



13/2/2008

RAP/Cha/Netherlands/20(2008)

EUROPEAN SOCIAL CHARTER

20th report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF NETHERLANDS

(FOR THE PERIODS 1ST JANUARY 2006 – 31ST DECEMBER 2006 on Articles 9,
10 and 15

1ST JANUARY 2005 – 31ST DECEMBER 2006 on Article 1,
1ST JANUARY 2004 – 31ST DECEMBER 2006 on Articles 18 and 20)

Report registered at the Secretariat on 13/02/2008

CYCLE 2008

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Twentieth Report

for the period 1 January 2005 - 31 December 2006

on Article 1

and for the period 1 January 2006 - 31 December 2006

on Articles 9, 10 and 15

and for the period 1 January 2004 - 31 December 2006

on Articles 18 and 20

and a first report on Articles 24 and 25

Report

For the period 1 January 2005 to 31 December 2006 (Article 1)
and for the period 1 January 2006 - 31 December 2006 (Articles 9, 10 and 15)
and for the period 1 January 2004 - 31 December 2006 (Articles 18 and 20)
and a first report on Articles 24 and 25,
made by the Government of the Netherlands in accordance with Article C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter.

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

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

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

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ARTICLE 1: THE RIGHT TO WORK**ARTICLE 1 PARA. 1**

*"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:
to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;"*

Question A

Please indicate the policy followed by your government in attempting to reach and maintain full employment. Please supplement with details of the measures and programmes implemented to achieve as high and stable a level of employment as possible.

Please indicate, if possible, the trend in total employment policy expenditure over the past five years, including the relative shares of "active" (job creation, training, etc.) and "passive" (financial compensation, etc.) measures.

Please indicate the active policy measures taken in order to favour access to employment of groups most exposed to or affected by unemployment (e.g. women, the young,¹ older workers, the long-term unemployed,² the disabled, immigrants and/or ethnic minorities). Please give indications on the number of beneficiaries from these measures and information, if possible, on their impact on employment.

Answer A

To maintain the welfare state, it is essential that labour market participation be increased. The Netherlands has introduced a large number of policy measures aimed at fostering labour market participation (among both men and women). In general terms, these are measures designed to:

- 1) guide benefit claimants back into work
- 2) 'seduce' non-participants into participating
- 3) ensure persons in employment remain in the labour market for longer.

General employment policy is the key framework for all groups. Tax measures such as the employed person's tax credit, for example, ensure that working is more attractive than not working. Such instruments help avoid situations whereby people are no better off when they come off benefits to take up low-paid work (the poverty trap), increase their working hours ('part-time trap') or move on to a new job ('transfer trap'). The employed person's tax credit has been increased in stages over the past few years. Workers aged 57 and over also qualify for an additional tax credit (which rises with age), providing an extra incentive for people in this age group to take up or remain in work. Other tax measures include the supplementary combination tax credit (aimed at partners with a lower income), the general tax credit and tax breaks for training.

Other more general measures also exist. Table 1 lists the most important instruments of general employment policy.

¹ Aged between fifteen and twenty-four.

² Persons without employment for over one year and seeking employment.

Table 1. General employment policy schemes/instruments

Scheme/instrument	Aim
<i>Tax measures</i> <ul style="list-style-type: none"> • generic employed person's tax credit; • supplementary combination tax credit; • (individualisation of) general tax credit; • tax breaks for training 	To make work financially attractive.
<i>Comprehensive Strategy</i> ³	To prevent long-term unemployment among people who are difficult to place. Every unemployed person who is unable to find work themselves should be offered a programme to guide them back into the labour market within 12 months (or six months in the case of young people).
<ul style="list-style-type: none"> • <i>Knowledge Migrants Scheme</i> • <i>Foreign Nationals (Employment) Act</i> 	<ul style="list-style-type: none"> • Gives employers more scope to take on highly-educated staff from outside the EU. • Allows employers to bring in staff from outside the EU if none are available within the EU
<i>Sheltered Employment Act (WSW)</i>	To create jobs, under specially adapted conditions, for disabled people who require work in a sheltered environment.
<i>Work and Care Act (WAZO; December 2001)</i>	This legislation combines a number of existing schemes, including pregnancy and maternity leave, which used to be governed by the Sickness Benefit Act, and parental leave, from the Civil Code. The aim of the Act is thus to bring together all leave schemes for workers in one piece of legislation.
<i>Life-course savings scheme (allows staff to save now for leave in the future)</i>	To allow people to combine their work and private life (care/training). An individual savings scheme where workers save up time to take as leave later.

Reintegration

Recent years have seen structural reforms to the social security system (unemployment and incapacity benefit, social assistance) designed to foster labour market participation. They include more opportunities in the field of reintegration, and more customised solutions. The reforms introduced under the Work and Income (Capacity for Work) Act (introduced on 1 January 2006) mean that a clear distinction can now be drawn between full, long-term incapacity for work and partial incapacity for work.

The introduction of the Work and Social Assistance Act in 2004 reinforced the emphasis on prompting social assistance claimants to rejoin the labour market. It is now the responsibility of local authorities to help claimants back into work, and initial experiences with the new

³ Not a separate instrument in itself, the Comprehensive Strategy involves the allocation of extra resources to step up the use of existing instruments and streamline the process.

system have been positive. Between the end of 2003 and 2006, the number of social assistance claimants fell by 27,000, to 312,000. The legislation allows for all kinds of measures to be deployed, including:

- temporary subsidisation of jobs, with the aim of getting claimants off benefit
- internships and trial placements to allow claimants to gain general or specific work experience
- job application training
- working and learning schemes
- individual subsidisation of wage costs

Within the Work and Income Implementation Structure (SUWI) the Employee Insurance Agency (UWV) can use various instruments in the case of clients on unemployment benefit (WW) or incapacity benefit (WAO/WIA). Examples include:

- unemployment benefit gatekeeper assessment: designed to reduce the number of new claims
- trial placements: three months' working, on benefit, prior to regular employment
- start-up help for the self-employed: six months' financial support and exemption from the obligation to seek work for claimants who start their own business
- no risk policy: help with compulsory continued payment of salary to staff on sick leave (applies for five years)
- reduced social insurance contributions for employers taking on someone who is partially incapacitated for work
- reintegration programmes: customised assistance, including job training, job application training, job placement etc.

Table 2 shows the results of placements under reintegration programmes in the period 2003-2005. The fact that there were relatively few placements at the end of 2005 compared to other years is because some reintegration programmes run for two years.

Table 2. Placement results for reintegration programmes (x 1000)

Year programme started	No. of programmes started	Of which, placements achieved by end of 2005	Placement percentage
Incapacity benefit claimants			
2003	44	13	29
2004	42	10	23
2005	32	2	7
Unemployment benefit claimants			
2003	30	10	32
2004	53	15	29
2005	46	5	10
Social assistance claimants (local authorities)			
2003	105	21	20
2004	109	19	17
2005	93	10	11

Sources: UWV ('Uitstroom naar werk') and Statistics Netherlands local authority reintegration statistics (CBS 'Statistiek re-integratie door gemeenten') (reworked by Ministry of Social Affairs and Employment)

Trend in expenditure on job creation

Table 3 shows total expenditure on active (columns 1-5) and passive (column 7) employment policy. Notably, while spending on benefits has increased, expenditure on active measures has remained more or less the same. The main reason for the increase in the number of benefit claimants is the poor economic situation between 2002 and 2004, which caused a rise in unemployment, and therefore in the number of claimants.

Table 3. Expenditure on active and passive labour market policy measures 2002-2004 as % GDP

	Employment Service (1)	Training ^{1, 2} (2)	Young people (3)	Subsidised work (4)	Unfit for work (5)	Total ² (6)	Benefits ² (7)	Active/passive ² (8)
2002	0.32	0.20	0.04	0.32	0.60	1.48	1.82	0.81
2003	0.34	0.29	0.04	0.26	0.59	1.52	2.02	0.75
2004	0.32	0.32	0.04	0.21	0.56	1.44	2.23	0.65

¹ Includes the budget for the "comprehensive approach", which has not been allocated to subcategories.

² Unemployment benefits paid to claimants on training courses are counted under "Benefits".

Source: OECD, Employment Outlook 2006 (Statistical Annex, Table H)

Target groups

Labour market participation among certain groups could be raised further. For example, though a relatively high number of women work in the Netherlands, most of them have part-time jobs. Participation by non-Western ethnic minorities is also below the average for the Netherlands.

To achieve the goal of higher labour market participation rates, various employment policy instruments have been introduced to help strengthen the labour market status of certain groups, such as non-Western ethnic minorities, older people, young people, the disabled and women. Table 4 lists these instruments.

Table 4. Specific employment policy schemes/instruments

Scheme/instrument	Aim
NON-WESTERN ETHNIC MINORITIES	
Civic Integration Act (1 January 2007)	Obliges local authorities to offer newcomers an integration assessment and an integration programme which they are obliged to attend.
National Diversity Management Network (DIV; 2004) ⁴	DIV aims to: <ul style="list-style-type: none"> • inform employers of developments concerning diversity and disseminate practical information and tools • assemble information for specific target groups, sectors etc. • exchange good practice • refer employers to specialist agencies, organisational consultancies and recruitment and selection agencies

⁴ DIV is a centre of expertise that promotes diversity management, drawing together the knowledge, competencies and experience of its members. DIV focuses its efforts on employers in the public and private sectors and on key actors in the field: social partners, centres of expertise specialising in corporate HRM policy etc. It fulfils its role in promoting diversity management by making accessible

