements between the government, employers' associations and trade unions in various sectors, specifically aimed at improving working conditions, curbing sick leave and reducing the number of cases of occupational disability. Setting compulsory target results stimulates action and encourages self-motivation. There are two phases:
 - 1999-2003: emphasis on prevention of key occupational risks
 - 2003-2006: emphasis on flanking incapacity policy

By the end of 2004, 69 voluntary agreements had been concluded (see Annex 3):

- Apart from the voluntary agreements, the social partners in various sectors also include specific rules in their collective labour agreements aimed at improving working conditions. A total of 83 agreements applicable to 4.1 million workers were concluded in 2003, covering such aspects as physical exertion, mental strain, hazardous substances, pressure of workload, sexual harassment, aggression and violence.

- A conference was held during the Dutch Presidency of the European Union, entitled “Towards effective intervention and social dialogue in occupational safety and health” (15-17 September 2004). The aim was to instil awareness that there are many creative and effective ways to build a safe and healthy working environment. Instruments include voluntary agreements, partnerships, a sector-based approach and financial incentives.
- Two financial instruments have also been developed with the aim of promoting health and safety at work:
 - Tax incentive programme for investments to improve working conditions (FARBO). Some 5,000 applications were submitted in 2003;
 - Ministry of Social Affairs and Employment grant scheme (SPA), under which companies wishing to market a worker-friendly product can receive a grant. Seventeen grant applications were approved in 2003.

Question B

Please indicate the special measures taken to protect the health and safety of workers engaged in dangerous or unhealthy work.

No new developments (see the Netherlands’ 15th Report, page 12).

Paragraph 2 : Provision for the enforcement of safety and health regulations by measures of supervision

"With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake: to provide for the enforcement of such regulations by measures of supervision;"

Question A

Please indicate the methods applied by the Labour Inspection to enforce health and safety regulations and please also give information, *inter alia*, statistical, on:

- a. the places of work, including the home, subjected to the control of the Labour Inspection, indicating the categories of enterprises exempted from this control;

The field of activity of the Labour Inspectorate in relation to working conditions covers the Netherlands as a whole. Only activities on the continental shelf come under the National Mines Inspectorate. The Labour Inspectorate’s sphere of action also covers the government, including the army and the police, education, health care, home workers (as explained in the Netherlands’ 15th Report, page 6) and the self-employed without personnel, in so far as safety, health and welfare legislation is applicable. The Environmental Protection Inspectorate (IMH), the Inspectorate for Transport, Public Works and Water Management (IVW), the Food and Consumer Product Safety Authority (VWA) and the National Mines Inspectorate have agreed on the distribution of tasks. Agreements concerning inspections in the education and health sectors have also been made with the Education Inspectorate and the Health Care Inspectorate (IGZ). No categories of work are exempt from inspection!

- b. the number of control visits carried out;

In 2004 the Labour Inspectorate visited 36,384 companies (private businesses including licensed premises) out of a total of 560,000 business establishments in the Netherlands. If several sites of a company are inspected, these are regarded as different companies, but if several inspections are carried out at one company or at one site, this is regarded as one company.

- c. the proportion of workers covered by these visits.

Approximately 25% of all employees in the Netherlands work in the companies inspected. Three per cent of all business establishments in the Netherlands were inspected: 21% of large companies (i.e. with more than 100 employees), 8% of medium-sized companies (10-99 employees) and 1% of small companies.

Question B

Please describe the system of civil and penal sanctions guaranteeing the application of health and safety regulations and also provide information on violations committed:

- a. the number of violations;
- b. the sectors in which they have been identified;
- c. the action, including judicial, taken in this respect.

With regard to the system of administrative and penal sanctions, see Annexe 3.

Civil liability is a matter for individuals.

a + b + c The number of violations, the sectors and the action taken

In 2004 a total of 36,384 establishments were inspected: 17% in industry, 28% in construction, 31% in commercial services and 1% unknown. One or more breaches were identified in 51% of the pro-actively performed inspections; in 5% of cases an administrative fine was imposed or a report drafted. The corresponding figures are 75% and 34% respectively as regards investigations as a result of complaints, and 70% and 47% respectively as regards investigations following accidents in the workplace.

Question C

Please provide statistical information on occupational accidents, including fatal accidents, and on occupational diseases by sectors of activity specifying what proportion of the labour force is covered by the statistics. Please describe also the preventive measures taken in each sector.

In 2004 a total of 2,135 occupational accidents were reported to the Labour Inspectorate and were subsequently investigated. This figure includes serious accidents reported, i.e. those requiring hospitalisation or causing permanent injury. There were 88 fatal accidents involving a total of 97 fatalities.

In 2003, based on a new statutory obligation, the safety, health and welfare services reported 5,937 cases of occupational disease to the Netherlands Centre for Occupational Diseases: 39% concerned musculoskeletal and neural disorders, 24% psychological disorders, 26% hearing loss, 4% skin diseases, 2% pulmonary disorders, and 9% other diseases. For a detailed breakdown of occupational diseases by sector and for conclusions and recommendations, see the Alert Report on Occupational Diseases 2004 published by the Netherlands Centre for Occupational Diseases (see <http://www.beroepsziekten.nl/datafiles/SR04perpaginadef.pdf> or www.beroepsziekten.nl); this report contains a summary and conclusions in English). As regards preventive measures, reference is primarily made to the voluntary agreement talks with the social partners to reduce the incidence of occupational diseases.

Paragraph 3 : Consultations with employers' and workers' organisations on questions of safety and health

*"With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:
to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health."*

Please indicate if consultations with workers' and employers' organisations are provided for in this connection by law, if they take place in practice and at what level (national, regional, at the sectoral or enterprise level).

No new developments (see the Netherlands' 15th Report, page 21).

Comments on the negative conclusions of the European Committee of Social Rights with regard to Article 3, paragraph 1

paragraph 1

1. The Committee notes from another source¹ that ... a study had been made on the working conditions of temporary workers which showed in particular that these workers were more exposed to noise and physically restricting conditions than the average worker.²

The Committee points out that for the situation to be in compliance with Article 3§1 of the Charter, states must take the necessary measures to equip non-permanent workers (temporary agency workers and fixed-term workers) with information, training and medical surveillance adapted to their employment status, in order to avoid any discrimination in respect of health and safety in the workplace. It indicates that these measures must ensure that such workers are afforded adequate protection, including against risks resulting from a succession of accumulated periods spent working for a variety of employers, exposed to dangerous substances, and, if necessary, must contain provisions prohibiting the use of vulnerable workers for some particularly dangerous

¹ Non-permanent employment, quality of work and industrial relations, study conducted in 2002 by the European Industrial Relations Observatory On-line (consulted on the site www.eiro.eurofound.eu.int).

² *Arbeidsomstandigheden 2000, Monitoring via personen* (2001), Statistics Netherlands (CBS)/ Ministry of Social Affairs and Employment, The Hague.

tasks. The Committee asks the Dutch authorities to indicate how the regulations apply the Charter in this regard.

The Working Conditions Act and the regulations based on this Act make no distinction in statutory protective measures between permanent and temporary workers or between full-time and part-time workers. The relevant regulations apply to all forms of work, irrespective of the nature of the appointment or contract.

paragraph 2

2. The Committee understands from the appendices to the report that global work-related statistics are not, or no longer developed in the Netherlands, a fact which is due to change as from 2000. In the absence of the necessary statistical data, the Committee defers its conclusion as concerns the development of accidents in the workplace and occupational disease, and it asks that the next report contain all the statistics that will have been developed by the Central Bureau of Statistics (CBS) as from 2001.

Occupational accidents

In the Netherlands there are about two fatalities a week as a result of an occupational accident. During the reference period the Ministry of Social Affairs and Employment expanded its sources of information on occupational accidents. The *Arbobalans 2004* (occupational health and safety report) presents figures that come from various data sources (Labour Inspectorate, Statistics Netherlands (CBS) and the Injury Information System of the Consumer Safety Institute). The number of accidents that took place during the reference period³ is indicated in the table below.

Table 5. Number of occupational accidents (2000-2003)

Year	Accidents	Fatal accidents	Hospitalisation within 24 hours
2000	103000	119	4100
2001	95000	115	3500
2002	103000	91	3500
2003	93000	104	3200

The main direct cause of occupational accidents is not sufficiently ensuring the safety of the workplace. The most common accident is falling from a height.

Occupational diseases

The safety, health and welfare services must report occupational diseases to the Netherlands Centre for Occupational Diseases. The aim is to gain insight into the prevention and causes of different types of damage to health caused by work, and the distribution over sectors and occupations. This information is important in formulating preventive policy. During the reference period the following number of occupational diseases was reported⁴:

Table 6. Number of occupational diseases (2001-2004)

2001	2002	2003	2004
5793	5335	5973	5788

³ Source: Arbobalans 2002/2004. No data is available yet for 2004.

⁴ Source: Netherlands Centre for Occupational Diseases.

Table 7 shows the number of reported cases per diagnostic category in 2004 compared with the previous three years.

Table 7. Number of reported cases per diagnostic category (2001-2004)

Diagnostic category	2001		2002		2003		2004	
	Number	%	Number	%	Number	%	Number	%
Musculoskeletal and connective tissue disorders	2698	48.2	2278	42.7	2333	39.1	2214	38.3
Psychological disorders	1517	27.1	1159	21.7	1406	23.5	1582	27.3
Diseases of the ear and mastoid bone	735	13.1	1344	25.2	1520	25.5	1389	24.0
Diseases of the skin, subcutis and adnexes	257	4.6	221	4.1	259	4.3	226	3.9
Diseases of the nervous system	115	2.1	71	1.3	120	2.0	86	1.5
Respiratory diseases	91	1.6	98	1.8	122	2.0	87	1.5
Cardiovascular diseases	10	0.2	21	0.4	49	0.8	42	0.7
Digestive system diseases	42	0.8	29	0.5	31	0.5	33	0.6
Diseases of the eye and adnexes	14	0.3	3	0.1	18	0.3	13	0.2
Other disorders	114	2.0	111	2.0	115	1.9	116	
Total	5593	100	5335	100	5973	100	5788	100

The cases reported roughly fall into three categories: disorders affecting posture and movement (39%), hearing impairment (25%) and psychological disorders (23.5%), including stress (61%) and burnout (22%). Another feature of the statistics is that there are relatively few reported cases affecting workers under the age of 25. Work-related psychological disorders mainly affect workers over 45.

3. Spot checks carried out in 2000 brought to light violations in 58 % of cases; in 5,6 % an administrative fine was imposed or a report drafted. These figures are 68 % and 11,5 % respectively as concerns investigations as a result of complaints, and 48 % and 36 % as concerns investigations following accidents in the workplace. The Committee asks that the next report contain similar data for the new reference period.

See the answer under Article 3, paragraph 1, point b. See also Annexe 3 (Description of the administrative and penal sanction system)

ARTICLE 4 - THE RIGHT TO A FAIR REMUNERATION

Paragraph 1 : Adequate remuneration

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

to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living."

"...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;"

Question A

Please state what methods are provided and what measures are taken to provide workers with a fair wage, having regard to national living standards and particularly to the changes in the cost of living index and in national income.⁵

No new developments: see page 23 of the Netherlands' Fifteenth Report.

Question B

Please specify if these include methods for fixing minimum wage standards by law or collective agreements.

No new developments: see page 23 of the Netherlands' Fifteenth Report.

Question C

Please indicate what proportion of wage-earners are without protection in respect of wages, either by law or collective agreement.

No new developments: see page 23 of the Netherlands' Fifteenth Report.

Question D:

1. Please provide information on:

- national net average wage⁶ (i.e. after deduction of social security contributions and taxes⁷);
- national net minimum wage if applicable or the net lowest wages actually paid (i.e. after deduction of social security contributions and taxes).⁸

⁵ If your country has accepted Article 16, there is no need to give information here concerning family allowances, etc.

⁶ In principle the net average wage should be the overall average for all sectors of economic activity. The average wage may be calculated on an annual, monthly, weekly, daily or hourly basis. Wages cover remuneration in cash paid directly and regularly by the employer at the time of each wage payment. This includes normal working hours, overtime and hours not worked but paid, when the pay for these latter are included in the returned earnings. Payments for leave, public holidays and other paid individual absences may be included insofar as the corresponding days or hours are also taken into account to calculate wages per unit of time.

⁷ The net wage (average and minimum) should be calculated for the standard case of a single worker. Family allowances and social welfare benefits should not be taken into account. Social security contributions should be calculated on the basis of the employee contribution rates laid down by law or collective agreements etc. and withheld by the employer. Taxes are all taxes on earned income. They should be calculated on the assumption that gross earnings represent the only source of income and that there are no special grounds for tax relief other than those associated with the situation of a single worker receiving either the average wage or the minimum wage. Indirect taxes are thus not taken into account.

⁸ The net minimum wage should be given in units of time comparable to those used for the average wage. The Netherlands' Nineteenth Report

2. Please provide information, where possible, on:
- the proportion of workers receiving the minimum wage or the lowest wage actually paid (after deduction of social security contributions and taxes);
 - the trend in the level of the minimum net wage and/or the lowest wage actually paid compared to national net average wage and any available studies on this subject.

1. Table 8 provides information about the level of the net average and net minimum wage in euros in 2001 and 2004. Net minimum wages are calculated for a single worker with no children.

Table 8: Average and minimum wages in euros per year in 2001 and 2004

	2001	2004
Gross average wage	25,380	27,370
Net average wage	17,070	18,060
Gross minimum wage	15,130	16,392
Net minimum wage	13,639	14,911

Source: Gross average wage (CBS, Statistics Netherlands), net wages and gross minimum wage (Ministry of Social Affairs and Employment); the gross and net average wage are calculated for all jobs including part-time jobs.

The value of the gross and net minimum wage as a percentage of the gross and net average wage respectively, as requested by the Committee, can be calculated on the basis of the figures in table 8. Over the reference period the gross minimum wage amounts to about 60% of the gross average wage. In net terms, this percentage was around 80% in 2001 and 82% in 2004.

The figures in table 8 do not show the effect income-dependent benefits may have on minimum incomes. The most important of these are housing benefit and exemption from local taxes. In addition, municipalities have well-developed income support systems for those on low incomes. Although those receiving the minimum wage make little use of these support schemes (unlike people on benefit), they do in fact qualify for them on the basis of their income.