Projects for ethnic minorities	2007 has seen the follow-up to a series of projects that the Ministry of Social Affairs and Employment launched in 2005 with the aim of improving the labour market status of ethnic minorities. Twenty projects were subsidised in 2005, 2006 and 2007. They all featured coaching and empowerment, job placement and efforts to improve the image of ethnic minority workers among employers. Ethnic minority role models visited schools, managers coached ethnic minority students, and meetings and job fairs were held to allow ethnic minority youngsters to meet each other and potential employers. Steps were also taken to promote entrepreneurship among ethnic minorities.
Ethnic Minority Women and Employment Coordination Group (RAVA)	The group was set up for two years, and is due to be disbanded at the end of 2007. It consists of representatives of central government, benefit agencies, employers, employees and the target group itself. The aim is to help ethnic minority women into the labour market
OLDER PEOPLE	
Supplementary working person's tax credit for workers aged 57+	Extra incentive to remain in work or return to work (tackling the unemployment trap).
Exemption from social insurance contributions for employers taking on or already employing staff aged 55+	Aimed at reducing the 'productivity trap'
Temporary incentive scheme for age-aware policies	Companies receive a subsidy for introducing measures aimed at achieving sustainable employability.
'Grey Works' Coordination Group	To coordinate the communication strategy on the need for people to remain in work longer, and to promote exchange of practical solutions developed by employers and employees.
45+ unemployment action plan	To mediate jobs for 30,000 people aged 45 and over within two years.
YOUNG PEOPLE	
Youth Unemployment Task Force	To help 40,000 young people into a youth job (this aim has been achieved and the Task Force has been disbanded)
No risk policy	This is a one-off trial involving help with continued payment of the wage costs of staff on sick leave.
DISABLED	
<i>Specifically for persons who are partially incapacitated for work</i>	<ul style="list-style-type: none"> • Activation • Work experience • Removal of obstacles perceived by employers in

and, if necessary, developing relevant knowledge, practical methods and instruments, and by facilitating exchange of knowledge between labour organisations. It aims primarily to introduce the concept of diversity management in terms of age, ethnicity and gender, and to ensure that it features on employers' agenda. DIV's mission is to make employers aware of the added value of diversity in their own organisation. It also acts as a source of information for employers.

compulsory continuation of salary payments to staff on sick leave (applies for five years) <ul style="list-style-type: none"> • Reduced social insurance contributions for employers taking on someone who is partially incapacitated for work • Grants for workplace alterations over and above the employer's general responsibility for health and safety • Start-up loans 	taking on/retaining staff who are partially incapacitated
WOMEN	
<ul style="list-style-type: none"> • Supplementary combination tax credit • Life-course savings scheme • Childcare 	To make work financially attractive.

Question B

Please indicate the trends in employment⁵ covering all sectors of the economy. In connection with this, indicate as far as possible, the activity rate,⁶ the employment rate⁷ and the breakdown of employment by region, by sex, by age, by employment status (employed, self-employed), by type of employment (full time and part time, permanent and fixed term, temporary), and by sector of activity.

Please give the trend of the figures and percentages of unemployed in your country, including the proportion of unemployed to the total labour force. Please give a break-down of the unemployed by region, category, sex, age and by length of unemployment.

⁵ Reference is made to the definition of employment adopted by the Thirteenth International Conference of Labour Statisticians (Geneva, 1982) or any further versions.

⁶ The activity rate represents the total labour force as a percentage of the population aged 15 years and over and living in private households. The labour force is defined as the sum of persons in employment plus the unemployed.

⁷ The employment rate represents persons in employment as a percentage of the population aged 15-64 years and living in private households.

Answer B

Table 5. Labour market data for the Netherlands, annual averages (part 1)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Activity rate (%)											
Total	63.5	64.7	65.4	66.3	67.0	67.3	67.5	67.9	67.7	67.6	68.3
men	76.7	77.3	78.0	78.4	78.7	78.5	78.3	78.0	77.3	76.4	76.6
women	49.9	51.7	52.5	53.9	55.0	55.9	56.5	57.5	57.9	58.7	59.8
Employment (thousands)											
Total	6185	6384	6587	6768	6917	7021	7035	7001	6919	6918	7074
men	3870	3940	4036	4105	4162	4185	4157	4096	4019	3981	4040
women	2315	2444	2551	2663	2755	2836	2878	2905	2899	2937	3034
aged 15-24	770	797	772	824	825	852	836	805	759	742	758
aged 55-64	387	408	439	482	534	575	657	698	744	773	834
non-Western minorities	318	340	384	418	449	494	515	520	526	543	538
native Dutch	5318	5479	5617	5741	5843	5892	5888	5842	5769	5748	5880
unskilled	423	416	438	460	475	460	446	401	345	331	339
low-skilled	1357	1382	1374	1411	1446	1510	1447	1401	1352	1287	1307
unskilled + low-skilled	1780	1798	1812	1871	1921	1970	1893	1802	1697	1618	1646
Employment rate (%)											
Total	58.7	60.4	62.1	63.5	64.5	65.0	64.8	64.2	63.3	63.2	64.5
men	72.4	73.6	75.2	76.0	76.6	76.5	75.6	74.3	72.9	74.3	74.3
women	44.6	46.9	48.7	50.6	52.0	53.2	53.6	53.9	53.6	53.9	53.9
aged 15-24	39.5	41.6	41.2	44.2	44.0	45.1	43.8	41.9	39.3	38.3	38.9
aged 55-64	26.4	27.6	29.3	31.2	33.6	34.7	37.5	38.1	39.2	39.7	41.8
non-Western minorities	40.1	41.2	44.3	45.5	47.8	49.7	49.1	47.4	46.5	46.9	46.7
native Dutch	60.7	62.5	64.1	65.6	66.5	67.0	67.0	66.5	65.8	65.6	66.9
unskilled	28.5	28.7	31.3	32.1	36.9	36.2	35.8	34.7	33.4	32.6	34.8
low-skilled	49.2	51.0	51.7	53.6	51.9	53.7	52.2	51.2	50.6	48.9	49.4
unskilled + low-skilled	41.9	43.2	44.6	46.0	47.2	48.3	47.1	46.3	45.8	44.4	45.5
Unemployment (thousands)											
Total	501	448	354	301	270	252	302	399	479	483	413
men	228	200	153	128	114	109	147	205	246	238	191
women	273	248	201	173	157	143	155	194	233	245	222
aged 15-24	112	91	72	67	59	68	79	96	119	112	91
aged 55-64	18	17	15	16	16	13	19	27	38	48	49
non-Western minorities	89	89	72	66	55	49	60	89	101	107	99
native Dutch	350	303	241	202	181	173	206	262	321	313	266
unskilled	80	72	61	47	39	35	38	49	53	51	47
low-skilled	139	134	104	89	76	79	88	113	120	126	104
unskilled + low-skilled	219	206	165	136	115	114	126	162	173	177	151
Unemployment rate (%)											
Total	7.5	6.6	5.1	4.3	3.8	3.5	4.1	5.4	6.5	6.5	5.5
men	5.6	4.8	3.7	3.0	2.7	2.5	3.4	4.8	5.8	5.6	4.5
women	10.5	9.2	7.3	6.1	5.4	4.8	5.1	6.3	7.4	7.7	6.8
aged 15-24	12.7	10.2	8.5	7.5	6.7	7.4	8.6	10.7	13.6	13.1	10.7
aged 55-64	4.4	4.0	3.3	3.2	2.9	2.2	2.8	3.7	4.9	5.8	5.5
non-Western minorities	21.9	20.7	15.8	13.6	10.9	9.0	10.4	14.6	16.1	16.5	15.5
native Dutch	6.2	5.2	4.1	3.4	3.0	2.9	3.4	4.3	5.3	5.2	4.3
unskilled	15.9	14.8	12.2	9.3	7.6	7.1	7.9	10.9	13.3	13.4	12.2
low-skilled	9.3	8.8	7.0	5.9	5.0	5.0	5.7	7.5	8.2	8.9	7.4
unskilled + low-skilled	11.0	10.3	8.3	6.8	5.6	5.5	6.2	8.2	9.3	9.9	8.4
Underemployment (thousands)											
Total	230	.	195	.	105	.	105	.	65	.	.
men	120	.	120	.	50	.	50	.	35	.	.
women	110	.	75	.	55	.	55	.	30	.	.

¹ Estimates based on the "Trendrapport Aanbod van arbeid", Organisation for Strategic Labour Market Research (OSA)

Non-western min. = persons with at least one parent born in Turkey, Central or South America, Africa or Asia (with the exception of Japan and the former Dutch East Indies)

Native Dutch = persons both of whose parents were born in the Netherlands

Unskilled = primary education

Low-skilled = junior general secondary education (MAVO) + pre-vocational education (VBO).

Employment = persons in employment (incl. the self-employed) with a working week of 12 hours or more.

Employment rate = employment as % of population (aged 15-64)

Unemployment = persons who do not work for at least 12 hours a week and who are actively seeking and available for such work

Unemployment rate = unemployment as % of labour force (= employment + unemployment)

Underemployment = employed persons working 12-34 hours a week who want to work for at least 35 hours a week

Source: Ministry of Social Affairs and Employment, based on Statistics Netherlands, *Enquête beroepsbevolking* (Labour Force Survey) and OSA, *Trendrapport Aanbod van arbeid* (Report on Trends in Supply of Labour)

Table 6. Labour market data for the Netherlands by region (province), annual averages

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Employment (thousands)											
Groningen	201	212	220	221	231	234	231	227	231	228	239
Friesland	222	231	238	251	248	261	258	260	259	252	260
Drenthe	174	176	185	185	190	196	199	200	193	194	199
Overijssel	392	408	418	438	455	463	458	466	448	459	459
Flevoland	115	117	130	141	141	146	153	158	159	159	165
Gelderland	740	768	790	811	826	840	839	834	820	819	848
Utrecht	467	483	480	500	518	527	516	526	521	523	549
North Holland	1037	1058	1083	1124	1134	1166	1177	1158	1151	1158	1177
South Holland	1316	1364	1420	1462	1498	1490	1499	1495	1477	1483	1499
Zeeland	141	145	148	147	154	148	157	152	153	153	156
North Brabant	940	965	1003	1020	1041	1064	1066	1053	1033	1030	1053
Limburg	440	456	470	468	482	486	483	473	471	460	470
Total	6185	6384	6587	6768	6917	7021	7035	7001	6919	6918	7074
Unemployment (thousands)											
Groningen	28	22	19	18	13	13	17	21	22	24	16
Friesland	23	21	18	15	13	13	13	18	20	19	17
Drenthe	16	13	13	14	10	9	11	11	17	16	15
Overijssel	33	28	22	20	16	15	19	24	31	36	28
Flevoland	8	9	8	5	7	7	8	13	14	15	14
Gelderland	56	46	38	34	30	31	31	43	53	51	45
Utrecht	29	25	20	15	12	14	22	25	31	28	25
North Holland	85	80	61	52	51	38	48	66	78	83	66
South Holland	108	97	77	60	59	55	66	90	101	105	100
Zeeland	10	10	7	7	8	6	5	6	8	10	7
North Brabant	69	60	44	38	31	34	37	55	70	59	53
Limburg	38	36	26	23	20	20	25	28	35	36	27
Total	501	448	354	301	270	252	302	399	479	483	413
Unemployment rate (%)											
Groningen	12	9	8	8	5	5	7	8	9	10	6
Friesland	9	8	7	6	5	5	5	6	7	7	6
Drenthe	8	7	7	7	5	4	5	5	8	8	7
Overijssel	8	6	5	4	3	3	4	5	6	7	6
Flevoland	7	7	6	3	5	5	5	8	8	9	8
Gelderland	7	6	5	4	4	4	4	5	6	6	5
Utrecht	6	5	4	3	2	3	4	5	6	5	4
North Holland	8	7	5	4	4	3	4	5	6	7	5
South Holland	8	7	5	4	4	4	4	6	6	7	6
Zeeland	7	6	5	5	5	4	3	4	5	6	4
North Brabant	7	6	4	4	3	3	3	5	6	5	5
Limburg	8	7	5	5	4	4	5	6	7	7	5
Total	7	7	5	4	4	3	4	5	6	7	6
Employment rate (%)											
Groningen	53	55	58	58	60	60	59	58	59	58	61
Friesland	55	57	58	61	60	62	61	61	61	60	61
Drenthe	57	58	60	60	62	63	64	64	62	62	64
Overijssel	55	58	59	61	63	64	63	64	61	63	63
Flevoland	62	61	65	67	66	66	66	66	65	64	67
Gelderland	58	60	62	63	64	65	64	64	63	63	65
Utrecht	63	64	64	66	68	68	66	67	66	66	69
North Holland	61	62	63	65	65	67	67	66	65	65	66
South Holland	59	61	63	65	66	65	65	64	63	64	64
Zeeland	59	60	61	61	64	61	64	62	62	62	64
North Brabant	59	61	63	64	65	66	66	65	64	64	65
Limburg	57	59	61	61	62	63	63	62	62	60	62
Total	59	60	62	63	64	65	65	64	63	63	65

Employment = persons in employment (incl. the self-employed) with a working week of 12 hours or more.

Unemployment = persons who do not work for at least 12 hours a week and who are actively seeking and available for such work.

Unemployment rate = unemployment as % of labour force (= employment + unemployment).

Employment rate = employment as % of population (aged 15-64).

Source: Ministry of Social Affairs and Employment, based on Statistics Netherlands, *Enquête beroepsbevolking* (Labour Force Survey)

Table 7. Labour market data for the Netherlands by sector of activity, annual averages

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Employment (thousands)											
A,B Agriculture and fisheries	231	226	207	200	209	188	198	177	199	197	194
C-F Manufacturing and construction	1491	1516	1524	1556	1556	1572	1518	1471	1481	1479	1471
D Manufacturing (excl. construction)	1024	1030	1031	1055	1046	1034	1001	983	981	960	955
F Construction industry	415	433	437	455	462	496	468	448	450	469	470
C,E Mining, extraction and public utilities	51	55	56	46	47	43	48	40	50	51	48
G-K Commercial services	2401	2463	2585	2721	2802	2821	2797	2817	2611	2648	2725
G,H Trade, repair, hospitality	1138	1154	1181	1219	1249	1240	1243	1229	1108	1125	1181
I Transport, communication	392	387	404	421	430	444	411	422	444	442	437
J,K Other commercial services	872	922	1000	1081	1123	1135	1145	1166	1059	1080	1106
L,M Government and education	906	910	946	948	920	969	1018	1004	1016	1014	1044
N,O Other non-commercial services	1063	1126	1179	1177	1249	1288	1317	1342	1269	1325	1383
Total	6185	6384	6587	6768	6917	7021	7035	7001	6919	6918	7074
Stock of vacancies (thousands)											
A,B Agriculture and fisheries	1	1	2	3	3	3	3	2	3	4	4
C-F Manufacturing and construction	17	22	28	37	47	41	28	17	17	23	34
D Manufacturing (excl. construction)	11	15	19	23	28	23	15	10	10	12	18
F Construction industry	5	7	9	14	19	18	12	6	7	10	15
C,E Mining, extraction and public utilities	1	1	1	0	1	1	1	0	1	1	1
G-K Commercial services	38	49	74	94	110	106	76	59	67	89	114
G,H Trade, repair, hospitality	16	20	30	38	43	41	34	26	28	35	44
I Transport, communication	4	5	8	14	12	10	7	6	6	8	11
J,K Other commercial services	18	24	36	42	54	55	35	27	33	46	59
L,M Government and education	8	9	11	14	15	16	13	10	10	12	14
N,O Other non-commercial services	11	13	19	23	27	31	29	22	22	23	29
Total	76	95	135	172	203	197	149	109	118	150	195
Inflow of vacancies (thousands)											
A,B Agriculture and fisheries	20	17	24	23	26	18	16	17	29	34	35
C-F Manufacturing and construction	132	141	152	177	191	154	106	88	99	125	156
D Manufacturing (excl. construction)	73	84	92	103	114	91	62	54	56	68	88
F Construction industry	53	55	59	72	74	61	42	33	40	54	65
C,E Mining, extraction and public utilities	2	2	1	2	3	2	2	2	2	2	3
G-K Commercial services	328	395	482	535	573	533	404	372	423	513	618
G,H Trade, repair, hospitality	169	203	250	264	281	262	211	186	206	243	296
I Transport, communication	33	42	52	70	63	48	40	39	40	44	58
J,K Other commercial services	125	151	181	201	228	222	153	147	178	226	266
L,M Government and education	49	55	64	68	74	76	63	47	45	56	63
N,O Other non-commercial services	91	103	134	148	154	165	146	120	129	142	168
Total	620	711	854	952	1018	945	735	645	725	869	1040
Vacancy rate (%)											
A,B Agriculture and fisheries	9	8	13	13	14	11	10	11	16	19	20
C-F Manufacturing and construction	10	11	12	14	15	12	9	7	8	10	13
D Manufacturing (excl. construction)	8	10	11	12	14	11	8	7	7	8	11
F Construction industry	14	14	16	19	20	16	12	9	10	14	17
C,E Mining, extraction and public utilities	5	5	3	5	8	6	6	6	5	5	8
G-K Commercial services	15	18	21	23	24	23	17	15	19	23	27
G,H Trade, repair, hospitality	16	19	24	25	26	24	20	17	21	25	29
I Transport, communication	9	12	15	20	18	13	11	11	10	12	16
J,K Other commercial services	16	19	22	22	25	24	16	15	20	25	29
L,M Government and education	6	7	8	9	10	9	8	6	5	7	7
N,O Other non-commercial services	10	10	13	15	14	15	13	11	12	12	14
Total	11	13	15	17	18	16	13	11	12	15	17

Vacancy rate = stock + inflow of vacancies as a percentage of number of employed persons (including self-employed).

Source: Ministry of Social Affairs and Employment, based on Statistics Netherlands, *Enquête beroepsbevolking* (Labour Force Survey) and *Vacature-enquête* (Vacancy Survey)

Question C

Please indicate the trend in the number and the nature of vacant jobs in your country.

Answer C

Table 8. Labour market data for the Netherlands, annual averages (part 2)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Registered unemployment (thousands)											
Total	440	375	287	221	188	146	170	255	319	311	260
registered >1 year	221	195	155	111	82	52	55	76	114	118	106
Total (as % of labour force)	6.6	5.5	4.1	3.1	2.6	2.0	2.3	3.4	4.3	4.2	3.5
Vacancies (thousands)											
Stock	76	95	135	172	203	197	149	109	118	150	195
New vacancies	620	711	854	952	1018	945	735	645	725	869	1040
Filled vacancies	608	675	834	905	997	986	777	671	699	832	996
Vacancies registered at the CWI (thousands)											
New registered vacancies	262	286	329	315	291	238	174	189	232	292	305
Filled registered vacancies	169	174	183	159	114	91	50	63	82	91	105
Placement rate (%)	65	61	56	50	39	38	29	33	35	31	34
Employment (thousands)											
Total <12 hours a week	769	787	784	786	816	808	832	829	863	866	863
of whom: women	537	545	547	554	566	558	557	555	577	577	558
Total >12 hours a week	6185	6384	6587	6768	6917	7021	7035	7001	6919	6918	7074
Full-time/part-time											
Total Full-time (>35 hrs/week)	4443	4540	4599	4695	4694	4727	4597	4507	4424	4359	4450
Part-time (12-34 hours)	1741	1843	1988	2073	2223	2294	2438	2494	2495	2560	2624
12-19 hours	418	450	525	545	578	603	638	636	642	662	674
20-34 hours	1323	1393	1463	1528	1645	1691	1800	1858	1853	1898	1950
Wo- Full-time (>35 hrs/week)	974	1019	1019	1061	1039	1051	995	985	963	946	988
men Part-time (12-34 hours)	1340	1426	1531	1602	1717	1786	1882	1921	1936	1991	2045
12-19 hours	347	380	432	448	478	505	529	535	535	551	565
20-34 hours	993	1046	1099	1154	1239	1281	1353	1386	1401	1440	1480
Employment status¹											
Total Employee	5456	5628	5850	6042	6116	6256	6256	6213	6116	6103	6195
regular	4911	5055	5244	5464	5584	5753	5774	5754	5646	5590	5631
flexible	545	573	606	578	532	503	482	459	471	513	564
Self-employed	728	755	737	726	801	765	779	788	802	816	879
Wo- Employee	2093	2211	2324	2429	2499	2594	2640	2662	2652	2692	2763
men regular	1798	1895	1988	2112	2225	2337	2397	2446	2426	2441	2482
flexible	295	316	337	317	273	256	243	217	226	251	281
Self-employed	222	233	226	234	257	243	238	243	247	245	271
Temporary employment											
Total FTEs ² (thousands)	147	169	180	217	219	218	-	-	-	-	-
as % of employment in FTEs	2.5%	2.8%	2.9%	3.4%	3.4%	3.4%	-	-	-	-	-
Total hours (millions)	-	-	-	-	-	453	424	387	393	441	518
as % of employment in hours	-	-	-	-	-	4.5%	4.2%	3.9%	4.0%	4.5%	5.2%

¹ Regular = employees who have a permanent contract (or a fixed-term contract for at least one year) for a fixed number of hrs.