During the entire reference period the minimum wage moved in line with average wages. As a percentage of the average wage, the minimum wage remained the same in gross terms and in net terms it increased by two percentage points.

For further information on the proportion of workers receiving the minimum wage see the Dutch government's reaction to the ECSR's negative conclusion with regard to Article 4, paragraph 1.

Paragraph 2 : Increased rate of remuneration for overtime work

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

to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;"

"...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;"

Question A

1. Please mention what provisions apply according to legislation and collective agreements as regards overtime pay, the method used to calculate the increased rates of remuneration and the categories of work and workers to which they apply.
2. Please specify what provisions apply in respect of overtime pay on Saturdays, Sundays and other special days or hours (including night work).

No new developments: see page 24 of the Netherlands' Fifteenth Report.

Question B

1. Please mention any special cases for which exceptions are made.
2. Please indicate, where appropriate, whether measures permitting derogation from legislation in your country regarding daily and weekly working hours (see Article 2 para. 1) have an impact on remuneration or compensation of overtime.

No new developments: see page 24 of the Netherlands' Fifteenth Report.

Paragraph 3 : Non-discrimination between men and women workers with respect to remuneration

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

to recognise the right of men and women workers to equal pay for work of equal value;"

"...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;"

Question A

Please indicate how the principle of equal pay for work of equal value is applied; state whether the principle applies to all workers.⁹

No new developments: see page 25 and 26 of the Netherlands' Fifteenth Report.

⁹ The term "equal pay for work of equal value" in this Form is to be understood in terms of ILO Convention No. 100 (Equal Remuneration), Article 1.

Question B

Please indicate the progress which has been made in applying this principle.

The Labour Inspectorate has published two reports on the labour market status of employees: the report on 2000 was published in September 2002 and the report on 2002 in December 2004. Copies of both reports are appended (annexes 4 'De arbeidsmarktpositie van werknemers in 2000' and 5 'De arbeidsmarktpositie van werknemers in 2002').

Some trends over time are highlighted in Chapter 3 of the latter report. This shows that uncorrected pay differentials between men and women have fallen from 23% (1998 and 2000) to 22% (2002), while the corrected differentials have remained at 7%. In the public sector uncorrected pay differentials have fallen from 15% (1998 and 2000 figure) to 14% (2002 figure), while corrected differentials have fallen from 4% (1998) to 3% (2000 and 2002).

Another Labour Inspectorate report on pay differentials between men and women (2004 figures) will be published in the course of 2006.

The uncorrected differentials can partly be explained by differences in job level, training and number of years' service. The corrected differential cannot yet be fully explained. It may be due to pay discrimination, but other factors may also be involved.

The public sector encourages equal pay through the following measures.

- Consultations with the social partners (for example at the spring and autumn round of talks).
- Developing instruments such as the gender-neutral job evaluation manual, the equal pay quick scan, the equal pay checklist and the equal pay management tool.
- Commissioning research: with the aid of a grant from the Ministry of Social Affairs and Employment, the Equal Treatment Commission (*Commissie gelijke behandeling*) has developed a simulation programme to analyse pay systems. This 'equal pay quick scan' is a quick and efficient way of determining whether further research is required. This makes it possible to test pay systems and pay policies for discriminatory elements on a large scale without creating long delays. A shorter version of the quick scan has also been developed.
- Setting up an equal pay task force in which all relevant organisations, such as employers' organisations, trade unions, the Dutch Association of Personnel Officers (*Nederlandse Vereniging voor Personeelsfunctionarissen*) and the Equal Treatment Commission, participate.
- Providing information (the Ministry of Social Affairs and Employment has compiled various booklets and reports on equal treatment and equal pay which are also available on the Internet).

Question C

1. Please describe the protection afforded to workers against retaliatory measures, including dismissal.
2. Please indicate the procedures applied to implement this protection.

No new developments, see page 25 and 26 of the Netherlands' Fifteenth Report.

Paragraph 4 : Reasonable notice of termination of employment

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

to recognise the right of all workers to a reasonable period of notice for termination of employment;"

"... 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."

[The Appendix to the Charter stipulates that this provision shall be so understood as not to prohibit immediate dismissal for any serious offence.]

Question A

1. Please indicate if periods of notice are provided for by legislation, by collective agreements or by practice and if so, indicate the length of such periods, notably in relation to seniority in the enterprise.
2. Please indicate whether the periods of notice established by legislation can be derogated by collective agreements.
3. Please indicate the periods of notice applicable to part-time workers and to home workers.
4. Please indicate in which cases a worker may not be given a notice period.
5. Please indicate whether provision is made for notice periods in the case of fixed-term contracts which are not renewed.

No new developments: see page 26 and 27 of the Netherlands' Fifteenth Report.

Question B

Please indicate whether wage-earners may challenge the legality of such notice of termination of employment before a judicial authority.

No new developments: see page 26 and 27 of the Netherlands' Fifteenth Report.

Paragraph 5 : Limitation of deduction from wages

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

to permit deductions from wages only on the 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."

[The Appendix to the Charter stipulates that 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.]

Question A

1. Please describe how and to what extent observance of this paragraph is ensured in your country, specifying the ways in which this right is exercised, both as regards deductions made by the employer for his own benefit and for the benefit of third parties.
2. Please indicate whether legislation, regulations or collective agreements provide for the non-seizability of a part of the wage.

No new developments: see page 27 of the Netherlands' Fifteenth Report.

Question B

Please state whether the measures described are applicable to all categories of wage-earners. If this is not the case, please give an estimate of the proportion of workers not covered and, if appropriate, give details of the categories concerned.

No new developments: see page 27 of the Netherlands' Fifteenth Report.

Comments on the negative conclusions of the European Committee of Social Rights with regard to Article 4, paragraphs 1 and 3

Paragraph 1

- a. However, the Committee recalls that under the Minimum Wage and Minimum Holiday Allowance Act as amended workers under the age of 23 years are entitled only to a percentage of the adult minimum wage ranging from 30 % for 15-year olds increasing to 85 % for 22-year olds. A worker aged 18 years was thus entitled to 45,5 % of the adult minimum wage which in 2000 represented a net value of about 4 904 € annually or a mere 31,4 % of the net average wage. Notwithstanding the Government's arguments, the Committee can only reiterate that such a wage is too low to be considered fair in the meaning of this provision of the Charter.....
The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Charter as the statutory minimum wage of workers aged between 18 and 21 years falls below the requirements of this provision.

In the view of the Dutch government, three arguments are essential to evaluating the Dutch minimum wage system for young people (aged below 23). The minimum wage must:

- 1) provide a decent standard of living
 - 2) allow for sufficient employment opportunities, and
 - 3) encourage young workers to complete their education
- 1) Provision of a decent standard of living

From an economic viewpoint, the aim of guaranteeing a minimum wage for young people is not to ensure sufficient income to support a family on a single wage. The minimum wage for young people is meant to be a reasonable reward for their productivity and in general the productivity of younger employees is lower than that of employees with more experience. This justifies the lower minimum wage for young people.

In the overwhelming majority of cases, workers under the age of 23 do not have to support a family on a single income. If they have to do so, additional income support is provided through the social assistance scheme, up to the general level that applies above the age of 22. Dutch welfare levels are high in comparison with those abroad. In addition, in the Netherlands parents have full financial responsibility for their children up to the age of 21. Besides the social assistance scheme, there are various income-dependent benefits to help those on minimum incomes, such as housing benefit and care benefit.

2) Safeguarding employment opportunities

International economic research has established a clear link between minimum wage levels and employment, especially for young workers. Evaluations of Dutch minimum wage policy in the 1980s showed that the reduction in youth minimum wages had clearly improved employment opportunities for young workers. It also reduced significantly the dropout rate from school. Experience from the early 1980s shows that high minimum wages rapidly destroy opportunities, especially for young people. On the basis of the international economic literature, the Dutch government believes that these results are still valid (see Neumark and Wascher, 2004), especially if one bears in mind that according to Eurostat data, the Netherlands has the highest minimum wage in the European Union after Luxembourg (see table 9).

In the Netherlands, the minimum wage forms an effective floor in wage negotiations. The lowest wages agreed in collective bargaining between employers and labour unions are usually higher than the minimum wage. Eurostat data also show that the percentage of full-time employees in the Netherlands on the minimum wage is one of the lowest in Europe (see table 10). Young people and women in part-time jobs in particular work at the minimum wage level. Other employees earn wages that are set above the minimum wage in collective bargaining agreements. This is an indication that the Dutch minimum wage system improves employment opportunities for young people.

The Dutch government believes that the Dutch minimum wage system is one of the reasons why the Netherlands has one of the lowest unemployment levels for young people in Europe (see figure 1). The government considers it absolutely necessary to maintain this low level of youth unemployment, as it is one of the means to achieve the objectives of the obligation laid down in Article 1, para. 1 of the Charter, which has also been accepted by the Netherlands.

3) Encouraging young persons to complete their education

A relatively high minimum wage encourages young people to leave school and find a job. The Dutch government considers this an important argument in favour of lower minimum wages for young people, because lower education levels lead to higher unemployment. This is also clear from unemployment figures according to education level in the Netherlands (see table 11).

The unemployment level is especially relevant if we look at the dropout rates in the Netherlands, which are higher than in neighbouring countries. The percentage of dropouts in the age category of 18-24 years is lower than the EU-25 average but it is high in comparison with the Scandinavian countries, Belgium and Germany. This relatively high rate is due to other factors unrelated to wage levels in the labour market. But a higher minimum wage for young people will in our view result in higher dropout rates, and employment opportunities for young people will deteriorate.

To sum up:

From the perspective of providing a decent standard of living and employment opportunities, and of preventing children from dropping out of school, the Dutch government believes that the Dutch youth minimum wage system is adequate.

Table 9: Top 5 of minimum wages in EU member states and candidate countries, January 2004, in euros

	2003	2004	2005
Luxembourg	1369	1403	1467
Netherlands	1249	1265	1265
Belgium	1163	1186	1210
UK	1106	1083	1197
France	1154	1173	1197

Source: Eurostat

Table 10: Top 5 of the lowest proportion of full-time employees earning the minimum wage in the European Union, candidate countries and the US, 2002

	Total	Male	Female
Estonia	0.8	0.7	1
UK	1.9	1.4	2.7
Czech Republic	2	1.1	2.8
Ireland	2.1	1.6	3
Netherlands	2.3	1.8	4.2

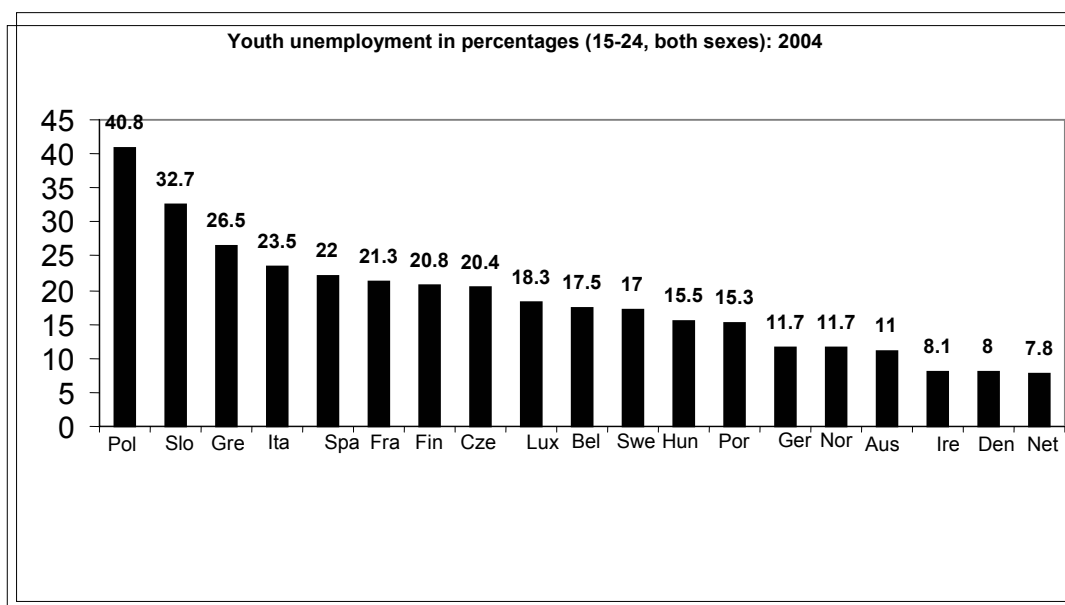
Source: Eurostat

Table 11: Unemployment levels according to education in percentages in the Netherlands, 2002

Level of Education		
Low	Basis	7.7
	MAVO	7.2
	VBO	4.8
Intermediate	HAVO/VWO	5.7
	MBO	3
High	HBO	3
	WO	3.7
Total		4.1

Source: CBS (Survey of working population)

Figure 1: Youth unemployment in various European countries



Source: OECD, Employment outlook 2005

Paragraph 3

b.1 For the purpose of comparing employment conditions, Section 7 of the WGB stipulates that comparison should be based on “the salary normally paid in the firm where the worker on whose behalf the comparison is being made is employed, to an employee of the other sex for work of equal value, or where there is no such work, for work of comparable value”. The comparison is limited to the firm. The term salary refers to the remuneration payable by an employer to an employee in exchange for his/her work, but does not include benefits or rights linked with a pension scheme. Section 9, Sub-section 2 of the WGB stipulates that account should be taken of elements of wages other than cash in accordance with the market value that can be assigned to them.

The Committee has always considered that the principle of equality should cover all elements of pay. It considers that the idea of remuneration in the Charter, for the purpose of the application of the principle of equality between the sexes, covers “basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment”. It considers that the exclusion of benefits or rights linked with a pension scheme from the notion of pay and therefore the application of the principle of equal treatment is too extensive and as a consequence not in conformity with Article 4§3 of the Charter.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§3 of the Charter as benefits or rights linked to a pension scheme are excluded from the notion of pay and therefore from the application of the principle of equal treatment.

Section 5, subsection 1 (e) of the Equal Treatment Act (*Algemene wet gelijke behandeling*; AWGB) states that it is unlawful to discriminate with regard to terms and conditions of employment. Such terms and conditions also include benefits or rights linked to a pension scheme. This Act also applies to the principle of equal treatment for men and women. The Equal Treatment (Men and Women) Act (*Wet gelijke behandeling van mannen en vrouwen*; WGB) is a *lex specialis* of the AWGB. Division 3 (sections 12a-12f) of the WGB governs equal treatment in the field of pensions. The Dutch government is therefore of the opinion that the situation in the Netherlands is in conformity with article 4, paragraph 3.

b.2 Partially dissenting opinion of Mrs. M. JAMOULLE

In accordance with Article 14§2 of the Committee's Rules of Procedure, a dissenting opinion of Mrs. M. JAMOULLE is appended to this conclusion.