Flexible = employees who do not have a contract for a fixed number of hours or who have a fixed-term contract for less than one year without the promise of a permanent contract.

² In FTEs of 2080 hours a year. From 1999, estimated on the basis of index figures from StatLine.

When the Flexibility and Security Act (Wet flexibiliteit en zekerheid) came into force in 1999, temporary employment was extended to comprise both employees working for an employment agency (SBI 74501) and temporary employees on secondment (SBI 74502). The Flexibility and Security Act introduced four categories of employment contract: contracts for hours worked until the work agreed upon is finished (categories 1 and 2),

employment contracts for a fixed period of time (at least 3 months) or permanent employment contracts with an employment agency (categories 3 and 4). Until 1999 only temporary employment in SBI 74501 was measured, where about 90% of the employment contracts fall into categories 1 and 2. Temporary employment in SBI 74502 consists mainly of contracts in categories 3 and 4.

Registered unemployment = persons without work >12 hours a week, registered at CWI and available for such work.

Placement rate = number of filled registered vacancies as a % of number of new registered vacancies.

Employment = persons in employment (incl. the self-employed) with a working week of 12 hours or more.

Source: Ministry of Social Affairs and Employment, based on Statistics Netherlands, Enquete beroepsbevolking (Labour Force Survey) and the Centre for Work and Income's Nieuwsflits and Jaarverslag CWI (monthly and annual reports, respectively)

ARTICLE 1 PARA. 2

*"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:
to protect effectively the right of the worker to earn his living in an occupation freely entered upon;"*

[The Appendix to the Charter stipulates that this provision shall not be interpreted as prohibiting or authorising any union security clause or practice.]

*Elimination of all forms of discrimination in employment*Question A

Please give information concerning legislative or other measures taken to ensure the elimination of all discrimination in employment which might be based on sex, social or national origin, political opinion, religion, race, colour or age and to promote effectively equal opportunities in seeking employment and in taking up an occupation.⁸

Please give information in this respect on existing sanctions and remedies in cases of discrimination in employment.

Answer A

The *Equal Treatment Act Evaluation Act* (Evaluatiewet Algemene wet gelijke behandeling) entered into force on 1 November 2005. This legislation provides for an extension of the Equal Treatment Commission's powers to allow it to institute investigations on its own initiative. Until that date, the Commission had only been able to conduct a sector-wide investigation on its own initiative. However, this required so much manpower that the Commission conducted few such investigations. Since 1 November 2005 it has been able to conduct its own investigations in individual companies.

The *Equal Treatment (Men and Women) Act* (Wet gelijke behandeling van mannen en vrouwen) was amended in October 2006 to implement Directive 2002/73/EC (Directive of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions). As a result of this amendment, the legislation now expressly states that harassment on the grounds of sex and sexual harassment constitute a form of banned discrimination, thus extending the protection that the law offers employees. The Act also states that any person who has rejected or has submitted to harassment, sexual or otherwise, may not suffer any disadvantage. The legislation puts employees in a slightly stronger legal position as regards harassment and sexual harassment, in a number of ways:

- the burden of proof in cases of harassment and sexual harassment has been shifted;
- there is now extra scope for applying to the Equal Treatment Commission;
- employees are now afforded more protection from disadvantage because they have invoked the Act.

⁸ The term "discrimination" in this Form is to be understood in terms of ILO Convention No. 111 (Discrimination, Employment, Occupations), Article 1.

National Employment Discrimination Monitor

The Government has set up a National Employment Discrimination Monitor with the aim of identifying the nature and scale of discrimination in matters of employment on the grounds of race, religion and nationality, and any trends over time.

The first monitor was launched on 15 December 2006. The results will be presented in November 2007 and discussed with the social partners. A further study will be conducted in 2008. The second monitor will be launched at the end of 2008, and will report in October 2009.

The aim is to publish a monitoring report on discrimination on the above grounds in all aspects of employment (recruitment/selection, promotion, termination of employment, etc.) every two years.

Nationwide system of anti-discrimination services

A nationwide system of anti-discrimination services will be introduced. The Government has earmarked 6 million euros a year for this purpose. The core tasks of these services will be registration, education and a complaints procedure (in the form of mediation and support with bringing legal action). This will provide anti-discrimination services at local level, making them more accessible to victims.

Question B

Please indicate any methods adopted:

- a. to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the above policy of non-discrimination;
- b. to ensure the acceptance and observance of the above policy through educational efforts.

Answer B

Activities targeting social partners

During the 'Work Summit' (regular talks between the Government and the social partners) on 1 December 2005 the Government and social partners agreed measures concerning ethnic minority labour market participation. It was agreed, among other things, that the Labour Foundation (Stichting van de Arbeid) would draft recommendations for parties to collective labour agreements and companies concerning companies' policy on ethnic minorities and on combating discrimination (recruitment and selection, unfair treatment, diversity policy, role of employee participation bodies).

Partly as a result of the December 2005 Work Summit, the Labour Foundation set out recommendations on behalf of the social partners designed to raise the labour market participation rate among ethnic minorities, and to promote mutual understanding and respect on the work floor. The recommendations concern the following:

- strengthening social cohesion on the work floor
- multicultural personnel policies
- recruitment and selection, and unfair treatment
- working and learning programmes.

The Labour Foundation also updated the Declaration on Equal Treatment in Employment.

During the Work Summit, employers' and employees' organisations also agreed to contribute to the National Employment Discrimination Monitor.

Psychological tests

The Ministry of Social Affairs and Employment has made a grant available to the National Bureau against Racial Discrimination (Landelijk Bureau ter bestrijding van Rassendiscriminatie, LBR) to develop a procedure, in collaboration with the Netherlands Institute of Psychologists, for the use of psychological tests on ethnic minority candidates. The procedure will be designed to promote equal treatment of ethnic minority candidates so that they enjoy equal opportunities when applying for a job or promotion in cases where psychological tests and/or structured questionnaires are used as part of the application procedure. The National Bureau and the Institute have also been asked to draw up a list of suitable psychological tests for use by ethnic minorities, with recommendations for further improvements in their use. Two publications have now been produced setting out guidelines for the use of psychological tests on ethnic minority candidates and listing suitable tests and recommendations.

The guidelines for the use of psychological tests on ethnic minority candidates were submitted to the House of Representatives on 23 August 2005.

Vacancies for all ages

The 'Vacancies for All Ages' project was launched in 2005, and was followed up in both 2006 and 2007. The project involved scanning job vacancies advertised in national and regional newspapers and on the internet for (unsubstantiated) age limits. Employers or agencies that had advertised job vacancies with age limits were sent a letter and information on the Equal Treatment in Employment (Age Discrimination) Act (Wet gelijke behandeling op grond van leeftijd, WGBL). With the help of the Equal Treatment Commission, the project produced an age discrimination checklist which employers can consult to answer any questions they may have about age differentiation in job advertisements.

'Discrimination? Not against me!' awareness-raising campaign

On 1 December 2004 the campaign 'Discrimination? Not against me!' succeeded the 'Discrimination? Call now!' campaign. 80% of the campaign's funding comes from the European Union Action Programme to combat discrimination (art. 13 EC Treaty), with the remaining funding coming from the Ministry of the Interior and Kingdom Affairs, the Ministry of Health, Welfare and Sport, the Ministry of Justice (responsible for Immigration and Integration) and the Ministry of Social Affairs and Employment. The new campaign is being implemented by a number of organisations, among them the National Bureau against Racial Discrimination, and is targeted mainly at people who are at risk of discrimination and unfair treatment. They are offered information on how to minimise the impact of discrimination in their daily lives and how to cope with both deliberate and unintentional discrimination. The campaign also targets the institutional setting in which discriminatory behaviour can occur. A brochure containing practical advice on how to deal with discrimination has been published. The first copy was presented to the State Secretary for Social Affairs and Employment on 31 January 2006. A reader advising organisations on how to tackle discrimination has also been published.

Equal treatment training pack for works councils

Works councils also play a role in tackling discrimination. To fulfil this role adequately, they need support in the form of information on how to draw up policies on minorities and the tools they can use to implement it. The Ministry of Social Affairs and Employment therefore commissioned an equal treatment training pack for works councils in 2003. This ready-made course teaches works council members how to incorporate the subject of equal treatment into the work of the council in a practical and workable way. The training pack was broadly

distributed to training institutes and works council trainers and advisors. The Ministry had the pack updated and redistributed in 2006.

Question C

Please indicate the guarantees, including applicable sanctions and remedies, which prevent any discrimination in regard to members of workers' organisations at the time of engagement, promotion or dismissal.

Answer C

No new developments, see pages 18 and 19 of the 18th report.

Prohibition of forced labour

Question D

Please indicate whether any form of forced or compulsory labour is authorised or tolerated.⁹

Question E

If so, please describe the nature and scope of any such labour and indicate the extent to which recourse has been had thereto during the reference period.

Question F

Please indicate what measures are being taken to secure the complete abolition of forced or compulsory labour and the date by which these measures will be fully implemented.

Answer D/E/F

Prohibition of forced or compulsory labour

The Netherlands does not have any form of forced or compulsory labour.

Question G

Please give information concerning the conditions under which work is carried out in prison establishments.

Answer G

Work carried out in prison establishments

Productive work is an important element of the Dutch prison system. The work done in many prisons has reached a high level of professionalism and covers a wide range of areas. For instance, inmates make products from concrete, wood, textiles and metal. Examples include furniture and graphic products. Other activities include spray painting and powder coating. Often a prisoner will already have some experience when he or she is put to work in a particular area, but in some prisons training is also available. Many products are commissioned by companies.

Under section 47 of the Custodial Institutions Act (*Penitentiare beginselenwet*), a prisoner is entitled to participate in the work on offer in a custodial institution. One of the prison governor's tasks is to ensure that there is work available for prisoners. Convicted offenders must participate in the work. Prisoners who have not been convicted, such as those in pre-trial detention, are under no obligation to work. Convicted prisoners who refuse to work are generally given a disciplinary punishment, e.g. a few days confined to their own cell or an isolation cell. There is no obligation to work on officially recognised public holidays or on

⁹ The term "forced or compulsory labour" in this Form is to be understood in terms of ILO Convention No. 29 (Forced Labour), Article 2.