Mrs. JAMOULLE considers that the conclusion of non-conformity should be applied for a second reason. She notes that the 1975 legislation stipulating the comparison of male and female salaries outside the firm is no longer in force and that the current system is limited in that it only allows for comparison within the firm whereas the existing jurisprudence of the Committee requires the possibility to look for comparative elements outside the firm, in order to guarantee that the rule of equal pay is effective.

The Dutch government originally envisaged an additional amendment to section 7 of the WGB. As stated above, under the provisions of this section a woman can only submit a claim for equal pay on the basis of a comparison with the salary a man earns for the same work within the same enterprise. The planned amendment to section 7 was scrapped since it has proven to be unnecessary in practice.

See also, below, the answer to question no. 1 of the ECSR with respect to Article 4, paragraph 3.

Answers to the questions or requests for information by the ECSR

Paragraph 3

1. The report refers to plans to amend the above-mentioned Section 7 to allow comparisons between different branches of the same firm. However, this amendment was found to be unnecessary in practice, as the Equality Commission's interpretation of the notion of the firm (see below) is already very broad. The Committee wishes to know the Commission's interpretation.

The Equal Treatment Commission interprets the term 'same undertaking' in section 7 very broadly and finds the existing provision adequate. The Equal Treatment Commission also interprets section 1b WGB broadly. Whenever work is performed under the authority of another (i.e. in the broadest sense: see article 7:646 and 7:647 of the Dutch Civil Code) and a distinction is made regarding appropriate payment, the Commission is competent to take cognizance of the claim and will apply sections 7-9 WGB.

- 2.-5. In its conclusion on Article 1 of the Additional Protocol to the Charter (Conclusions XV-2, p. 378), the Committee noted that one of the reasons for this difference in pay was that women worked part-time more often than men. In the Netherlands, about 15 % of collective labour agreements still do not apply to employees working "short part-time" (less than twelve hours a week).

The Committee considers that the principle that there should be no discrimination between the sexes implies that the rule of equal pay for full-time and part-time workers

should be observed, since most of the latter are women and this can give rise to indirect discrimination. Accordingly, the Committee wishes to receive answers to the following questions:

2. Is the hourly wage of part-time workers employed in the same type of job or in a similar job identical, as a rule, to the hourly wage of full-time workers ?
3. Are there any exceptions to this principle and, if so, on what grounds?
4. If pay increases with length of service, how is the latter calculated in the case of part-time workers?
5. Are certain components of pay, such as premiums, bonuses, entitlements and benefits associated with complementary insurance schemes, paid as a result of employment, reserved for full-time workers?

2. The Dutch minimum wage is not an hourly wage. It is a monthly minimum wage for the weekly working hours that are normal within a particular sector or industry. For example: if the normal working hours for industry X are 36 hours a week, which is usually established by a collective labour agreement, in principle the minimum wage is for 36 hours. If someone works part-time, say 12 hours a week, he/she is entitled to 12/36 of the minimum wage. If the normal working hours are 40 hours in an industry the part-time worker is entitled to 12/40 of the minimum wage.

3. There are no exceptions to this principle.

4. Discrimination on the grounds of working hours is prohibited. Section III of the Working Hours (Discrimination) Act (*Wet verbod op onderscheid naar arbeidsduur*, WOA) prohibits discrimination on the grounds of a difference in working hours in the conditions under which an employment contract is entered into, continued or terminated, unless such discrimination is objectively justified. Any provision contrary to this is null and void. A worker who suspects that he/she has been discriminated against can file a complaint with the Equal Treatment Commission.

5. See the answer to question no. 4: part-time workers have the same rights as full-time workers. Section 5, subsection 1 (e), (f), (g) and (h) of the Equal Treatment Act also prohibits discrimination with regard to terms and conditions of employment, training during or prior to employment, promotion and working conditions. A worker who suspects that he/she has been discriminated against can file a complaint with the Equal Treatment Commission.

It is therefore prohibited to restrict to full-time workers certain elements of pay, such as premiums, bonuses, entitlements and benefits associated with supplementary insurance schemes, paid as a result of employment.

Paragraph 4

6. The Committee also notes that notice of termination of employment is not required during probationary periods. It therefore asks whether the length of probationary periods is determined by law or by other means and what is its average duration.

The length of probationary periods is determined by law. For an open-ended contract and for a fixed-term employment contract for longer than 2 years the maximum duration of the probationary period is 2 months. For a fixed-term employment contract up to 2 years the maximum duration is 1 month. The probationary period must be established in writing. If a longer probationary period is stated in the employment contract, this provision is null and void. See article 7:652 of the Dutch Civil Code

ARTICLE 9 - THE RIGHT TO VOCATIONAL GUIDANCE

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

Question A

Please give a description of the service - its functions, organisation and operation - specifying in particular:

- a. whether access to services is free of charge;
- b. whether vocational guidance work is carried out in the public or private sectors;
- c. the measures taken to supply all persons with adequate information on the choice of employment;
- d. the measures taken to ensure a close link between vocational guidance and training on the one hand and employment on the other;¹⁰
- e. the measures in hand for improving the services;
- f. the details of special measures to assist disabled persons.

General comments

Educational establishments are required by law to provide good career planning and guidance. Information for students in pre-vocational secondary education (VMBO) and secondary vocational education (MBO) concerning educational and vocational guidance and the labour market has been available through a single Internet portal (www.opleidingenberoep.nl) since 1 December 2005. The Youth Unemployment Task Force launched the portal in conjunction with the Learning and Working Project Department, the Ministry of Education, Culture and Science, *Kennisnet* (Knowledge Network, the education portal for all sectors in education), the Association of Centres of Expertise on Vocational Education, Training and the Labour Market (COLO), the Centres for Work and Income (CWIs) and ROC.nl (regional training centres). The aim is to help young people, their parents, counsellors and careers advisors to track down relevant information about training and career options more quickly. Naturally, educational and vocational guidance will always be an interactive and emotional process for the people involved (careers advisor, youth counsellor, parents, etc.). The creation of one central information hub should therefore be regarded as an additional tool to support this process. Many people in the target group only start searching for a website offering career and training options after a primary source (teacher, careers advisor or parent) has pointed them in this direction.

The Learning and Working Project Department, set up jointly by the Ministry of Education, Culture and Science and the Ministry of Social Affairs and Employment, will upgrade the portal in 2006 and 2007 to make it a complete, integrated website offering information about all aspects of learning and working for school-age children and other young people, the unemployed, workers, careers advisors and employers. Besides being a source of information, the website places emphasis on user interaction. If visitors cannot find answers to all of their questions using the portal, they will soon be able to call a helpline to get specialised advice about training and employment.

¹⁰ If your country has accepted Article 10 para. 1, it is not necessary to describe these measures here. NB The Netherlands has accepted Article 10 para. 1!

As well as the portal site, the Youth Unemployment Task Force has launched two further initiatives to provide vocational orientation at an early stage in VMBO. First, in 2006 the task force will organise the second national *Kom in het leerbedrijf* campaign, a joint initiative with COLO, the Centres of Expertise on Vocational Education, Training and the Labour Market (KBBs), the Association for Management in Secondary Education (Schoolmanagers_VO), the Association of Student and Career Counsellors (NVS/NVL) and the VMBO Platform Council. This campaign involves certified training companies taking part in an open day to enable VMBO students to find out what is involved in various occupations in practice. Secondly, the task force is working with CWIs to develop a learning package for students and careers advisors, focusing on the facilities that CWIs offer in terms of vocational guidance and help finding a job or work experience placement. To tie in with this, CWIs will be organising visits by CWI youth counsellors to VMBO schools in order to provide information about what the local CWI has to offer. The schools will also visit CWI offices.

On the subject of CWIs, it can also be reported that individuals can obtain information there free of charge about careers, training courses, the labour market situation in specific occupations and actual vacancies. This information can usually be consulted in electronic form via the website www.werk.nl (this general site exists alongside the aforementioned Internet portal www.opleidingenberoep.nl, which is specifically aimed at VMBO and MBO students). It is also possible to get personalised information and advice from CWIs. Specialist careers guidance is not one of their tasks, however. Where specialist advice is needed, people with relatively poor job prospects can contact the Employee Insurance Agency (UWV) or their local authority (this service is then provided by a private-sector body).

Re a: access to the services mentioned above is free of charge.

Re b: both public and private services are provided (see above).

Re c: see above.

Re d: not applicable

Re e: see above.

Re f: no new developments since the previous report (see p. 34 of the Netherlands' 15th Report).

Question B

Please indicate the measures taken in the field of vocational guidance to promote occupational and social advancement.

See the answer to question A. Otherwise no new developments since the previous report (see the Netherlands' 15th Report, p. 34).

Question C

Please indicate the types of information available in the vocational guidance services and the means employed to disseminate this information.

See the answer to question A. It can also be reported that CWIs are in the process of phasing in "competence test centres". People who take a competence test (free of charge) can use the information obtained to choose an appropriate occupation or job. CWIs are expecting this to be a very effective job-hunting tool.

Question D

Please indicate:

- a. the total amount of public expenditure devoted to vocational guidance services during the reference period;
- b. the number of specialised staff of the vocational guidance services and their qualifications (teachers, psychologists, administrators, etc.);
- c. the number of persons benefiting from vocational guidance broken down by age, sex and educational background;
- d. the geographical and institutional distribution of vocational guidance services.

Re a: The table below indicates the total expenditure of the Ministry of Education, Culture and Science on career planning and guidance.

Table 12: Total public expenditure on career planning and guidance

2001	€859,357
2002	€606,627
2003	€202,633
2004	€299,575

In 2005 the sum of €2.5 million was added to the block grant paid to educational establishments to boost career planning and guidance services.

CWIs have an annual budget of approximately €3 million for information and advice on vocational guidance and training. Once the competence test centres are introduced nationwide, the ongoing cost will be about €10 million.

Re b/c/d: information is not available at the required level of detail.

Question E

Please indicate whether equality of access to vocational guidance is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled persons.

Although the services mentioned under point A are usually intended for specific groups (e.g. VMBO/MBO students), this does not necessarily mean that they are not accessible to others. This is the case, for example, with the Internet portal mentioned. Furthermore, everyone of school age is entitled to career planning and guidance, which schools are required by law to provide. Lastly, with regard to CWIs, everyone who is entitled to register as a jobseeker may benefit from the services available. The right to register is not exclusively reserved for Dutch nationals. The following also enjoy the same right: 1) foreign nationals to whom Article 1 or Article 10 of Council Regulation (EEC) No. 1612/68 is applicable and 2) foreign nationals who hold a permit issued under the Aliens Act 2000, provided the permit is endorsed by the Minister of Justice indicating that the holder may carry out work without any restrictions.

Answers to questions or request for information by the ECSR

1. (...) outside the reference period, the situation has basically changed in the labour market as a consequence of the entry into force of the Work and Income (Implementation Structure) Act. ...
The Committee notes that, being outside the reference period, it will consider this reform in detail in the next supervision cycle; accordingly, it requires the next report to provide an up-to-date description of the system.

The Work and Income (Implementation Structure) Act entered into force on 1 January 2002. This legislation introduced a new division of tasks in the fields of social security and employment services. With a view to achieving the goals of effectiveness, efficiency and client orientation, new contacts have been established so as to create a “chain of work and income”. Under this Act, every jobseeker must register with a CWI for initial assessment and subsequent placement. The “one-stop shop” approach means that the CWI also receives applications for social assistance or unemployment benefits. More so than in the past clients are therefore made aware of the prospects of employment right from the start.

The organisations that are most directly affected are charged with the task of reintegration (and are also responsible for paying out benefits):

- the local authority, which is responsible for reintegrating social assistance benefit claimants, non-benefit claimants and people who are receiving surviving dependant’s benefit;
 - the Employee Insurance Agency (UWV), which is responsible for reintegrating people claiming unemployment benefit and/or incapacity benefit.
2. With respect to vocational guidance in the education system, the Committee asks if students can choose to follow or not the advice received through guidance. If the advice is compulsory, the Committee asks which are the consequences in case of non-compliance by the student.

With respect to vocational guidance in the education system: in the field of adult and vocational education, advice on further training and study is not legally binding. The competent authority can, however, lay down rules that are binding for participants. These must be clearly communicated to participants right at the outset.

3. Answering the Committee’s question, the report indicates that EU nationals and other foreigners lawfully residing in the Netherlands who have permission to work (sticker in the passport) can register with the CWI and then make use of the CWI services, including guidance.
The Committee asks confirmation as to whether this implies that all the nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter lawfully resident or regularly working in the country are given access to vocational guidance.

See the answer to point E.

ARTICLE 10 - THE RIGHT TO VOCATIONAL TRAINING

Paragraph 1 : Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education

"With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake: to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;"

Question A

Please give an account of the functions, organisation, operation and financing of the services designed to provide vocational training for all persons including disabled persons,¹¹ specifying in particular:

- a. the rules laid down by legislation, collective agreements or carried out otherwise;
- b. the total amount of public expenditure devoted to vocational training;
- c. the number of vocational and technical training institutions (at elementary and advanced levels);
- d. the number of teachers in such schools in the last school year;
- e. the number of pupils, full-time and part-time in such schools in the last school year.

Re a: There have been several developments since the previous report.

Training for workers and jobseekers

With regard to the use of ESF funds, see the Netherlands' 15th Report, pp. 37-38. It can also be reported that the training and development funds – collaborative partnerships between employers and employees – administer applications for grants and organise specialised training. Between 2000 and 2005, 302,800 people made use of the ESF measure, corresponding to grants of €1,341 million.

With a view to giving adult education fresh impetus, the government adopted a Lifelong Learning Action Plan in November 2004 and submitted it to Parliament. On 1 March 2005, with a view to implementing the action plan, the government set up an interministerial project department, staffed by the Ministry of Education, Culture and Science and the Ministry of Social Affairs and Employment and also involving the Ministries of Agriculture, Nature & Food Quality, Economic Affairs and Immigration & Integration. This is a temporary measure and the team will be disbanded on 1 March 2007. The department aims to give a boost to vocational training for workers and jobseekers and is adopting a three-pronged approach: dual courses combining study and work experience, training & employment helpdesks/EVC (recognition of prior learning) and removal of obstacles/promotion/innovation (for further details, see Article 10 para. 3, under A).

¹¹ If your country has accepted Article 15, it is not necessary to describe here the services for disabled persons. NB The Netherlands has accepted Article 15!

Entry-level and step-up jobs

Since the introduction of the Work and Social Assistance Act (WWB) on 1 January 2004 and the expiry of the voluntary agreement on subsidised work on 1 July 2004, local authorities have been responsible for ensuring that people in entry-level and step-up jobs remain in paid employment and move on to regular jobs. Under this new legislation, the aim in deploying the work component of the budget, from which subsidised jobs can also be funded, is to stimulate regular employment. There is no longer a dual objective as was the case with entry-level and step-up jobs, i.e. to encourage people to take up regular employment and to improve services to the community.

Towards the end of 2003 the Ministry of Social Affairs and Employment made grants available for employers who offered someone in an entry-level and step-up job a permanent contract. This temporary incentive scheme was available for at least 10,000 jobs. Employers used the grant to convert more than 7,200 subsidised jobs (entry-level and step-up or “Melkert” jobs, named after the then Minister of Employment) into regular jobs. Despite the relatively disappointing results, the main objective of the scheme seems to have been achieved. It was intended to prevent people in subsidised “Melkert” jobs being dismissed as a result of the cutbacks in 2003. Statistics show that in 2003 and 2004 fewer people lost their jobs than during the previous reference period.

Recently (October 2005) the parties to the voluntary agreement on subsidised work (the Dutch government, the Association of Netherlands Municipalities (VNG), employers and employees) agreed to use the funds available because of underspending on the aforementioned temporary incentive scheme to subsidise programmes combining work and study. The aim of this new temporary incentive scheme is to encourage people in entry-level and step-up jobs and jobs subsidised under the Jobseekers Employment Scheme to move into regular employment. The scheme came into effect on 1 January 2006. The deadline for submitting grant applications is 31 July 2006. Under this scheme grants are available for more than 3,600 programmes combining work and study.

- Re b. The total amount of expenditure devoted to secondary vocational education (MBO) in 2004 was €2.3 billion.
- Re c. The number of Regional Training Centres (ROCs) in 2004 was 58.
- Re d. The number of teachers (full-time equivalents) in 2004 was 22,600.
- Re e. In 2004 there were 300,900 full-time students, 16,000 part-time students, 135,000 block or day release (BBL) students and 147,000 participants in adult education.

Question B

Please indicate how the arrangements for vocational training are provided with reference to the various types of vocational activity and, if data are available, to age and to sex.

Secondary vocational education (MBO) is divided into four sectors:

- personal and social services and health care (DGO)
- business
- engineering and technology
- agriculture (provided by the Ministry of Agriculture, Nature and Food Quality)

The breakdown of students by sex per sector is as follows:

Table 13: Students in secondary vocational education, by sex (number of students x 1,000)

2004	Total	%	BBL	BOL-ft	BOL-pt	DGO	Business	Eng. & Tech.
Men	238.4	52.8	84.8	156.6	7.1	22.5	94.2	121.8
Women	213.5	47.2	50.3	154.3	9.0	124.7	73.0	15.8
Total	452.0		135.0	300.9	16.0	147.2	167.2	137.6

BBL = block or day release scheme (*Beroepsbegeleidende leerweg*)

BOL = vocational training (*Beroepsopleidende leerweg*)

BOL-ft = full-time vocational training (*voltijdonderwijs*)

BOL-pt = part-time vocational training (*deeltijdonderwijs*)

DGO= personal and social services and health care (*Dienstverlening en gezondheidszorg*)

The breakdown by age per sector is not available. The number of students enrolled on 1 October 2004 in each age bracket according to type of education is as follows:

Table 14: Students in secondary vocational education, by age (number of students x 1,000)

	MBO	%	BBL	BOL-pt	BOL-ft	AE	%	KSE 1-3	KSE 4-6	NT2
Younger than 15	107	0%	4	3	99	17	0%	7	1	9
15	8,315	2%	743	56	7,493	147	0%	46	62	44
16	63,352	14%	8,245	299	54,648	1,210	1%	282	718	298
17	85,438	19%	14,356	388	70,508	3,013	2%	287	2,437	671
18	80,506	18%	15,372	498	64,483	4,397	3%	359	3,225	1,336
19-21	118,362	26%	31,817	2,356	84,099	11,599	8%	1,544	3,630	7,026
22-27	43,537	10%	22,784	3,615	17,294	25,061	17%	3,668	1,206	20,514
28-39	28,678	6%	22,112	5,174	1,647	50,524	34%	9,502	1,327	39,832
40-64	23,628	5%	19,609	3,609	613	46,096	31%	18,789	1,280	24,403
65 or over	43	0%	3	40	1	4,939	3%	3,518	113	869
Total	451,967		135,044	16,039	300,884	147,000		38,000	14,000	95,000

MBO = Secondary vocational education

AE = Adult education

KSE = Adult education qualification structure (levels 1-3 and 4-6)

NT2 = Dutch as a second language

Question C

Please state what measures are taken to ensure a close link between vocational guidance and training on the one hand and employment on the other.¹²

See the report on Article 9 of the Charter.

Question D

Please indicate the methods adopted by your government with a view to providing access to higher technical education and university education on the basis of the sole criterion of individual aptitude.

¹² If your country has accepted Article 9, it is not necessary to describe these measures here. NB The Netherlands has accepted Article 15!

With regard to access to higher education for people without the qualifications required by law, the following developments can be reported:

- a) experiments are under way to devise alternative admission requirements to ensure that people under the age of 21 who do not have the previous education required by law can have access to higher professional education. This mainly concerns people who have a level three secondary vocational education certificate (MBO-3). The aim is to develop at least one good test per study programme that may be used by all institutions, but the intention is not to make the same test compulsory for all institutions;
- b) to improve access to higher education for working and non-working adults, study programmes in higher education are being developed in consultation with local government and employers; these programmes guarantee full recognition of prior learning (known as EVC in Dutch) at higher education level. Specific agreements on training are already being made at regional level. The EVC system aims for uniformity by establishing guidelines, formulated jointly with the social partners, on quality requirements for EVC and for the way in which EVC is determined. It is expected that these guidelines will be set down in a voluntary agreement between the social partners and the government by the end of 2006. Development of the standards underlying these quality guidelines is already in progress.

Question E

Please indicate whether equality of access to vocational training opportunities is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled persons.

Under Section 8.1.1 of the Adult and Vocational Education Act (WEB), secondary vocational education facilities are open to people of Dutch nationality or who are treated as Dutch nationals on the basis of some other provision. Foreign nationals up to the age of 18 also have access, while those aged 18 or over have access if they are lawfully resident in the Netherlands within the meaning of Section 8 of the Aliens Act 2000 on the day they enrol.

Paragraph 2: Promotion of apprenticeship

*"With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake:
to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments."*

Question A

Please give an account of the legal framework and the functions, organisation, operation and financing of apprenticeships and/or other systems for training young boys and girls in various jobs in your country.

Adult and Vocational Education Act (WEB)

The Adult and Vocational Education Act includes measures designed to achieve a better match between education and the labour market. The Centres of Expertise on Vocational Education, Training and the Labour Market (KBBs) form the links between vocational education and trade and industry. They are organised on a sectoral basis and are run by

representatives of employers and employees and, in almost every case, by representatives of schools. The KBBs develop a clear qualification structure, defining the required qualifications that reflect trends in professional practice. They also determine which companies or organisations are competent to provide practical training in the workplace. This is done on the basis of predetermined criteria. Companies or organisations that fulfil the criteria are accredited and are entered in the business register of their local KBB.

Tax exemption measures have been introduced to encourage businesses to make more practical training places available for the block or day release scheme (BBL). The format chosen is a fixed amount per BPV agreement (BPV = practical training in the workplace) per calendar year. The maximum tax exemption available is €2,500 per calendar year. During a given calendar year employers are entitled to claim a reduction in the salaries tax and social insurance contributions paid by the company or institution. To be eligible for the tax concession, there must be a “genuine” employer-employee relationship. Moreover, the trainee’s gross pay must not exceed the reference wage of €20,793 per annum.

Since 2002 employers have been entitled to an additional tax reduction, which can be claimed for additional costs incurred for training and supervising employees to help them obtain basic qualifications. This only applies to employees who have prematurely left a training programme to accept a job and people who – without having been in a training programme – start work without any basic qualifications. This potential target group is estimated to comprise 150,000 people on an annual basis.

Youth Unemployment Task Force

On 31 October 2003 the State Secretaries for Social Affairs & Employment and Education, Culture & Science also set up the Youth Unemployment Task Force. By May 2007 this task force aims to have created 40,000 extra jobs for young people under the age of 23 by encouraging employers to make such jobs available and to report vacancies suitable for young people. The task force is also stimulating cooperation between all relevant stakeholders in the labour market and the education sector and is undertaking various actions jointly with them. These initiatives are intended to assure young people in regular jobs a permanent place in the labour market, give them work experience or help those in jobs entailing a combination of working and learning to obtain basic qualifications.

Programmes combining work and study in pre-vocational secondary education (VMBO)

Pre-vocational secondary education (VMBO) has four programmes: the theoretical, the combined, the middle-management vocational and the basic vocational programme. Since August 2001 schools have been able to offer programmes combining work and study as part of the basic vocational programme. A programme combining work and study is a learning pathway within the basic vocational programme with a practical component outside of school, comprising between 640 hours (80 days) and 1,280 hours (160 days) of the total teaching time in the third and fourth year. This kind of programme specifically helps young people to obtain basic qualifications at basic vocational training level. Students take Dutch and a vocationally-oriented subject as a minimum.

Dual courses combining study and work experience in higher professional education (HBO)

Since the start of the 1998/1999 academic year institutions of higher professional education have been able to offer a dual option for all full-time study programmes. A dual course combines academic study and paid employment with the aim of ensuring a better match

between education and the labour market and better preparing students for professional practice. These dual courses can be regarded as a refined form of the existing practice of work experience placements as part of a full-time study programme. Dual courses demand more of both the educational institution and the employer in terms of supervising students. Under a learning/employment contract between the student, the educational institution and the employer, part of the course comprises a programme combining work and study. Student and employer shape the student's curriculum to ensure the work experience gained is relevant to the course. Alternation of study and work periods and the link between working and learning in all curricula give higher professional education an important role in "lifelong learning".

Question B

Please give an account of the measures taken to implement this provision, stating approximately, if possible, the number of young persons benefiting from training systems.

Measures: see Article 10 para. 2, under A.

Number of participants:

The number of participants in block or day release schemes as of 1 October 2004 was 135,000. The total number of pupils in the VMBO basic vocational programme in 2004 was 32,700. The number of students starting dual courses in higher education rose from about 200 in 1992/1993 to about 2,500 in the 2004/2005 academic year. The total number of students enrolled in these courses rose from 200 in 1992/1993 to 11,000 in 2004/2005. In 2003/2004 about 1,600 students successfully completed a dual course and obtained their diploma.

Question C

Please indicate how the arrangements for vocational training are divided between the various types of vocational activity.

Table 15: Number of participants in block or day release schemes per sector in 2004

Block or day release scheme (BBL)	2004
Personal and social services and health care	39,423
Business	31,844
Engineering and technology	63,777
Total	135,044

Question D

Please describe any measures under which private apprenticeship schemes are assisted out of public funds.

No new developments; see p.43 of the 15th report.

Question E

Please indicate whether the measures described are applicable to all categories of young boys and girls likely to benefit from and wishing to undertake apprenticeship or vocational training. If this is not the case, please give an estimate of the proportion of those not covered and, if possible, indicate the categories concerned.

No new developments; see p.43 of the 15th report.

Question F

Please indicate whether equality of access to apprenticeship training is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled persons.

No new developments; see p.43 of the 15th report.

Paragraph 3: Vocational training and retraining of adult workers

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

to provide or promote, as necessary:

- a. adequate and readily available training facilities for adult workers;*
- b. special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment."*

Question A

Please give details of the facilities provided for the training and retraining of adult workers, in particular the arrangements for retraining redundant workers and workers affected by economic and technological change.

The Learning and Working Project Department mentioned above (see para. 1) aims to give a boost to vocational training for workers and jobseekers and is adopting a three-pronged approach:

1. Dual courses combining study and work experience

The Department brings together several parties that are actively involved in the field of vocational education and training: these include the regional training centres (ROCs), local authorities, employers' associations and trade unions. Dual courses combining working and learning seem to be very successful and have proved to be an effective and efficient training instrument for both employers and employees. It is also motivating for employees to be able to immediately put into practice something they have learned. Supply and demand are often mismatched, however, because of a lack of communication between the various parties involved. The Department has therefore set itself the target of creating 15,000 new dual courses in 2005 and 2006 by encouraging regional arrangements between the parties. It will act as an intermediary between regional and sectoral parties, solving any problems that arise. The Department has a limited grant budget available for its designated tasks.

As of mid-February 2006 arrangements have been made in cooperation agreements for a total of 15,100 dual courses.

2. Training and employment helpdesks and EVC

Many workers with little in the way of formal qualifications have gained knowledge and skills on the job, but because their skills are not certified they are unable to use them effectively in the labour market. This problem can be remedied by developing and implementing a system for the recognition of prior learning (EVC in Dutch). At the same time EVC can lead to more efficient training and shorter learning programmes, which is motivating for both employers and employees. Although many people can gain from EVC, it has proved difficult to create an integrated infrastructure and an integrated framework for its implementation, as so many parties are involved. The Department therefore wants to set up an integrated regional

infrastructure (training and employment helpdesks) to provide career guidance, advice on EVC procedures and information about the training available. At the same time it plans to conclude agreements with regional and sectoral parties to carry out 20,000 extra EVC procedures in 2006 and 2007.

As of mid-February 2006 arrangements have been made in cooperation agreements for a total of 11,850 EVC programmes.

3. Removal of obstacles, promotion and innovation

Here the Department will target its activities in the following three areas:

- Better information about existing instruments for promoting lifelong learning. Research into the effectiveness of the existing instruments by means of an evaluation study and experiments on the effectiveness of individual learning accounts for low-skilled workers. The Department will advise the government early in 2007 on the best way to stimulate lifelong learning.
- The Department will identify successful training projects and transfer them to other regions or sectors.
- In September 2006 the Department will launch a number of short programmes in higher education to meet the demand for shorter courses for people in employment.