Sundays. Prisoners may be allowed to refrain from working on a day other than Sunday for religious reasons. Inmates over the age of 65 are not required to work.

The hours of work of prisoners in a closed prison are set out in the prison regulations. In most closed facilities prisoners work half-days, i.e. an average of 20 hours a week.

The remuneration of prisoners is regulated in the Prisoners' Pay Regulations (Regeling arbeidsloon gedetineerden). The pay system comprises a basic wage of EUR 0.64 an hour, plus any bonuses paid for performing special duties or for certain types of work.

Prisoners in a minimum security facility receive pay based on the gross minimum wage for 23-year-olds, currently EUR 111.36 a week. A sum is deducted for board and lodging in the prison. Prisoners who work for a private employer as part of a penal programme receive the full stipulated wage and are regarded as being able to support themselves. Participants in penal programmes who earn no or insufficient income from work are entitled to claim social assistance.

The sums mentioned above are laid down by law. Under section 47, subsection 5 of the Custodial Institutions Act, the Minister of Justice establishes rules regarding the breakdown and amount of pay. The hourly wage of EUR 0.64 is laid down in the Prisoners' Pay Regulations (Annex 7).

The 1998 Working Conditions Act (*Arbeidsomstandighedenwet*) and the Working Conditions Decree (*Arbeidsomstandighedenbesluit*), which lay down rules governing conditions in all places in the Netherlands where work is performed, are also in principle applicable to prisons. The Working Conditions Decree stipulates special rules for custodial institutions. Under these rules, prisoners are permitted to refuse work on the grounds of inadequate working conditions (i.e. serious threat to safety).

ARTICLE 1 PARA. 3

*"With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:
to establish or maintain free employment services for all workers;"*

Question A

Please describe the operation of free employment services available in your country, indicating the age, sex and nature of occupation of persons placed by them in employment and persons seeking employment.

Please indicate as far as possible the number of vacancies, the placement rate and the duration of unemployment of persons placed.

Answer A

No new developments, see page 19 of the 18th report.
See Table 9 for updated figures (where available).

Table 9. Jobseekers and placements registered by the public employment service (CWI), 1998-2006

	1998	1999	2000	2001	2002	2003	2004	2005	2006
	<i>thousands</i>								
New jobseekers	963	911	862	704	749	900	742	669	505
employed	278	280	277	202	195	262	-	-	-
unemployed	684	631	585	503	554	638	-	-	-
aged 15-22	174	152	129	104	107	135	-	-	-
aged 23-64	510	479	456	399	447	502	-	-	-
Total number of jobseekers (end of year)	863	730	629	582	634	769	770	717	606
employed	205	175	138	93	87	90	78	46	51
unemployed	658	555	491	489	547	679	692	671	554
long-term unemployed	386	327	293	261	272	339	376	-	366
ethnic minorities	156	140	132	141	154	179	170	-	-
women	322	280	251	246	267	327	339	342	289
aged 15-22	63	49	41	40	46	56	50	38	25
phase 1	198	144	122	113	136	164	134	109	71
phase 2	62	39	32	36	49	81	130	143	125
phase 3	120	102	88	95	119	159	189	207	185
phase 4	229	220	198	192	190	210	191	178	152
phase (as yet) unknown	49	50	51	53	55	65	48	35	22
Placements	212	204	141	81	50	63	82	91	105
employed	53	53	43	20	-	-	-	-	-
unemployed	159	150	98	60	-	-	-	-	-
long-term unemployed	55	52	31	4	-	-	-	-	-
ethnic minorities	26	28	20	27	-	-	-	-	-
women	76	72	48	17	-	-	-	-	-
aged 15-22	45	38	22	9	-	-	24	-	31
phase 1	83	62	43	50	50	63	-	-	-
phase 2	27	30	17	2	-	-	-	-	-
phase 3	32	42	26	3	-	-	-	-	-
phase 4	5	5	4	1	-	-	-	-	-
phase (as yet) unknown	11	12	8	4	-	-	-	-	-
of which: placed after programme	42	67	40	5	-	-	-	-	-
employed	6	12	8	1	-	-	-	-	-
unemployed	36	56	33	3	-	-	-	-	-
long-term unemployed	20	35	21	-	-	-	-	-	-
ethnic minorities	9	14	9	-	-	-	-	-	-
women	17	27	17	-	-	-	-	-	-
aged 15-22	8	7	3	-	-	-	-	-	-
phase 1	7	0	0	-	-	-	-	-	-
phase 2	13	23	13	-	-	-	-	-	-
phase 3	15	32	20	-	-	-	-	-	-
phase 4	1	0	0	-	-	-	-	-	-
phase (as yet) unknown	0	0	0	-	-	-	-	-	-
% placed after programme	20%	33%	29%	6%	-	-	-	-	-
employed	12%	22%	18%	6%	-	-	-	-	-
unemployed	23%	37%	33%	5%	-	-	-	-	-
long-term unemployed	36%	67%	68%	-	-	-	-	-	-
ethnic minorities	35%	52%	44%	-	-	-	-	-	-
women	22%	37%	35%	-	-	-	-	-	-
aged 15-22	18%	18%	15%	-	-	-	-	-	-
phase 1	8%	0%	0%	-	-	-	-	-	-
phase 2	48%	77%	76%	-	-	-	-	-	-
phase 3	49%	78%	76%	-	-	-	-	-	-
phase 4	16%	3%	6%	-	-	-	-	-	-

Question B

Please describe the organisation of public employment services in your country indicating the accompanying measures for the unemployed, and where appropriate, the steps taken to revise the geographical distribution of local and regional employment centres and to redeploy resources when the changing patterns of economic activity and of population so warrant.

Question C

If both public and private free employment services exist in your country, please describe the steps taken to co-ordinate such services, and to determine the conditions governing the operation of private employment agencies.

Question D

Please indicate whether and how the participation of representatives of employers and workers in the organisation and operation of the employment services and in the development of employment services policy is provided for.

Question E

Please indicate what legislation or administrative guarantees are provided to ensure that these services are available to all.

Answers B to E

No new developments, see pages 19-21 of the 18th report.

General question from the European Committee of Social Rights

c. Article 1§2 – Right to Private Life

To provide the Committee with sufficient information to determine whether this balance is maintained, States party are invited to include in their next report information allowing the Committee to assess how employees' individual dignity and freedom are protected by legislation or through case law of courts from interference in their private or personal lives that might be associated with or result from the employment relationship (see §§ 13 – 21 above, comments on Article 1§2).

Answer

One example or aspect of the right to privacy is the protection of email confidentiality. The right to privacy is enshrined in the Constitution. Article 13 of the Dutch Constitution protects the privacy of correspondence, the telephone and telegraph. The Netherlands has no specific provisions relating to checks on the email correspondence of employees. Article 7:660 of the Civil Code does however stipulate that an employer is entitled to issue instructions concerning the performance of work and to take measures to promote order in the company. This power in principle gives an employer the right to issue instructions concerning the use of email and the internet in his company. However, this authority is limited by the said right to privacy and the confidentiality of the employee's communications, and is also affected by the standards of proper conduct on the part of employers and employees laid down in article 7:611 of the Civil Code. The literature and case law suggest the following picture.

An employment relationship implies that an employee relinquishes certain claims to, for example, respect for his privacy and his right of confidentiality of communications. However, he does not relinquish all these claims. Even during working hours, an employee must be able to maintain relations with others, including by means of communication without the interference of the employer. An employee therefore has the right to limited use of

communications facilities in the workplace. He must however take into account the interests of his employer. The employer can entirely prevent or limit certain types of email correspondence – such as emails of an insulting, violent or sexist nature, or emails that may damage the company or which contain company secrets – by means of system or network security. Employers may draw up a code of conduct that makes clear to employees the extent to which they are permitted to conduct personal email correspondence, as well as the permitted content of that correspondence and any attachments. Such a code of conduct can strengthen the employer's position to some extent in the event of termination of contract.

Retroactive checks by the employer may infringe the employee's right to privacy, though some employer interests may justify such checks. If the employer wishes to check certain email practices on the part of employees by means of an employee monitoring system, he will need the assent of the works council. For example, suspected abuse or fraud may be a reason to monitor an employee's use of email. Such monitoring must however meet the requirements of proportionality and subsidiarity, and the employee must in principle be aware of the fact before monitoring takes place. Employees must keep any such monitoring to a minimum in terms of its duration, frequency, intensity and the number of individuals being monitored. Employers with questions regarding the possibility of regulating and checking their employees' email correspondence often turn to the Data Protection Authority, which has published a report on the subject ('Goed werken in netwerken').

Questions from the European Committee of Social Rights

paragraph 1

Question 1

The Committee notes from the report that another important change in labour market policy is the shift from encouraging labour demand to stimulating labour supply. Committee also notes that under the new Work and Social Assistance Act (WWB) which was introduced in 2004 the municipalities are given an increased role in reforming the labour market which puts them in a better position to decide which instruments are needed to get unemployed and inactive people into employment. Committee wishes to be informed about the implementation of this Act over the next reference period.

Answer 1

Purchasing and implementation of programmes

When the Work and Income Implementation Structure (SUWI) was introduced many local authorities began buying in reintegration programmes. They generally purchased entire programmes from just one, or a limited number of, reintegration agencies. The agencies themselves would usually manage the programmes, making a diagnosis and using it as a basis for designing the programme. Since 1 January 2006 local authorities have had more opportunity to manage the process themselves. Before then, they were obliged to contract out a large proportion of their reintegration activities.

Result now key

The introduction of the Work and Social Assistance Act has placed more emphasis on results, prompting local authorities to take a more critical look at the services of reintegration agencies. Local authorities were generally dissatisfied with the results they achieved. Many also had the feeling they were losing their grip on their clients. In recent years, there has therefore been a shift in the contracting out of reintegration programmes by local authorities.

More control for client managers

The introduction of the new legislation has also caused changes in the purchasing of reintegration services. Programmes are now shorter, and local authorities are increasingly purchasing modules rather than entire programmes. If it turns out that a job can be found for a client after only one module, he or she will be helped back into work. In the past local authorities had less control over their clients' programmes, which were managed by the reintegration agencies. Local authorities are now taking more and more control back into their own hands. This has allowed them to reassess at the end of each module what the appropriate next step would be. The fact that they are increasingly conducting the initial diagnosis themselves also helps in this process. Control was a key issue for client managers, as shown by an internet survey which found that half of respondents said that the issue of more control for client managers had been a focus of much attention in 2006. The survey also showed that three-quarters of respondents felt that consultants should spend more time guiding their clients back into work. Local authorities were pleased with the abolition of compulsive tendering, which had given them more control. They frequently manage project activities themselves, or develop programmes not offered by the market, such as language programmes, or specific programmes for homeless people.