Another point worth mentioning is that as of 1 July 2005 the Employee Insurance Agency (UWV) is entitled by law to use reintegration instruments for workers threatened with redundancy (during a four-month period prior to redundancy).

Question B

Please indicate how the arrangements for vocational training are divided between the various types of vocational activity.

See Article 10 para. 1, under B.

Question C

Please state whether the measures described are applicable to all categories of interested workers likely to benefit from and in need of training or retraining facilities. If this is not the case, please give an estimate of the proportion of those not covered and, if appropriate, give details of the categories concerned.

The measures outlined above are available to both workers and jobseekers. Obviously, this does not mean that everyone takes advantage of them. The rate of participation in education and training by people aged 25-64 is 16.4% (2003) in the Netherlands, well over the European average. The Netherlands is therefore investing heavily in training. On the other hand, about 25% of the labour force still have no basic qualifications (MBO level 2 = ISCED level 3), which means that less educated people are still not benefiting enough from the training opportunities available. This prompted the government to set up the Learning and Working Project Department in 2005 with a view to increasing the number of people with basic qualifications and generally raising the level of education of the Dutch labour force by encouraging the uptake of dual courses combining study and work experience and the use of the EVC system.

Question D

Please indicate the approximate number of adult workers who have participated in training or retraining measures.

About 17% of the workforce in the Netherlands in the 25-64 age bracket are in post-initial education. Based on a working population in 2005 of 6.2 million people aged 25-64, this equates to more than 1 million adult workers.

Question E

Please describe special measures to assist adult women wishing to take up or resume employment.

Experience has shown that women wishing to take up or resume employment – usually after a period of looking after a family full-time – often find paid work of their own accord. Others need help, frequently because their knowledge and experience is out of date. Recognition of prior learning (EVC) can put them in a better position. Dual courses combining working and learning can also be a good way for them to obtain the right qualifications. It is important for these women to register with their local Centre for Work and Income (CWI). If the CWI is not able to find them a job or a place on a dual course, it is the local authority's responsibility to offer them a reintegration programme, which may include EVC. The labour market is characterised by large regional differences. Regional collaboration between CWIs, local authorities and employers in reintegrating unemployed women (and men) seeking work, based on employers' demand, offers the best chance of matching supply and demand. In recent years an action plan has been implemented for women returners – a group defined as unemployed women seeking work who are over the age of 23, are not claiming benefit and are not school leavers. Based on the above analysis, the key component was to establish regional/local voluntary agreements among parties that can help women find work: CWIs, local authorities and employers. The role of the Ministry of Social Affairs and Employment was to promote and support the agreements and to provide limited resources for communication campaigns. The Ministry also invested in the development and management of a website targeted at employers, and organised working meetings. A total of seven regional/local voluntary agreements have been concluded, plus one voluntary agreement with seven national parties, the national arrangements with the CWIs being the most comprehensive. Projects carried out under voluntary agreements have provided several good examples of support directed at women wishing to take up or resume paid employment, but who needed help to do so. The experience gained will be collated and distributed nationwide in March 2006. The exchange of best practices will also take place via the Ministry's *Gemeenteloket* website (a special helpdesk for local authorities) and via the National Diversity Policy Network.

Question F

Please indicate whether equality of access to adult training and retraining is ensured for all those interested, including nationals of the other Contracting Parties to the Charter lawfully resident or working regularly in your territory, and disabled persons.

No new developments (see the Netherlands' 15th Report, p. 45).

Paragraph 4: Encouragement for the full utilisation of available facilities

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

to encourage the full utilisation of the facilities provided by appropriate measures such as:

- a. reducing or abolishing any fees or charges;*
- b. granting financial assistance in appropriate cases;*
- c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;*
- d. ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally."*

Question A

Please give a brief account of any fees or charges imposed in respect of vocational training and indicate, where appropriate, the measures taken to reduce or abolish such fees or charges.

See Article 10 para. 1.

In 2004/05 school fees for secondary vocational education were €916. Higher education tuition fees were €1,476. These fees are covered under the student finance system. See also para. 1.

Question B

1. Please describe the system existing in your country for providing financial assistance (allowances, grants, loans, etc.) to participants in vocational training. Please indicate also the nature of the financial assistance provided (amounts, duration, eligibility criteria, etc.).
2. Please indicate whether equal treatment in respect of financial assistance is ensured for nationals of all the Contracting Parties to the Charter lawfully resident or working regularly in your territory.

There have been several developments since the previous report (Netherlands' 15th Report, pp. 45 and 46).

Table 16: Amount of grant and loan in € that a student may receive per month

Date	Education	Living situation	Health insurance	Basic grant	Supplement. grant	Interest-bearing loan	Standard budget
1-9-2004	HE	Away from home	Private	€228	€237	€491	€719
1-9-2004	HE	Away from home	Public	€228	€201	€454	€682
1-9-2004	HE	At home	Private	€74	€219	€473	€547
1-9-2004	HE	At home	Public	€74	€183	€436	€510
1-8-2004	BOL	Away from home	Private	€210	€319	€457	€667
1-8-2004	BOL	Away from home	Public	€210	€282	€421	€631
1-8-2004	BOL	At home	Private	€56	€301	€439	€495
1-8-2004	BOL	At home	Public	€56	€264	€403	€459

HE = Higher education

BOL = Vocational training option, secondary vocational education

All students are entitled to a student travel pass, which allows them to use public transport free of charge, subject to certain conditions.

Students in higher education are eligible for financial assistance for seven years. During the first four years¹³ they receive a basic grant, possibly a supplementary grant and a student travel pass; they also have the option of taking out a loan. The basic grant, any supplementary grant and the student travel pass are provided in the form of a performance-related grant. In effect this means that the financial assistance provided is initially a loan. If a student qualifies within ten years, the loan is converted into a non-repayable grant. The qualification obtained does not need to be for the course for which a grant was originally awarded, but must be of a comparable, or higher, level. Having received a performance-related grant for four years, students can take out a loan for the next three years. The maximum loan is the standard budget specified in the table above. Apart from a few exceptions, eligibility for entitlement to student finance in higher education is subject to a maximum age limit of 30. There is no lower age limit.

Participants in full-time secondary vocational education (*Beroepsopleidende leerweg*, BOL) can apply for financial assistance if they are in the 18-30 age bracket, apart from a few exceptions. The duration of financial assistance for BOL students is not limited. For as long as necessary, participants receive a basic grant, possibly a supplementary grant and a student travel pass; they also have the option of taking out a loan. As of August 2005, a performance-related grant is to be introduced for participants in BOL levels 3 and 4, reflecting the existing provision for higher education students. This means that for participants in these levels financial assistance will initially be a loan, converted into a non-repayable grant once they have obtained their diploma. Their performance-related grant will also be limited to four years, and the loan to three years. Nothing will change for BOL students in levels 1 and 2. In the case of BOL students younger than 18, parents may be eligible for a contribution towards

¹³ Based on a three-year Bachelor's degree and a one-year Master's degree (university) or a four-year Bachelor's degree (higher professional education). Students in higher professional education studying for a Master's degree are entitled to an extra year's performance-related grant. For longer university Master's courses, a performance-related grant is awarded for a correspondingly longer period of time.

fees and educational expenses. This allowance is means-tested and is based on a sliding scale, which means that the allowance gradually decreases, the higher the parents' income. The income limit for the 2004/2005 school year is €27,983 (based on 2002 income). Parents granted a full allowance receive €916 to cover fees and €937 for other educational expenses for the whole year. As of August 2005, fees for minors (under 18) in BOL are to be abolished. The contribution towards course fees will also be discontinued.

In 2006 the Dutch health insurance system will be changed, in that there will no longer be any distinction between private and compulsory public health insurance. This distinction will therefore be abolished in the student finance system as well.

A new student finance system for higher education is currently being developed and will be introduced in 2007/2008. BOL has not been included for the time being. Work is also ongoing to facilitate the portability of higher education grants, as of 2007/2008, to all the countries that have signed the Bologna Declaration. With regard to BOL, it will be possible from August 2005 to transfer grants for specific courses in Germany and the Dutch-speaking part of Belgium, and – in exceptional cases – in other EU member states.

Question C

Please indicate the measures taken to include time spent on training taken by workers, at the request of their employer, in the normal working hours.

It is up to the social partners to ensure that collective agreements contain provisions in this area. According to a study by the Ministry of Social Affairs (Autumn Report on Collective Agreement Provisions 2005), 114 collective agreements (125 were studied, of which 124 contained provisions on training) specifically included arrangements for leave for the purpose of training. Ninety collective agreements mention paid leave for work-related training.

Question D

Please indicate the supervision and evaluation measures taken in consultation with the social partners to ensure the efficiency of apprenticeship and other training arrangements for young workers.

The following developments have taken place since the 15th report (p. 47).

Towards the end of 2004 a decision was made to supervise the statutory tasks of the Centres of Expertise on Vocational Education, Training and the Labour Market (KBBs) with regard to the development and maintenance of the qualification structure and the assessment, approval and promotion of the quality and quantity of practical training in the workplace. Together with educational establishments, the KBBs make a vital contribution to the quality of vocational education. The introduction of supervision of the KBBs by the Education Inspectorate, starting in 2006, will ensure comprehensive, integrated supervision throughout the vocational education system.

Question E

Please indicate if the provision of sub-paragraphs (a), (b) and (c) of Article 10 para. 4 are applicable to the great majority of the persons concerned.

No new developments (see the Netherlands' 15th Report, p. 47).

Comments on the negative conclusions of the European Committee of Social Rights with regard article 10, paragraph 4

paragraph 4

- a. The Committee observes that, as it stands, equal treatment with respect to financial assistance is not guaranteed in practice to all nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter lawfully resident or regularly working in the Netherlands, but only to EU nationals. The fact that a proposal to reform the system, aiming at lifting the nationality requirement, is currently on-going witnesses that, generally speaking, non-Dutch nationals are discriminated. The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.
- The Committee concludes that the situation in the Netherlands is not in conformity with Article 10§4 of the Charter because equal treatment for nationals of non-EU Contracting Parties to the 1961 European Social Charter and of non-EU Parties to the Revised European Social Charter lawfully resident or regularly working in the Netherlands with respect to financial assistance for training is not guaranteed.

The Dutch government would like to make the following comments regarding this conclusion.

First of all, it should be noted that the legislation on which this conclusion is based has been amended. The Student Finance Act 2000 (WSF) entered into force on 1 September 2000, followed by the Fees and Educational Expenses (Allowances) Act (WTOS) on 1 August 2001.

The legal situation in the Netherlands with regard to financial assistance for students under the Student Finance Act is as follows:

Any student is eligible for financial assistance if:

- he/she has Dutch nationality;
- he/she does not have Dutch nationality, but is resident in the Netherlands and is placed on an equal footing with a Dutch person as regards financial assistance for students pursuant to a treaty or a decision by an international organisation, or
- he/she does not have Dutch nationality, but is resident in the Netherlands and belongs to a group of people, designated by order in council, who are placed on an equal footing with Dutch nationals as regards financial assistance for students.

Please note that there is no requirement as regards *length* of legal residence in the Netherlands.

A further point worth noting is that the European Court of Justice ruled in 1999* that residence in the Netherlands cannot be required of EU nationals according to EU legislation on the free movement of persons. This means that an EU national does not have to live in the Netherlands in order to be entitled to financial assistance for students. The law was amended accordingly by means of a bill dated 22 October 2003.

Non-EU/EEA students come under the third category. To reside lawfully in the Netherlands, non-EU/EEA students must possess a residence permit. Non-EU/EEA nationals residing lawfully in the Netherlands can be divided into four groups:

- people who have an asylum residence permit for a fixed period or people who have an asylum residence permit for an *indefinite* period may be eligible for full student finance;
- people who have a regular residence permit for an *indefinite* period may also be eligible for full student finance;
- people who have a regular residence permit for a fixed period are only eligible for student finance in specific cases, namely when assistance is granted in connection with family formation or family reunification, in connection with residence for the purpose of adoption or as a foster child, or in connection with residence as an unaccompanied minor immigrant.

EU/EEA nationals and nationals of other countries that are Parties to the Charter or the Revised Charter do not therefore enjoy 100% equal treatment. Students who are resident in the Netherlands on the basis of a residence permit for a fixed period, granted for reasons other than those mentioned above (e.g. study), are not eligible for any form of financial assistance.

In the Dutch government's opinion, however, the distinction made is objective and reasonably justified. The following arguments can be put forward to support this view:

- a. An objective and reasonable justification exists by virtue of the fact that the EU Treaty contains provisions for exemption from the residence requirement as a result of the free movement of persons. Unlike the EU, the Council of Europe has not adopted any directive on the free movement of persons; nor is there any treaty provision that obliges the member states to guarantee such free movement of persons. EU member states are required by law to implement the free movement of persons. This means that EU member states have different obligations towards one another than towards non-EU member states that have ratified the Charter or the Revised Charter.

Because of the free movement of persons, EU/EEA students cannot be obliged to live in the Netherlands. They can have other ties with the Netherlands that entitle them to student support, for example the fact that they or their parents are working in the Netherlands. For non-EU/EEA students this is not the case. The fact that they must have a residence permit is logically linked with the obligation that they have to live in the Netherlands. It is also noted that the entitlement of EU/EEA students to some sort of student support is closely connected with EU legislation on the free movement of persons.

To sum up, the distinction between EU/EEA students and non-EU/EEA students follows from the obligations that are contained in EU legislation and that are not in the Charter or the Revised Charter.