Some local authorities approach reintegration in the same way as they did prior to the introduction of the Work and Social Assistance Act. These are authorities that either already managed reintegration themselves, or began buying in programmes immediately before or during the introduction of the legislation. These authorities are generally locked into a contract for the purchase of entire programmes, though most are keen to purchase modules and thus assume more of the management role themselves in the future.

As part of their stronger management role in reintegration, more and more local authorities are mediating between clients and employers, as a result of their dissatisfaction with the results achieved by reintegration agencies. Several reasons were cited for this. Firstly, local authorities say that they know the local labour market better than the agencies. They also have more influence over local employers, to whom they may award grants or contracts (contract compliance).

More customisation

The increase in the control exercised by client managers as a result of modular purchasing should, the local authorities hope, lead to more customisation, providing clients with better support and thus helping them into work more quickly. The internet survey reaffirmed this, with 82% of respondents stating that the Work and Social Assistance Act had led to more customised services for clients. Interviews also showed that consultants believe that they need to provide more tailor-made services. The interviews also revealed, incidentally, that many client councils feel that clients have too little input into their own programmes. Several pinpointed this as an area for improvement, emphasising that programmes need to be better suited to clients' personal situation.

Content of programmes

Programmes have not only become shorter, their content has also changed. Initially, many programmes included a work component. They have also become more intensive, taking 32 hours a week, spent partly at work and partly acquiring job application or social skills. At the time of the previous survey, barely any training was included. Now there seems to be a growing focus on this element. Youngsters with no basic qualification are obliged to combine working and learning, as a basic qualification is the only way to escape benefit dependence in the long term. Local authorities are also increasingly arranging training for other groups (always in combination with work and/or a guarantee of work). This is partly because they are

now turning their attention to people who have been on benefits for longer, who often do not have the qualifications to take up a job immediately. They include lone parents who for a long time have not been obliged to seek work. Furthermore, the labour market is demanding more and more highly qualified staff. As a result, the length of programmes is expected to rise again in the future. Most will involve a combination of working and learning, preferably with a guarantee of a job at the end.

More insight into client list

Effective purchasing requires knowledge of one's client list. The survey found that since the introduction of the Work and Social Assistance Act local authorities have been turning their attention to this matter. Over half (61%) of respondents said they now had more insight into their client list. According to almost two-thirds of respondents, they currently have enough information. However, the effects of this approach are not yet measurable.

Greater focus on sustainability

The goal of most local authorities is to help benefit claimants into work as quickly as possible. But most local authorities are now also focusing increasingly on the sustainability of placements, as evidenced by the growth in training, and in after-care. Some local authorities also believe that temporary jobs found via employment agencies can help ensure claimants get off and stay off benefits. After all, it is better for someone to hold several temporary jobs and then leave the benefits system permanently than to remain on benefits with no work experience (because no sustainable jobs are available).

Generally acceptable work

The Work and Social Assistance Act obliges social assistance claimants to accept any offer of generally acceptable work. Under the Social Assistance Act, they were obliged to accept suitable work. All local authorities are actually applying this principle, which has impacted particularly on the better educated, who can now be forced to accept work below the level to which they are accustomed. The principle of generally acceptable work has also allowed many local authorities to introduce the Work First concept.

Policy instruments

This section sets out information on the instruments that local authorities use for reintegration and activation, looking first at the Work First concept. Social activation and new-style subsidised jobs are then examined.

Work First

Most local authorities use Work First or a similar instrument. The Work and Social Assistance Act has boosted the development of this concept, according to the authorities themselves. This is probably largely down to the financial incentive in the legislation. Another important condition for the introduction of Work First is that anyone can be forced to accept generally acceptable work.

There are many different forms of Work First, and WF programmes can vary in duration from a few weeks to many months. The time involved each week and the actual activities in the programme also vary. In most cases, this instrument is used to restrict the number of new claimants, and also serves as a diagnostic tool or reintegration instrument. Typically, a Work First programme will involve clients spending part of their time working and/or applying for jobs.

Many local authorities have noticed that many new claimants withdraw their claim when asked to participate in a Work First programme in return. Some authorities would like to know more about why this is so, and are investigating the matter.

Social activation

The previous evaluation of the Work and Social Assistance Act identified three groups of local authorities: those who have deliberately chosen not to use social activation any longer, those who want to use it but have not yet done so and those who want to use social activation and actually succeed in doing so. These three groups were found again in the most recent study.

In most local authorities (49%) there has been no change in the use of social activation programmes in response to the Work and Social Assistance Act. The local authorities contacted did however say they expected to use this instrument more in the future. After all, they are now dealing increasingly with groups who have been out of work for longer and are more difficult to place. The introduction of the new legislation has altered the content of social activation programmes, as the goal is now work rather than income. It therefore comes as no surprise that the emphasis has shifted increasingly towards helping clients into work. In the internet survey, 62% of local authorities confirmed this to be the case.

New-style subsidised jobs

After the abolition of the Jobseekers Employment Act (Wet inschakeling werkzoekenden, WIW) and the Entry-level and Step-up Jobs Decree (Besluit I/D-banen), local authorities began to seek other ways of helping social assistance claimants acquire work experience. This has resulted in new forms of subsidised work.

Goal

The idea behind these jobs is to help people move on to regular jobs in the labour market. Subsidised jobs are also used to activate people who have been out of work for a long time and are difficult to place, in an attempt to help them participate in society. However, the ultimate goal is always to help them back into the labour market. Unlike the old forms of subsidised labour, local authorities no longer see these jobs as a final destination. The old subsidised jobs often were in effect. The major difference now is that the person is now subsidised rather than the job. This is expected to prompt a shift in focus towards individual potential, and away from the need to fill a particular subsidised position. Time will tell whether these jobs really do help people back into regular work.

Means

Most local authorities offer one or more forms of subsidised labour. Jobs differ in terms of work, duration, target group and funding. Examples include participation jobs, work experience placements and step-up jobs, lasting anything from six months to several years. The survey found that 41% of local authorities have taken advantage of the opportunity to introduce subsidised jobs lasting two years or longer (including any extensions). The work may be relatively simple, taking the form of sheltered employment or a job with a conventional employer. Funding systems also vary widely. Clients may be placed in regular jobs in either the for-profit or non-profit sector. They may be taken on directly by the employer, in which case funding comes in the form of subsidised wage costs. Clients may be employed by a reintegration agency which seconded them to another employer, or work under contract to the local authority. Many different variations came to light in the study. Coaching of clients also took many different forms. Sometimes it was contracted out to a reintegration agency, in other cases it was the responsibility of the employer or of the local authority.

Question 2

Unemployment among ethnic minorities in 2003 was nearly three times higher than among ethnic Dutch people. The Committee notes from the report that at the end of 2003 65% of the active population was in work, compared with just 49% of the ethnic minority population. However, the Committee acknowledges the efforts of both CWIs (Centres for Work and Income) and UWM (Employee Insurance Schemes) in 2004 to reintegrate ethnic minorities. They have both pledged in their annual plans for 2005 to devote special attention to ethnic minority jobseekers. Currently the Ethnic Minority Promotion Programme and the Employment of Minorities Act are being implemented. The Committee wishes to be informed about the results of these efforts.

Answer 2

Under the Employment of Minorities (Promotion) Act (SAMEN), all companies with more than 35 staff were obliged to report annually on the number of ethnic minority staff they employ (compared with regional target figures) and on their policy on achieving proportionate labour market participation by ethnic minorities. Although the number of companies producing an annual report under the legislation increased each year, the Act never enjoyed full compliance. After the temporary legislation was extended for a further two years in 2002, it was not extended further when it expired in 2004, since the government felt it was not producing the desired results.

Building on the legislation, this year a National Diversity Management Network (DIV) will be established. The DIV will support employers in pursuing a policy of diversity. It will be an activating centre of expertise that both encourages diversity management and brings together the knowledge, competencies and experience present in the network, on both the supply and demand sides. This should guarantee that the knowledge of diversity policy developed in projects over the past few years becomes part of mainstream government policy.

*paragraph 2*Question 3

The Committee seeks information on how the concept of indirect discrimination has been interpreted by the courts in relation to the legislation as well as information on how the concept of age discrimination has been interpreted.

Answer 3

Most victims of discrimination do not take their case to court, turning instead to the Equal Treatment Commission. In response to requests from petitioners, the Commission examines whether the employer's actions contravene equal treatment legislation. Though the Commission's findings are not legally binding, they are adhered to in a majority of cases. The Commission findings below illustrate how it interprets the concept of indirect discrimination.

Indirect discrimination on the grounds of race

The petitioner was born in the Netherlands and has Dutch nationality. His parents are of Moroccan origin. The petitioner applied online for a job in telemarketing with the respondent, a company that sells home security systems. During the application procedure the petitioner was required to sell a security system by telephone as part of a role-playing exercise. Having initially informed him that his application was successful, the respondent subsequently rejected the petitioner's job application.

The petitioner is of the opinion that, in rejecting his application, the respondent discriminated against him on the grounds of race. In support of his claim, the petitioner stated that he was

informed that he could not be taken on because of his foreign accent.

Setting a language requirement, in the sense that applicants are required to speak Dutch without a foreign accent, does not constitute direct discrimination on the grounds of race. The requirement does not relate directly to an individual's origins. There are after all individuals of foreign origin who speak Dutch with no trace of an accent, just as there are individuals of Dutch origin who speak Dutch with a foreign accent.

It is however a generally known fact that the requirement to speak Dutch without a foreign accent will affect disproportionately more people of non-Dutch origin than of Dutch origin. The requirement that applicants must speak Dutch without a foreign accent therefore constitutes indirect discrimination on the grounds of race.