* C-337/97, judgment of 8 June 1999.
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- b. People who come to the Netherlands for a fixed period (for reasons other than asylum) are deemed to have sufficient means to support themselves. (This does not include social assistance benefits.) This is a prerequisite for obtaining a valid residence permit. In practice the Netherlands makes no distinction between financial assistance for study costs/course fees and living expenses (i.e. it is currently “all or nothing”).
- c. Students are also deemed to have sufficient means to support themselves. This is apparent from the fact that it is internationally assumed that the student’s homeland will provide support. See, for example, the European Agreement on Continued Payment of Scholarships to Students Studying Abroad (Paris, 12.XII.1969).
- d. Finally, see also the declaration by all ministers responsible for higher education in the 45 countries that are participating in the Bologna Process (Bergen Communiqué):

Mobility

We recognise that mobility of students and staff among all participating countries remains one of the key objectives of the Bologna Process. Aware of the many remaining challenges to be overcome, we reconfirm our commitment to facilitate the portability of grants and loans where appropriate through joint action, with a view to making mobility within the EHEA a reality. We shall intensify our efforts to lift obstacles to mobility by facilitating the delivery of visa and work permits and by encouraging participation in mobility programmes. We urge institutions and students to make full use of mobility programmes, advocating full recognition of study periods abroad within such programmes. (Bergen Communiqué, May 2005)

Answers to questions or request for information by the ECSR

paragraph 1

1. The Committee recalls that Article 10§1 covers all forms of higher education. In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the Committee considers that, today, the notion of vocational training of Article 10§1 covers initial training, i.e. general and vocational secondary education, university and non-university higher education, and continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.
Under Article 10§1 national reports should, accordingly:
 - a. describe the most recent measures adopted to promote vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship, and continuing training (the description of the whole system may be recovered from existing database on the topic: Eurydice, Cedefop);
- Adult and vocational education establishments are to implement a skills-based qualification structure, which will also be more compatible with pre-vocational secondary education (VMBO) and higher professional education (HBO). Pilot projects got under way during the 2004/2005 college year. The transitional period for adult and vocational education establishments will run until at least 2007/2008 (see question 1 e).

- To introduce innovation into vocational education and improve quality, a specific innovation budget has been made available. This is known as the innovation arrangement for the vocational sector and began in 2003. Furthermore, grant schemes promoting the exchange of knowledge between vocational education and the business sector and providing incentives for innovative learning environments have the common goal of introducing innovation in vocational education, with educational establishments having to work closely with businesses.
- In 2006 an “innovation box” (containing funds specifically for innovation initiatives) will supplement the block grant paid to educational establishments. Guidelines to be agreed with the parties involved will indicate how these funds are to be used.
- A Science and Technology Platform has been set up by the government, the education sector and industry with the aim of ensuring a good supply of scientists and engineers. The aim is to achieve a consistent 15% increase in the number of students taking scientific and technical subjects and to make better use of existing talent in companies and research institutes.
- In conjunction with the Ministry of Economic Affairs, best practices will be shared with the aim of enhancing entrepreneurship.
- The government is seeking to strengthen and update the knowledge infrastructure within the technical sector and achieve a better match between technical vocational education and the needs of industry. To this end technocentres have been created. A technocentre is a partnership between industry, educational establishments and other organisations. The start-up phase of the technocentre project was evaluated in 2003 and the profile of technocentres is now more focused on strengthening the knowledge infrastructure at regional level. This is achieved by promoting and facilitating cooperation between education and industry.
- Since 2001 educational establishments and centres of expertise in the vocational education sector have received “incentive funds” to ensure a better match between the different forms of education, both by networking and by improving teaching methods (providing more intensive advice and guidance, improving the interface between course programmes and developing recognisable educational theory and teaching methods for vocational education, improving the knowledge infrastructure through better cooperation between companies and educational establishments, and enhancing the quality of practical training in the workplace). In 2004 a budget of €31 million was set aside for this purpose. Expenditure is monitored. The indicators “chance of success” and “chance of transfer VMBO-MBO-HBO” are used to determine whether the funds are being deployed effectively.
- Obstacles between pre-vocational secondary education (VMBO) and secondary vocational education (MBO) will also be removed, VMBO programmes combining work and study will be improved, assistant-level training will be introduced in VMBO in the 2004/2005 school year, interim transfer from VMBO to MBO will be easier, and there will be broad-skills experiments at training to assistant level.
- One of the objectives of the Youth Unemployment Action Plan is to create an extra 40,000 jobs entailing a combination of working and learning (see para. 2, under A). Discussions got under way in 2004 with the Centres of Expertise on Vocational Education, Training and the Labour Market (KBBs) on how they might contribute in this area. This also ties in with the intention of small and medium-sized businesses to generate 10,000 extra programmes combining work and study for VMBO and MBO students and also for risk groups. Consideration will also be given to how places can be created and recognised at the Regional Training Centres (ROCs), in collaboration with the KBBs, for young people who run the risk of missing out. A budget of €2 million was set aside in 2004. With regard to the quality of practical training in the workplace, agreements will be made with the KBBs to ensure greater public accountability.

- The accreditation procedures for training companies are being simplified to make it easier and hence more attractive to register as a training company; this includes reducing the administrative burden.
- Higher education institutions will be able to offer courses that are better tailored to the talents, capabilities and needs of its students in terms of content and level, and, in particular, a curriculum of the highest standard. The contribution that such instruments as selection, tuition fee differentiation and admission policy can make towards achieving these objectives will be examined. In this context institutions may submit proposals to conduct experiments with these instruments, to be evaluated subsequently by a committee.
- A new Higher Education and Research Act and a new funding model for higher education are in the pipeline. The higher education bill will go before Parliament early in 2006 and should become law in 2007. The new tuition fees system is due to come into effect at the same time. The aim of these initiatives is to provide clear, comprehensible regulations for higher education, including funding.
- Experiments with an open system in higher education. As part of these experiments a number of institutions, which are currently not eligible for funding, will be able to get funding on a temporary basis and subject to strict conditions. Opening up the system is often cited as one way to improve the quality, appropriateness and accessibility of higher education. The State Secretary for Education has announced that the experiments will focus on two intakes: students starting in the 2007/2008 and 2008/2009 academic years. It has been agreed that the interim results of the experiment will be available in 2009 or 2010.
- Extra investment in lecturers and “knowledge circles” in higher education: here, the aim is to improve external orientation, reform the curriculum, make teaching staff more professional and increase the circulation and development of knowledge and ideas. A new voluntary agreement on lecturers and knowledge circles in higher professional education was concluded towards the end of 2004 with a stipulated budget of €38.4 million for 2006.
- Pilot projects with an associate degree in higher professional education (HBO): in the 2006/2007 academic year it will be possible to take two-year HBO programmes (associate degree courses). This will be a three-year experiment aimed at attracting more students into HBO. The programmes will mainly appeal to students in senior general secondary education (HAVO) and in secondary vocational education (MBO). The short programme is also an alternative to prevent students dropping out of HBO. An associate degree course will be part of a HBO Bachelor’s study programme. The experimental phase should be complete by 2009 and a decision will be made as to whether to make the short programme a permanent feature of the higher professional education system.

See also Article 10 para. 1, under D; Article 10 para. 2, under A; Article 10 para. 4, under B; and all of the questions below.

- b. highlight the bridges between secondary vocational education and university and non-university higher education;

See Article 10 para. 1, under D.

- c. outline the mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general or technical education;

One problem facing many low-skilled workers is that they have gained knowledge and skills in the workplace, but because their skills are not certified they are often not used in the best possible way. Recognition of prior learning (EVC) can remedy this problem. At the same time it can lead to more efficient training. It is also more motivating for employees. Although many people can gain from EVC, it has proved difficult to create an integrated infrastructure and an integrated framework, as a lot of parties are involved.

In developing EVC, the Dutch government has adopted a bottom-up approach. Training and recognition of prior learning are the responsibility of employers and employees. In several collective agreements the social partners have made provision for the development and implementation of EVC.

Companies, training providers and reintegration agencies develop and implement EVC. The government has supported EVC since early 2001 through the EVC Knowledge Centre (subsidised by the Ministries of Economic Affairs, Social Affairs & Employment and Education), which gathers information about EVC and helps organisations and sectors that wish to develop it.

One of the issues currently requiring attention is that, while there are a lot of initiatives, there is no standardised procedure for quality control and not everyone has access to EVC.

To create an integrated infrastructure for EVC, the government is encouraging regional networks comprising local authorities, the public employment service, employers and educational establishments to set up regional training and employment helpdesks. At the same time it is making arrangements with parties in different regions and sectors to carry out 20,000 extra EVC procedures in 2007.

Regional training and employment helpdesks provide information about EVC and facilitate access to EVC, training and career guidance. The interministerial Learning and Working Project Department awards grants, subject to the condition that the parties involved provide structural support for the helpdesks. The Department will monitor the work of the helpdesks (number of EVC procedures).

In January 2006 the government reached an agreement with four regional networks to invest in training and employment helpdesks and carry out 6,500 EVC procedures.

At the moment it seems to be very difficult, especially for low-skilled workers, to find their way through the maze of training programmes and career guidance on offer. Assistance and information is available from several sources. To bring together all the information on career guidance, EVC, dual courses combining study and work experience, training courses on offer, etc., the Dutch government is building an online marketplace for combined training and employment.

The government recently reached an agreement with the social partners. One aspect of this involves the government asking the EVC Knowledge Centre to develop an EVC quality control system/procedure that has the support of all relevant parties (training providers, the social partners and the public employment service) and that will result in a voluntary agreement between the government and these parties concerning its use.

The government has also agreed to see whether EVC can be stimulated by providing a tax incentive for employers.

- d. underline the measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;

Pre-university education (VWO) and senior general secondary education (HAVO) (and also junior general secondary education (MAVO), which is the equivalent of the theoretical programme in pre-vocational secondary education (VMBO)) are all general courses that prepare students for further and higher education, which in turn equips them with vocational qualifications. HAVO/VWO qualifications are therefore, by definition, not directly relevant to the labour market. These courses do, however, offer subjects that may have more immediate relevance to the world of work, e.g. management and organisation. In connection with the knowledge-based economy, students are being encouraged to take scientific and technical subjects.

University study programmes prepare students to train as researchers and for professions where academic training is useful. Only a small group of university graduates (about 10%) work in research. Some full-time courses may include compulsory work experience placements. Like institutions of higher professional education, universities chart the labour market status of their graduates. In the autumn of 1998 all graduates in the 1996/1997 academic year were asked about their labour market status for the first time. The results were published in the university monitor and the HBO monitor, which first appeared in the spring of 1999. This survey now takes place annually and is commissioned by the Association of Dutch Universities (VSNU) and the Council for Higher Professional Education (*HBO-Raad*).

A Science and Technology Platform has been set up by the government, the education sector and industry with the aim of ensuring a good supply of scientists and engineers. The aim is to achieve a consistent 15% increase in the number of students taking scientific and technical subjects and to make better use of existing talent in companies and research institutes.

- e. outline the mechanisms for the recognition of qualifications awarded by continuing vocational education and training;

The national qualification structure for secondary vocational education (MBO) includes all nationally recognised MBO qualifications. A qualification profile is a description of the level and content (competence, knowledge, understanding, skills and attitude) of a particular qualification and any specialised options, with an indication of the corresponding diplomas and possibly certificates in the case of a qualification comprising certifiable units. These diplomas and certificates are valid nationwide. The Centres of Expertise on Vocational Education, Training and the Labour Market (KBBs) are responsible for drawing up these qualification profiles. Each KBB does this for the sector(s) in which it is active. Joint committees comprising representatives from industry and education operate within the KBBs. The qualification profiles must meet nationally established quality requirements and must be in a specific format. The KBBs must carry out, monitor and account for this task. The Qualification Structure Coordination Centre is responsible for independent auditing. Professional skills profiles, which come under the responsibility of the social partners in the relevant sectors, are one of the sources used as the basis for the qualification profiles. The minister adopts the national qualification profiles submitted by the KBBs (and also the corresponding diplomas and certificates) if they meet the quality requirements (i.e. only if the Coordination Centre has conducted a positive independent assessment). From then on

educational establishments may offer courses and examinations based on these qualification profiles and diplomas/certificates. This concerns educational establishments or courses funded by the government as well as unfunded establishments/courses. Educational establishments must comply with the nationally established quality requirements for education, as do the examinations associated with the courses. Otherwise the minister can revoke the establishment's licence (per course). If an establishment has its examination licence revoked, it must contract out the examination to another establishment with the appropriate licence. Both young people and adults can take courses and examinations leading to national qualifications and the corresponding diplomas and certificates. Adults can even sit an exam without actually doing a course, for example as part of an EVC procedure (recognition of prior learning).

- f. provide figures about the completion rate of students enrolled in higher education;

The success rate for full-time students (starting in 1996) in higher professional education (HBO) after six years is 63%. The dropout rate after six years is about 25%; the remaining 9% are still studying. The success rate for full-time university students (starting in 1996) after seven years, including those who changed courses and subsequently obtained an HBO qualification, is 61%. The dropout rate after seven years is 17% and the remaining 22% are still studying.

The success rate for part-time students after six or seven years is more than 20% lower than for full-time students. This is of course due to the fact that, on average, part-time students take longer to complete their course than full-time students; the dropout rate for part-time students is also high, however. The success rate differs substantially per sector. It is highest in the health sector for both university and HBO students, and lowest in language and culture (arts courses) for HBO students and in engineering for university students. After seven years the dropout rate from university engineering courses is not actually very high; 37% of students are still working towards their degree.

- g. provide figures on the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

In 2003, 90% of HBO graduates from the previous year had found a job within four months, 80% in the case of university graduates. Graduates found employment most quickly in the health sector; university graduates with a degree in engineering, agriculture or language and culture took longest to find a job. Eighteen months after completing their studies, about 5% of university and HBO graduates were still unemployed. The language and culture sector has the highest unemployment rate in both higher education systems, as much as 15% for HBO graduates. The health sector has the lowest rate of unemployment.

2. According to the report, MBO qualifications of at least level four (middle-management training) give access to higher professional education (HBO), but not to university. To enter university MBO certificate-holders shall first obtain a HBO diploma. Persons without the requisite previous education have the option of sitting a special entrance examination to gain access to university. The report indicates that developments are foreseen to standardise the procedure for admission without diploma, as well as efforts to improve the interfaces between the various levels of vocational education. The Committee requires to be informed about this in the next report.

During the reference period efforts were indeed made to improve the transition/interfaces between the various levels of vocational education. In addition to the experiments mentioned in para. 1, under D, which also have a part to play in this context, grants have supported activities intended to promote regional cooperation between courses at MBO and HBO level, as well as activities designed to modernise the course content of the various MBO levels, where one of the objectives was to align the various qualification levels – both vertically and horizontally.

paragraph 2

3. Due to the evolution of the legal and practical framework of the organisation of apprenticeship¹⁴ at national level, the Committee has sometimes had difficulties in evaluating its conformity with Article 10§2 of the Charter. As a consequence, the Committee asks the next report to provide information on the following topics: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

There are two learning pathways in the Dutch vocational education and training system:

1. Work-based programme: more than 60% of the training component takes place in companies (students have an employment contract);
2. School-based programme: 20 to 60% of the training component takes place in companies.