Under the Equal Treatment Act, the ban on discrimination does not apply with regard to indirect discrimination that is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

As to the question of whether the indirect discrimination is justified, the answer is as follows. The party said to have discriminated must submit facts justifying its actions. Whether there is objective justification must be examined on a case-by-case basis, assessing the aim of the discrimination and the means used to achieve it. The aim must be legitimate in the sense that it must be based on compelling reasons or meet an actual need. A legitimate aim may not be discriminatory in purpose, and the means used must be appropriate and necessary. A means is regarded as appropriate if it is suitable for achieving the aim, and as necessary if the aim cannot be achieved via a means that does not lead to discrimination, is at least less objectionable and is proportionate to the aim. Only if all these conditions are met can indirect discrimination be deemed not to contravene equal treatment legislation.

To justify its indirect discrimination on grounds of race, the respondent claimed that people who speak Dutch with a foreign accent sell less than people who speak Dutch without a foreign accent. The Commission has concluded that the respondent has no factual basis for this claim. The Commission is therefore of the opinion that this position cannot serve to justify the indirect discrimination on the grounds of race.

On the basis of the above, the Commission concludes that the respondent indirectly discriminated against the petitioner on the grounds of race, and that this discrimination is not objectively justified. The respondent's actions towards the petitioner therefore contravened the Equal Treatment Act.

Finding 2004-143 of the Equal Treatment Commission

The Equal Treatment in Employment (Age Discrimination) Act (Wet gelijke behandeling op grond van leeftijd) prohibits discrimination on the grounds of age in employment, the liberal professions and vocational education. Both direct and indirect discrimination on the grounds of age are prohibited, unless there is objective justification. This means that there must be a legitimate aim behind the discrimination and the means of achieving it must be appropriate and necessary. Instructions to discriminate on the grounds of age and harassment on the grounds of age are also banned. The findings below illustrate how courts are expected to deal with discrimination on the grounds of age, which in this case is regarded as objectively justified.

Discrimination on the grounds of age

The fact that a redundancy programme discriminates by age means that, in principle, it

contravenes the Equal Treatment in Employment (Age Discrimination) Act, which prohibits discrimination on the grounds of age in terms and conditions of employment and in termination of employment. Under section 7 of the Act, however, the ban does not apply if discrimination is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

According to the employer, the redundancy programme has two aims: a) to minimise the financial impact of the reorganisation on the employer and remaining staff and b) to protect the income of employees who are losing their jobs, within the financial constraints of the operation. The programme was drawn up on the principle that younger employees should be provided with a temporary income, and that older employees above all require protection of their income until retirement age. The purpose of this principle, which is based on solidarity, is not discriminatory and is realistic. It is after all a generally known fact that employees aged 55 and over have difficulty in finding a new job. The purpose of the arrangement is therefore legitimate, as are the means chosen: a supplementation scheme in the form of a lump sum.

Finally, the court must assess whether, as the employee has claimed, the discrimination by age in the redundancy programme is unnecessary in light of the aim. He would have found the matter less objectionable had he been offered an option. However, the employee overlooks the fact that employees under 55 were not offered any option either and that if everyone had been able to choose between the court formula and the supplementation scheme, the redundancy programme would not have been viable, if only because of the extra costs involved.

Since there appears to be no reasonable alternative that would allow the justifiable aims of the redundancy programme to be achieved in a more satisfactory way, the means chosen may be regarded as both suitable and necessary. They are at any rate proportionate to the aim.

Arnhem District Court, limited jurisdiction sector, 15 January 2007, LJN: AZ6237

Question 4

The legislation provides for an alteration of the burden of proof in favour of a plaintiff in all discrimination cases.

The Committee asks for updated information on legal remedies for victims of discrimination, access to the courts and other bodies.

Answer 4

The Equal Treatment Commission recently published its 2006 annual report, which reveals that it received 694 requests for findings in 2006, as opposed to 621 in the year before, as well as over 2300 requests for information. Most requests concerned discrimination on the grounds of age, followed by race, disability or chronic illness, sex and religion. Over two-thirds of requests related to work, followed by supply of goods and services. The Commission issued findings in 261 cases (2005: 245). In 46% it found that there had been some form of banned discrimination. The Commission was struck by the rise in the number of cases in which its findings were implemented in a structural way: from 44% in 2005 to 60% in 2006. Some examples:

- policy was changed in response to cases of discrimination on grounds of disability/chronic illness (findings 2006-118, 137 and 197);
- the wage structure was altered and the female employee's pay changed in her favour (finding 2006-97);
- the board of a number of primary schools changed its policy so that would-be trainees are now no longer rejected because they wear a headscarf (2006-144).

Question 5

The Committee recalls that under Article 1§2 of the Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of pre defined upper limits to compensation that may be awarded not to be in conformity with the Charter as in certain cases these may preclude damages from being awarded which are commensurate with the loss suffered and not sufficiently dissuasive. The Committee asks whether there are limits to the amount of compensation that may be awarded in discrimination cases, including in cases where the employee is dismissed as a result of making a claim of discrimination.

Answer 5

There are no limits to the amount of compensation awarded in cases of discrimination.

Question 6

Prohibition on forced labour: Prison work: The Committee invites the Government to reply to its question in the General Introduction on this issue:

The Committee has already previously considered the general issue of prison labour.

However, for an accurate examination and assessment of the situation, it requires certain specific items of information:

- Can a prisoner be required to work (irrespective of consent)?
 - A. For a private undertaking / enterprise?
 - i) within the prison?
 - ii) outside the prison?
 - B. For a public/ state undertaking?
 - i) within the prison?
 - ii) outside the prison?
- What types of work may a prisoner be obliged to perform?
- What are the conditions of employment and how are they determined?

Answers 6A and B

After conviction a prisoner is obliged to perform work within the prison. Whether the order for work comes from a private or public-sector organisation has no impact on the prisoner. In fact, a great deal of work in prisons is commissioned by private companies. A prisoner who is prepared and motivated to work outside the prison can be placed in a very limited-security prison where he can work on the premises, doing gardening for example, or outside the prison for a private or public-sector organisation.

– **What types of work may a prisoner be obliged to perform?**

This question has been answered at G, but for the sake of completeness, the information is given again below:

Productive work is an important element of the Dutch prison system. The work done in many prisons has reached a high level of professionalism and covers a wide range of areas. For instance, inmates make products from concrete, wood, textiles and metal. Examples include furniture and graphic products. Other activities include spray painting and powder coating. Often a prisoner will already have some experience when he or she is put to work in a particular area, but some prisons also offer training. Many products are commissioned by companies.

– **What are the conditions of employment and how are they determined?**

This question has been answered at G, but for the sake of completeness, the information is given again below:

The 1998 Working Conditions Act (*Arbeidsomstandighedenwet*) and the Working Conditions Decree (*Arbeidsomstandighedenbesluit*), which lay down rules governing conditions in all places in the Netherlands where work is performed, are also in principle applicable to prisons. The Working Conditions Decree stipulates special rules for custodial institutions. Under these rules, prisoners are permitted to refuse work on the grounds of inadequate working conditions (i.e. serious threat to safety).

Question 7

The Committee invites the Government to reply to its question in the General Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment:

In view of the measures currently being taken by European states to combat terrorism, the Committee asks whether any legislation aimed at terrorism (or incitement to terrorism) explicitly precludes persons from taking up certain employment and, if so, under what circumstances such legislation is applied.

Answer 7

The existing terrorism-related legislation in the Netherlands does not include any reference to preclusion from taking up certain employment. Related legislative measures are however being prepared. A bill currently in preparation would extend the scope for excluding individuals from certain employment. No details are available as yet.

paragraph 3

Question 8

As regards the municipalities, the Work and Social Assistance Act (WWB) stipulates that at least 70% of the reintegration budget should be contracted out in the private market and with the remaining 30% municipalities can reintegrate clients themselves. The Committee notes from the report that during the initial period following the implementation of WWB most of the budget is still spent on traditional measures. The Committee would like to receive more information in the next report on the phasing out of traditional measures and on the number of reintegration services contracted out by the municipalities.

Answer 8

The goal of the new Work and Social Assistance Act (*Wet Werk en Bijstand*, WWB) is to encourage local authorities to promote work instead of benefits. All Dutch citizens are expected to provide for themselves by earning their own income through work. If this is not possible *and* no other provisions are available, the government is obliged to help them find work. Furthermore, when a person is unable to provide for their own upkeep through work, the government must provide income support.

The optimum realisation of this objective ('Work rather than benefits') depends on the system working as effectively as possible. This was not always the case in the past, so the system had to be changed. There was no incentive for local authorities to limit the number of households receiving benefits and get people back into work.

What was needed was greater policy freedom for local authorities, full control of social assistance budgeting, fewer implementation regulations and a reduction in the administrative burden. It was hoped that, in time, this would lead to fewer new claimants and more people leaving the welfare system to take up work. The new system was expected to reduce the number of households on benefits by about 5% in two years (depending on the state of the economy).

Greater policy freedom and full control of social assistance budgeting

Under the new system, local authorities have greater policy freedom. This has implications for funding mechanisms. Local authorities have therefore been given full financial responsibility for implementing the legislation. Full control over budgeting, together with control over the allocation of resources to help people find work, are designed to maximise the incentives for local authorities to help every able person to find work as efficiently as possible. The funding system is based on the principle that the government covers risks linked to the economic situation while risks related to local policy are covered by the local authorities.

The government provides local authorities with a fixed budget consisting of an ‘income portion’ and a ‘work portion’. The budget for the income portion changes in line with economic developments. Resources that are left over from the work portion are returned to the government. Local authorities may use funds from the income portion as they see fit.

The government divides the macro budget (income portion) between the local authorities. The budget is divided in a way that ensures local authorities have sufficient resources to meet their obligations vis-à-vis benefits. The system works well for local authorities that implement their benefits policy effectively. Local authorities with inefficient implementation practices are motivated to improve.

The government also sets a macro budget for the work portion. This macro budget is earmarked for financing reintegration activities, which the local authorities initiate with a view to fulfilling their reintegration task. The basic concept is that local authorities with a more difficult reintegration task should receive a proportionately higher level of resources.

Fewer implementation regulations

Under the new system, local authorities can draft their own policy guidelines within the framework defined by national law. Detailed national implementation regulations have been abolished.

Reduced administrative burden

The Minister for Social Affairs and Employment is responsible for the functioning of the entire funding, legislation and implementation system. The Minister therefore needs information to enable him to:

- set the macro budget and divide it between the local authorities;
- assess the legitimacy of expenditure; and
- assess and be accountable to Parliament for the effectiveness of the system.