Companies need to be accredited as training companies. This is the responsibility of the national Centres of Expertise on Vocational Education, Training and the Labour Market (KBBs), which are also responsible for the quality and quantity of in-company training. The social partners are represented on the boards of the KBBs. Companies are entitled to a tax reduction for employees in work-based programmes. In some sectors there is extra compensation in the form of funding for training and development, based on collective agreements.

Schools are responsible for the content of training and for examinations. The Ministry of Education has overall responsibility for the meta-performance of the education system. Students are responsible for finding their own apprenticeship place. Companies are responsible for the quality of the work-based training. The apprentices are students (school-based training) or employees (work-based training). Guidance is provided by the student's teacher/mentor and the supervisor appointed by the company, based on the study programme being undertaken.

System of approval of training companies:

- Training must be possible in the day-to-day working environment, based on qualification criteria for one or more study programmes.
- Company must provide a supervisor who is an experienced employee, has teaching skills and is willing to guide the student.
- Company must spend time and money on guidance and training (cooperation, supervision, assessment and testing).

¹⁴ The Committee seems to use the word "apprentices" to refer to participants in block and day release schemes (BBL).

- Company must be willing to use instruments for supervision, assessment and testing (from school or KBB).
- Company must be willing to cooperate with school and KBB on a regular basis.

The KBB responsible also advises the company on training issues. The Education Inspectorate is responsible for the quality of education and training.

paragraph 3

4. In view of the growing relevance of continuing vocational training, the Committee asks that the next report provides information on the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress.

With a view to giving adult learning an extra boost, the Dutch government has created the Learning and Working Project Department for a period of two years (2005-2007). The Department is part of the Ministry of Education, Culture and Science and the Ministry of Social Affairs and Employment and also involves the Ministries of Agriculture, Nature & Food Quality, Economic Affairs, Immigration & Integration and Finance. Its mission is to get across the message that learning must be accessible to all and must become a familiar part of adults' daily lives. The combination of learning and working is regarded as an important instrument in this context. Dual courses combining study and work experience strengthen the labour market status of workers and jobseekers and, in particular, can prevent low-skilled and older workers from becoming unemployed. The specific objectives are as follows:

- The creation of an extra 15,000 dual courses for workers and jobseekers over the age of 23. It is vital that people combine work or job-hunting with education and training leading to a vocational qualification. The more people who do this, the more normal learning will become for both employees and employers. The Department wants to reach agreements with sectoral and regional parties on the number of dual courses they are able to create.
- The Department is planning to introduce training and employment helpdesks in several locations, which will provide workers and jobseekers with easy access to careers advice, assessment and recognition of prior learning (EVC), and training options. The Department is aiming to have 20,000 new EVC procedures carried out during the project period.
- Experiments with a two-year HBO Bachelor's study programme will get under way in September 2006. Many people feel the need and also have the ability to undertake higher education, but are unable to do so because the normal training programme takes too long and does not tie in well with their existing qualifications.
- The Department will identify successful local and regional lifelong learning projects and transfer them to other regions or sectors.

The government has also taken the following measures:

- The Youth Unemployment Task Force has been set up with the task of creating 40,000 extra jobs for unemployed young people under the age of 23. The training component is an important factor here.
- The Knowledge Centre for Recognition of Prior Learning (EVC) has continued its activities.
- The effects of the impact of individual learning accounts on training for low-skilled workers have been gauged.

Existing policy measures:

- tax concessions (reduced remittances for training provision);
- the use of innovation advisors to advise small and medium-sized businesses about innovation in their company and associated staff development;

- support for companies in developing integrated personnel policy by setting up Investors in People Nederland.
5. From another source¹⁵, the Committee observes that, in the Netherlands, the activation rate of unemployed people was 34 % (134 560 participants) in 1999 and 39 % in 2000. With respect to training measures it was 16,4 % (64 370 participants) in 1999. The Committee asks whether one of the goals of the liberalisation of the training services market is to raise the activation rate in relation to training measures and if results are already appreciable.

In the Netherlands the provision of reintegration services, including training, has been liberalised since the introduction of the Work and Income (Implementation Structure) Act (SUWI) in 2002. By 2004 there were at least 700 reintegration agencies, including more than 60 training establishments, registered as such in the reintegration services monitor of the Council for Work and Income. Reliable figures on the uptake of training (numbers of jobseekers in a training programme) are not available at the moment. The Employee Insurance Agency (UWV) introduced a training protocol in 2005. This helps to determine for which jobseekers the use of training instruments is effective and appropriate. Part of the protocol is that the results will be measured. The first evaluation of the protocol is planned for 2007. Initial interim results are expected in the autumn of 2006.

6. In order to increase the female participation rate, an important effort has been done to ensure a considerable expansion in childcare facilities and after-school supervision. However, the Committee is rather interested to know about the existence of vocational training schemes for women re-entering the labour market after child-birth or women who have never worked.

See Article 10 para. 3, under E.

7. Being figures on State total expenditure for continuing training missing, the Committee observes from another source¹⁶ that expenditure for adult education was stable at around 200 million €. Expenditure for integration courses amounted to 69 million € in 1997 and to 90 million € in 2000. The Committee, however, requires the next report to provide information on the total amount of expenditure for continuing training.

Trends during the period 2001-2004

During the period 2001-2004 public funds available for *adult education*, allocated to Dutch local authorities by the Ministry of Education, Culture and Science under the Adult and Vocational Education Act (WEB; 1996), amounted to approximately €230 million per annum.

Subsequent to the introduction of the Civic Integration (Newcomers) Act (WIN) in 1998, the budget for the *civic integration* of newcomers was initially substantially increased, to about €280 million per annum during the period 2001-2003. This budget was included in the overall

¹⁵ EC, Joint Employment Reports 1999, 2000 and 2001, (www.europa.eu.int). In 1999, the activation rate was defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons. In 2000, the activation rate is defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

¹⁶ Education, Culture and Science in the Netherlands, Facts and Figures 2002, Dutch Education Ministry website (www.minocw.nl).

budgets of the Ministries of Education, Culture & Science (70% “education component”) and Health, Welfare & Sport (30% “welfare component”), with the then Minister for Urban Policy and Integration of Ethnic Minorities within the Ministry of the Interior being responsible for coordinating the deployment of these resources via the local authorities. In 2004 responsibility and budget funds for civic integration were transferred to the Ministry of Justice, specifically the new Minister for Immigration and Integration, and cuts were introduced. The civic integration budget in 2004 was still about €210 million.

Trends after 2004

In 2005 there was a further cut in the civic integration budget to approximately €190 million. A new Civic Integration Act is expected to come into effect in the summer of 2006. Under this legislation part of the adult education budget (approx. €70 million per annum) will be transferred to the budget of the Ministry of Justice reserved for civic integration. As a result of this, the civic integration budget will be about €260 million per annum from 2006 on. €172 million of this is earmarked for the purchase of educational activities by local authorities, while newcomers and certain established migrants will have to pay for their own course. If the exam at the end of the course is not passed within the period laid down by law, a fine will be imposed.

Summarising trends in expenditure for adult education and civic integration

The total expenditure for adult education and civic integration during the period 2001-2003 was approximately €510 million per annum, falling to about €440 million per annum in 2004. Once the new Civic Integration Act comes into effect in 2006 the total budget for adult education and civic integration will be approximately €420 million per annum.

8. The Committee also requests information on the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

There is little information available about expenditure on post-initial training. Based on the level of expenditure in 1999 (€3.4 billion according to the Continuing Vocational Training Survey – CVTS, 1999), the business sector spent an estimated €4.5 billion on company training in 2003, excluding labour costs. Government expenditure on activating labour market measures with a training component (excluding expenditure for adult education and civic integration, and excluding expenditure on unemployment benefit for people in a reintegration/training programme) was approximately €1.5 billion in 2004.

According to the post-initial training statistics published by Statistics Netherlands (CBS), 40% of the workers doing a post-initial training course pay the course fees out of their own pocket, while 10% pay a proportion. Based on expenditure of approximately €4.5 billion on post-initial training by the business sector, the private expenditure of households can be estimated to be about €3.5 billion.

paragraph 4

9. Since there is no information in the report, the Committee asks whether time spent on supplementary training at the request of the employer is included in the normal working-hours.

The statistics available make no distinction between supplementary training and training.

10. The Committee asks which are the existing procedures to assess higher education.¹⁷

Existing procedures for monitoring higher education cover the accreditation of existing study programmes every six years as well as the accreditation of new programmes.

Accreditation means “awarding a hallmark that indicates that certain quality standards have been satisfied”. To this end the independent supranational accreditation organisation NVAO (Accreditation Organisation for the Netherlands and Flanders) has drafted and laid down accreditation frameworks for Flanders and the Netherlands. According to the framework, checks are carried out on:

1. goals of the study programme;
2. study programmes in relation to either research or a profession;
3. staff (must be of sufficient quality and quantity);
4. facilities (sufficient material facilities and tutoring);
5. internal quality assurance system;
6. results (quality of graduates).

The process of accreditation (external checks) is preceded by an internal evaluation of the programme and an external peer review.

Accreditation is a precondition for government funding of a Bachelor’s or Master’s degree programme, for the right to confer recognised diplomas and, in the Netherlands, for granting financial assistance to students.

¹⁷ Judging by the previous text in the conclusions, this question concerns the evaluation/monitoring of the quality of higher education.

ARTICLE 15: THE RIGHT OF PHYSICALLY OR MENTALLY DISABLED PERSONS TO VOCATIONAL TRAINING, REHABILITATION AND SOCIAL RESETTLEMENT

Paragraph 1: Vocational training arrangements for the disabled

*"With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:
to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private."*

Question A

Please indicate the criteria applied to grant disabled status and give an estimation of the total number of disabled persons as well as the number of disabled persons of working age.

Question B

Please describe the measures taken to give effect to this Article, in favour respectively of physically and mentally disabled persons through vocational training within the framework of general schemes, wherever possible, or within specialised public or private institutions. Please provide information in particular regarding:

- a. assessment of the vocational skills of disabled persons (frequency, practical skills) and criteria used to assess the prospects of rehabilitation of a disabled person;
- b. adjustment of the methods of vocational rehabilitation in accordance with the needs of the labour market.

Question C

Please specify:

- a. the number and nature of the principal specialised institutions giving suitable training and the total number of places available;
- b. the number of persons undergoing such training;
- c. the number of staff and their qualifications.

A, B, C

Article 15 concerns the right of physically or mentally disabled people to access to vocational training and employment. In response to the previous report on the application of this Article, the Committee asked the Dutch government a large number of questions. The Netherlands attaches great importance to ensuring that the disabled play a full part in society. To give the Committee some idea of the Dutch measures taken to put this policy into practice, the Dutch government feels it is appropriate to answer the Committee's questions as a whole rather than address each one individually.

The general principle underlying Dutch policy is that the rehabilitation of the disabled must take place, wherever possible, on the basis of their participation in society on an equal footing with non-disabled people. With regard to the policy areas covered by Article 15, the following strategies are adopted.

Equal treatment

The Dutch Constitution does not permit discrimination on the grounds of religion, belief, political opinion, race or sex or on such grounds as age or disability. This fundamental right is enshrined in the Equal Treatment (Disabled and Chronically Ill People) Act (WGBH/CZ), which prohibits both direct and indirect discrimination on the grounds of disability or chronic illness. Indirect discrimination is permitted only if it can be “objectively justified”. This Act came into effect on 1 December 2003 and for the time being covers only the areas of employment and vocational training. Other policy areas such as public transport and housing will be brought within the scope of the Act at some point in the future. The Dutch government reported on this legislation in its previous report on Article 1 (see the Netherlands’ 18th report).

The Equal Treatment (Disabled and Chronically Ill People) Act does not define the terms “disability” and “chronic illness”, since the key factor is not whether someone is disabled or is suffering from a chronic illness, but that there is discrimination against that person because of an actual or alleged disability or chronic illness. The individual situation determines whether someone is hindered because of his/her disability or chronic illness.

With regard to employment, the Act prohibits discrimination on the grounds of disability or chronic illness at every stage: placement, recruitment and selection, conclusion of an employment contract, terms and conditions of employment, promotion, training and termination of contract.

The right to equal treatment inevitably entails the obligation to make effective alterations, when asked to do so, to enable disabled and chronically ill people to play a full part in society. If these alterations are not made, this constitutes unjustified discrimination under the Equal Treatment (Disabled and Chronically Ill People) Act. However, these measures do not need to be put in place if they impose a disproportionate burden.

The Equal Treatment (Disabled and Chronically Ill People) Act is also applicable to vocational training. The right to equal treatment applies not only to taking classes, but also to doing a work placement, taking exams and getting vocational guidance. Every establishment that offers vocational training (public or private, publicly or privately funded) must abide by this. Vocational training within the meaning of the Equal Treatment Act (WGB) is education intended to help people enter and function effectively within the labour market. This specifically refers to general and vocational secondary education and university and non-university higher education.

Individuals who feel that they are being discriminated against in the area of employment, vocational training or public transport because of a disability or chronic illness have two legal avenues they can pursue:

- They can file a complaint with the Equal Treatment Commission, which will investigate free of charge and decide whether there has been any unjustified discrimination. The Commission’s decisions are not legally binding and have no legal consequences, but they are usually complied with. If legal proceedings are instituted, the Commission’s decisions can be brought to the attention of the court.
- They can also bring the matter before the civil court. Individuals can either first approach the Equal Treatment Commission and then petition the civil court, or go directly to court. The Equal Treatment Act lightens the burden of proof incumbent on the alleged discriminated party. The court will shift the burden of proof to the other party if the alleged victim adduces facts at law that give grounds for suspecting that discrimination on the grounds of disability or chronic illness has indeed taken place.

Education

Dutch policy on the participation of disabled pupils and students in education aims to ensure that as many disabled pupils as possible take part in or return to mainstream education. Accordingly, mainstream schools are being helped to cater for pupils with special needs. During the 2003/2004 school year 20% of pupils with a diagnosed disability were integrated into mainstream primary and secondary schools. The aim is to increase this percentage.

It is not assumed that all disabled pupils can be integrated into the mainstream schools. At primary and secondary level there are also many special facilities for pupils with special needs: special education (primary and secondary) specialising in various categories of disabilities, learning support within pre-vocational secondary education (VMBO), and practical training that leads to employment without being geared towards obtaining a specific qualification.

Special education exists for the following categories:

- a. visual disability
- b. hearing disability
- c. mental or physical disability
- d. behavioural problems

Institutions providing the types of education mentioned above work together, thereby forming a number of regional expertise centres. They also offer peripatetic supervision to pupils in mainstream schools. To be eligible for special education, practical training or learning support, pupils must meet nationally established criteria. An independent committee determines whether these criteria have been met and assesses the individual's needs.

In the case of pupils who are ill and/or in hospital, the school at which they are enrolled is responsible for continuing their education. The introduction of the Personal Budget (Special Needs) Act in August 2002 gave pupils with special needs, and/or their parents, a choice between mainstream education and special education. If pupils have been assessed as needing special education, they can opt to attend a special school or they can receive a personal budget (which travels with them, i.e. it is allocated to the school they attend), allowing them to look for a mainstream school that is prepared to accept them and provide special support facilities.

With a view to ensuring direct entry to the labour market, particularly in the case of pupils in special secondary education and practical training, the Minister of Education supports the following activities:

- the use of specific instruments for career planning and vocational orientation;
- an individual development plan for each pupil undergoing practical training;
- agreements with each individual pupil on the educational and employment-oriented activities to be carried out;
- support from a national information and advisory centre (LIESA) for special education;
- participation of schools offering special secondary education and practical training in ESF and EQUAL projects that are geared towards getting pupils into employment to enable them to gain work experience and know-how.

In secondary vocational education and higher university and non-university education there are no special education institutions for young people. Institutions offering secondary vocational and higher education may not discriminate against disabled or chronically ill people in enrolment procedures, and are also obliged to make any necessary alterations, in so

far as they do not impose a disproportionate burden. These types of education come under the Equal Treatment (Disabled and Chronically Ill People) Act (WGBH/CZ), which came into force in December 2003. To date the Equal Treatment Commission has reached a decision in four cases, and in two of these ruled that there had been unequal treatment. These concerned physical access and adapting teaching methods to take into account dyslexia problems.

Secondary vocational and higher education institutions do not receive any extra funding for teaching these students. In the case of secondary vocational education institutions, however, the year 2000 marked the end of a period of financial assistance, during which time they were able to develop their expertise in supporting students with a physical, mental or psychological condition, and since then the funds in question have been added to the block grant received by these institutions. As from 1 January 2006, they can also benefit from a personal budget for pupils with a disability. This was created by analogy with the personal budget for pupils in primary and secondary education. As regards higher education, practical and financial assistance has been provided since 2002 to raise awareness of and find practical solutions to obstacles encountered by students. A budget of more than €4 million was set aside for this purpose between 2002 and 2005, rising to more than €11 million for the period 2005 to 2010. Practical assistance includes the services of a Disability and Study Expertise Centre for students and higher education institutions.

Various personal material facilities may be needed to enable participation in education. So far these have been provided under the auspices of the Ministry of Social Affairs and Employment on the basis of the Work and Income (Capacity for Work) Act (WIA) (previously the Disability (Reintegration) Act, REA), although the intention is to transfer this responsibility to the Minister of Education. Transport facilities for primary and secondary pupils are, however, already provided under the responsibility of the Ministry of Education.

Reintegration of people who are unfit for work

It is a well-known fact that the large number of people receiving incapacity benefit has been one of the main focal points of Dutch social policy for the past 25 years or so. For the past decade the government has therefore concentrated on reducing the large number of people who are unfit for work. The basic principle adopted is “work before benefits”. The government reported at length on these trends, and on the measures taken, in its previous report on Article 12. It is useful at this juncture to consider how partially disabled people are being helped to get back to work.

The Employee Insurance Agency (UWV) is responsible for reintegrating people claiming incapacity benefit. Reintegration itself is privatised, however, with the UWV purchasing reintegration services on the free market for benefit claimants. There are currently more than 650 private reintegration agencies; 65% of these are small (fewer than ten employees) and the rest are large to very large. Most agencies (57%) offer their services regionally, 27% operate nationally and 16% are local. Many specialise in one or more target groups or a specific section of the market. About three-quarters of them focus on sick workers and work-disabled people. More than a third target clients on social assistance, for whom reintegration is the responsibility of the local authorities. More than a quarter of the agencies provide placement services for the unemployed and services designed to prevent unemployment. Twenty per cent deal with jobseekers who are not receiving benefit.

Reintegration agencies make use of reintegration programmes offering, for example, counselling in the form of interviews or a careers guidance test, job-interview training or vocational training. To get a clear idea of what kind of support is needed, the employment expert at the UWV first formulates a reintegration strategy. Based on this the reintegration

agency contracted by the UWV then works with the client to draw up a reintegration programme that they will implement. Since 1 January 2004 people who are unfit for work have been entitled to an individual reintegration agreement. In this case the party commissioning services from the reintegration agency is the partially disabled person, not the UWV. Broadly speaking, the same rights and obligations apply. The difference is that partially disabled people with an individual reintegration agreement can choose a reintegration agency of their own accord and draw up a plan together with that agency.

The UWV contracted out more than 40,000 reintegration programmes for work-disabled people in 2004. Besides purchasing these programmes, the UWV can make provisions for employees with a long-term functional condition caused by illness or disability to enable them to perform effectively in the workplace. These include:

- transport facilities to convey them to and from the workplace;
- personal support needed by employees in the working environment;
- facilities needed to enable people to work in trial placements and take part in other activities that promote reintegration;
- providing operating capital in the form of a business start-up loan for partially disabled workers wishing to be self-employed;
- alterations to the workplace or portable facilities to fit out the workplace, or adapt production and working methods and the work equipment to be used (mainly tailored to individual needs);
- support in the form of an interpreter for the deaf or a reading assistant.

Until 1 January 2006 there were a few subsidised training institutions (EEGA, Heliomare, etc.), which were reported on in the last report on the application of Article 15. Traditionally these were institutions that focused on the medical rehabilitation and reintegration of seriously disabled people. Since the aforementioned date training courses via these institutions are no longer directly subsidised; they are now funded through a new grant scheme or through tendering by reintegration agencies. This means that trainees with serious training obstacles who belong to the target group can still attend the traditional institutions or can make use of other training institutions that fulfil the quality requirements.

In 2004 approximately €221 million was spent on reintegration programmes for work-disabled people. This expenditure went partly on new programmes and partly on existing programmes started in 2002 or 2003 and still continuing in 2004. Some €272 million was spent on facilities and grants (based on the 2004 annual report of the Ministry of Social Affairs and Employment).

People who became unfit for work at a young age before they could enter the labour market have their own benefit scheme, governed by the Invalidity Insurance (Young Disabled Persons) Act (WAJONG). Some of this group can work in regular jobs or sheltered employment, provided sufficient support is provided and special arrangements are made. The facilities described above are also available for these people. A specially appointed committee, the Prospect of Work Committee (CWP), and the allocation of additional budget funds ensure that extra attention is devoted to getting this group back to work.

Finally, the term partially disabled is not a strictly medical concept here, but rather a work-related concept. The degree of disability is the percentage loss of earning capacity as a result of a medically diagnosed illness or deficiency.

Sheltered employment

The Sheltered Employment Act, in the form in which it has existed since 1998, offers adapted employment for people with a physical, mental or psychological disability, who would not otherwise be able to participate in the labour market. It is financed by means of central government funding to local government. Local authorities must use this to create as many jobs as possible under the Sheltered Employment Act for people who have been assessed as being eligible for the scheme.

To establish whether registered jobseekers are eligible for the scheme, their degree of disability must be determined. The assessment looks at whether a work disability is serious enough to make sustained participation in the labour market impossible without recourse to the scheme. The person assessed must have considerably reduced productivity and must need alterations to the workplace and supervision on the job. Only then will he/she be regarded as eligible for the scheme and given work in sheltered employment subsidised by the local authority. The local authority uses central government funding to create jobs in sheltered employment. It can opt to implement the scheme itself within a specific municipal department, or it can appoint a legal entity to act on its behalf.

People in sheltered employment are paid in accordance with the collective labour agreement for sheltered employment (people in supervised employment working for a regular employer are paid in accordance with their employer's collective labour agreement).

The vast majority of people assessed as being eligible for the sheltered employment scheme work in a company offering sheltered employment. In 2004 more than 90% of this category of workers were employed in such a company, about 9% were seconded by the sheltered employment company to a regular employer and about 1% were employed by a regular employer under a supervised working arrangement. The aim is for local authorities to fill at least 25% of new vacancies from the waiting list annually in the form of supervised working arrangements. Only a few local authorities have managed to do this in the past few years. The government is in the process of modernising the Sheltered Employment Act to enable people who are eligible for this scheme to work under circumstances that are as normal as possible. Measures are in the pipeline to increase the local authorities' share of responsibility in implementing the scheme, create more rights for people eligible for the scheme and encourage regular employers to make jobs available for them. The Netherlands will come back to this subject in the next report.

Paragraph 2: Placements arrangements for the disabled

"With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake: to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment."

Question A

Please describe the measures taken to ensure the placement and, if appropriate, the employment of physically or mentally disabled persons (for instance quotas, financial subsidies, etc.).

Question B

Please indicate the number (actual or approximate) of physically or mentally disabled persons who during the reference period found paid employment (whether in specialised institutions or not).

See the report in relation to Article 15, para. 1.

Answers to questions or requests for information by the ECSR

See the report in relation to Article 15, para. 1.

ADDITIONAL PROTOCOL, ARTICLE 2 – THE RIGHT TO INFORMATION AND CONSULTATION

1. 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 decision 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.*
2. *The Parties may exclude from the field of application of paragraph 1 of this article those undertakings employing less than a certain number of workers to be determined by national legislation or practice.”*

[The Appendix to the Protocol states that: Articles 2 and 3:

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 term "national legislation and practice" embraces 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 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 Articles 2 and 3 are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.]*

- A. Please state if workers in undertakings are informed and informed and consulted directly or through their representatives and, in the latter case, how such representatives are appointed at the various levels (workshop, establishment, undertaking, etc.).

Since 1 January 2002 the Works Councils Act (*Wet op de Ondernemingsraden*; WOR) has also applied to officers of the limited jurisdiction sector of the district courts, the district courts, the appeal courts, the administrative courts and courts of appeal, but not of the Supreme Court.

No other new developments: see page 63 of the Fifteenth Netherlands' Report.

- B. Please describe the structures, procedures and arrangements for information and consultation in your country with all necessary information concerning the level at which they operate, whether they are compulsory or optional, their frequency, etc.

When Directive 2002/14/EC, establishing a general framework for informing and consulting employees in the EU was implemented (the necessary amendments to Dutch legislation entered into effect on 22 December 2004) a seventh subsection was added to section 20 of the WOR. The new subsection allows employees to appeal against the rules on confidentiality that may be imposed by an employer.

No further new developments: see page 63 of the Fifteenth Netherlands' Report.

- C. Please state the nature of the information and of the consultation provided for by legislation, examples of significant collective agreements or by other means, and whether they take place at the level of the undertaking or of the establishment.

No new developments.

- D. Please state the specified number or numbers of workers below which undertakings are not required to comply with the provisions relating to the information and consultation of workers.

No new developments.

- E. If some workers are not covered by provisions of this type prescribed by legislation, collective agreements or other appropriate measures, please indicate the proportion of workers not so covered (see Article 7 of the protocol and the relevant provision in the Appendix).

No new developments.

- F. Please state whether undertakings other than those specified in paragraph 2 of Article 2 are excluded from the application of this provision in the meaning of the Appendix to the Protocol (Article 2 and 3, paragraph 4) and state the nature of such undertakings and their sectors of activity.

No new developments.

ADDITIONAL PROTOCOL, ARTICLE 3 - RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

1. *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.*
2. *The Parties may exclude from the field of application of paragraph 1 of the article those undertakings employing less than a certain number of workers to be determined by national legislation or practice”.*

[The Appendix to the Protocol states that: Articles 2 and 3

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 term "national legislation and practice" embraces as the case 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 Articles 2 and 3 are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.]*

- A. Please state if workers participate directly or through their representatives in the determination and improvement of the working conditions and the working environment and, in the latter case, how such representatives are appointed at the various levels (workshop, establishment, undertaking, etc.).

Chapter IV of the Working Conditions Act 1998 lays down rules governing cooperation between employers and employees and the special rights of the works council, the employee representative body and the relevant employees. Accordingly, employers and employees must cooperate in the implementation of the undertaking's policy on working conditions. The employer must hold prior consultations with the works council or employee representative body about the implementation of policy or, in the absence of a works council or employee

representative body, with the relevant employees. These representatives have the right to meet government inspectors and accompany them during inspection visits to the undertaking.

- B. Please give general description of the structures, procedures and arrangements for workers to take part in determining the work conditions in undertakings in general and, when appropriate, in the various activity sectors of undertakings. This information should be specified according to each of the various areas referred to in paragraph 1 of Article 3 of the Protocol. If appropriate, please describe at what levels within the undertaking these rights are exercised and describe how.

No new developments.

- C. Please state if workers' participation concerns all of the areas covered by Article 3, paragraph 1, of the Protocol.

No new developments.

- D. Please state the number or numbers of workers below which undertakings are not required to make provision for the participation of workers in the determination of their working conditions.

No new developments.

- E. If some workers are not covered by provisions of this type prescribed by legislation, collective agreements or other measures, please state the proportion of workers not so covered (see Article 7 of the Protocol and the relevant provision in the Appendix).

No new developments.

- F. Please state whether undertakings other than those specified in paragraph 2 of Article 3 are excluded from the application of this provision in the meaning of the Appendix to the Protocol (Articles 2 and 3, paragraph 4) and indicate their nature and the sector of activity involved.

No new developments.

LIST OF ANNEXES

- 1) Act of 30 November 2000 amending title 7.10 (contract of employment) of the Civil Code with regard to annual leave and parental leave (Bulletin of Acts and Decrees 2000, 545).
- 2) Act of 30 November 2000 amending a few provisions of the Act of 30 November 2000 amending title 7.10 (contract of employment) of the Civil Code with regard to annual leave and parental leave (Bulletin of Acts and Decrees 2000, 546).
- 3) Overview of voluntary agreements as at 15 April 2005
- 4) *De arbeidsmarktpositie van werknemers in 2000* (only in Dutch available)
- 5) *De arbeidsmarktpositie van werknemers in 2002* (only in Dutch available)