The information required by the Minister is derived from statistics,¹⁰ monitoring, investigations and reports from mayors and councillors.

Assessing the effectiveness of the system as a whole does not require information on how effective individual local authorities are. The effectiveness of individual local authorities must be assessed by the local council. The council now decides on policy issues and requires information to evaluate outcomes and manage policy implementation. This has reduced local authorities’ reporting obligations to central government (thereby reducing the administrative burden).

¹⁰ The main source of these statistics is Statistics Netherlands (Centraal Bureau voor de Statistiek, CBS).

Instruments

The main instruments local authorities have at their disposal for putting the ‘Work rather than benefits’ concept into practice are:

- *Activating people to reintegrate.* The Act is based on the principle of ‘generally acceptable work’ (rather than the concept of ‘suitable work’ used until 2004). The level of benefit paid is linked to the responsibility shown by the client and the extent to which obligations are met. This enables local authorities to correct undesirable client behaviour more rapidly. The local authority is required to provide tailored support: it is responsible for offering services to clients who are not able to find work by themselves and must provide balanced help for the various groups. The legislation operates on the principle that the shortest route to regular employment lies in exploiting the creativity, effectiveness and efficiency of the market. One example of this is the introduction of various ‘Work First’ projects, which has prevented a lot of unnecessary use of benefits. In fact most of the progress made by local authorities has been ‘at the gate’, rather than in guiding large numbers of clients into work.
- *Benefits.* The new legislation does not alter the current system of national standards and local authority payments that apply to general benefits. The Dutch system also provides for crisis payments (e.g. for living, studying or medical costs). The rules applying to entire categories of applicants have been abolished and benefit is now granted only on an individual basis (i.e. tailored). This makes it clear that income policy is a matter for the state. The law provides for an additional allowance for people who have received no more than the minimum income for a long period (five years or more) and have no prospect of finding work.
- *Combating fraud through prevention and sanctions.* Under the WWB, the obligation to recover expenditure in the event of fraud has been replaced by the power to do so, and the imposition of a fine or measure has been replaced by a reduction in benefit. The option of reducing the benefit paid to anyone displaying aggressive behaviour towards the local authority has also been introduced. Any proceeds go to the local authority. This is expected to encourage more effective enforcement.

The broad goal referred to above (‘Work rather than benefits’) is reflected in three specific goals:

- fewer new benefit claimants;
- a state-guaranteed minimum income for those who cannot work;
- greater outflow: people are encouraged to get off benefits and into work.

How have local authorities experienced the changes?

Greater policy freedom and full control over social assistance budgeting

In general, local authorities are enthusiastic about the WWB, especially the decentralisation aspect. In their view, responsibility now lies with the appropriate party: local authorities themselves. As a councillor in a large local authority said: “*The new system is good: if I’m going to be ‘taking the flak’, I also want to be able to steer the boat. If people complain to me about the national policy, I can only listen. But now, when they complain about local policy, I have the power to actually change things!*” Generally speaking the introduction of the WWB has led to a more businesslike culture among municipal social services. Tailor-made solutions to help clients back into work are now the order of the day.

The new system encourages local authorities to base their management practices on the volume of social assistance claims. The incentives are felt throughout the organisation, from top to bottom. Local authorities with a population of 40,000 or more, whose WWB budget is set using an objective distribution model, tend to feel the financial incentives directly. Local authorities faced with a potential or actual deficit in their income portion are also generally

inclined to pursue a new, more vigorous policy. For these local authorities, the deficit is a reason for 'pushing through' new policy, even though that may be hard for some parties to stomach. Local authorities with a surplus are more likely to indicate that they have plans to adjust their policy but do not feel the need for change in the short term.

Fewer implementation regulations

People are also positive about deregulation, especially its impact on the obligation to carry out reassessments. One social services manager said: "*We had to reopen every case. In 99.9% of cases this did not result in drastic changes, so we had to work hard for very little result. Now we can choose which cases we reopen by means of risk assessment and so on.*"

Reduced administrative burden

Local authorities have seen a shift in information provision from central government to local authorities. The demand for information within local authorities has changed. Social services and the municipal executive have a greater need for management information. Councils are also demanding more information. As one interviewed councillor and social services manager put it: "*Having to account to the local council is not a burden: I call it transparency.*" Councils have difficulty in controlling social services at a more detailed level.

Question 9

The Committee reiterates its request that more detailed and up-to data be provided in the next report on the actual placement rate for all services, such as CWIs, UWMs and local authorities.

Answer 9

See article 1, paragraph 3, answer A.

ARTICLE 9: THE RIGHT TO VOCATIONAL GUIDANCE

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

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;¹¹
- e. the measures in hand for improving the services;
- f. the details of special measures to assist disabled persons.

Answer A

Re f: The Expertisecentrum handicap + studie (expertise centre for reducing obstacles in higher education for students with a disability) has developed a career guidance test and job application training, particularly aimed at people with a functional impairment.

Otherwise no new developments (see pages 32 and 33 of the Netherlands' 19th report).

Question B

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

Answer B

- In collaboration with the Ministry of Education, Culture and Science, the Youth Unemployment Task Force (see question 1) has been working to improve educational and vocational guidance for the past year, culminating in the campaign *Kiezen moet je kunnen* (Everyone should have a choice). This multimedia communication campaign, which included a booklet containing six practical examples of vocational orientation, was targeted at pupils, schools (teachers, careers advisors, mentors and school managers) and parents. An evaluation of the campaign indicated that 96% of the participants (careers advisors and school managers) thought that it was a good way of focusing attention on the issue of educational and vocational guidance.
- In collaboration with the Ministry of Education, Culture and Science and other stakeholders, the Youth Unemployment Task Force has also launched the *Kom in het leerbedrijf* initiative, which offers young people the opportunity to spend a day in a certified training company to give them a realistic idea of what is involved in various occupations. This is an excellent way for schools and training companies to enlarge their network.

¹¹ 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!](#)

Question C

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

Answer C

- The websites www.opleidingenberoep.nl and www.studiekeuze.nl contain information about training and career options for students and anyone else who is interested. Training options can also be compared. The site is accessible free of charge and is updated on a regular basis.
- In 2006 several conferences on career planning and guidance were organised for people working in this field, with the aim of exchanging relevant professional experiences.

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.

Answer D

No reliable data is available in order to be able to answer the above questions in detail. The following general information can be provided, however:

- The annual block grant allocated to the regional training centres (ROCs) and specialist colleges includes €11.8 million for career planning and guidance, which has been increased by €2.5 million every year since 2005. The amount spent by these institutions on educational guidance is not accounted for separately, however.
- Sharing and disseminating knowledge is extremely important, which is why the Ministry of Education, Culture and Science also co-funded a study of the success factors in career planning and guidance carried out by the Vocational Education Platform.
- There are 31,662 full-time teaching posts (FTEs) in the adult and vocational education sector. One aspect of the teachers' job is to provide career guidance to their students. Most ROCs also have a careers advice centre that fulfils this function. No information is available about how exactly the aforementioned FTEs are deployed.

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.

Answer E

No new developments (see p. 34 of the Netherlands' 19th report).

ARTICLE 10: THE RIGHT TO VOCATIONAL TRAINING

ARTICLE 10 PARA. 1

"With a view to ensuring the effective exercise of the right to vocational training, the 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 those with disabilities¹², 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.

Answer A

Re A: *the rules laid down by legislation, collective agreements or carried out otherwise*

A new funding system in the form of personal budgets for disabled children was introduced into secondary vocational education on 1 January 2006. Under this scheme, schools receive extra funds for supporting disabled pupils assessed as having special needs.

A statutory "qualification requirement" for under-18s was introduced on 1 August 2007. After having completed compulsory education up to and including the school year in which they turn 16, pupils are required to continue learning until they obtain a basic qualification, up to the age of 18. One example of such a qualification is a level 2 certificate in secondary vocational education. A basic qualification can be obtained in full-time education (vocational training) or through a combination of working and learning (block or day release). This basic qualification ensures that people have a minimum level of education, enabling them to perform certain basic tasks.

Re B: *the total amount of public expenditure devoted to vocational training*

2006 expenditure (x € million)

Secondary vocational education (MBO)	2,751.3
Adult education	248.5
Centres of expertise	92.4
Specific stimulation measures	24.9
Technology centres	9.0
<i>Total</i>	3,126.1

¹² If your country has accepted Article 15, it is not necessary to describe the services for persons with disabilities here.

Re C: *the number of vocational and technical training institutions (at elementary and advanced levels)*

Number of educational institutions:

Regional training centres (ROCs)	44
Specialist colleges	13
Other	4
<i>Total</i>	61

Number of centres of expertise: 17

Re D: *the number of teachers in such schools in the last school year*

Personnel (FTEs x 1,000):

Management	0.4, of which 31% women and 77% over 50
Teachers	22.3, of which 43% women and 52% over 50
Other	14.2, of which 55% women and 36% over 50

Re E: *the number of pupils, full-time and part-time, in such schools in the last school year*

Learners (x 1,000):

Block or day release	129.4
Vocational training, full-time	322.6
Vocational training, part-time	14.0
<i>Total</i>	466.0

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.

Answer B

Personnel (FTEs x 1,000):

Management	31% women and 77% over 50
Teachers	43% women and 52% over 50
Other	55% women and 36% over 50

Learners:

Block or day release (BBL)	35% women, average age 25
Vocational training (BOL), full-time	47% women, average age 18
Vocational training (BOL), part-time	57% women, average age 32

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.¹³

Answer C

See the report on Article 9 of the Charter (p. 32 ff).

¹³ If your country has accepted Article 9, it is not necessary to describe these measures here.

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.

Answer D

No new developments (see p. 39 of the Netherlands' 19th report).

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.

Answer E

No new developments (see p. 39 of the Netherlands' 19th report).

ARTICLE 10 PARA. 2

*"With a view to ensuring the effective exercise of the right to vocational training, the 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.

Answer A

No new developments (see pp. 39-41 of the Netherlands' 19th report).

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.

Answer B

There are 129,400 people in block or day release schemes. This figure relates only to publicly funded places; the number of people taking part in privately funded courses is not known.

Question C

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

Answer C

No new developments (see p. 41 of the Netherlands' 19th report).

Question D

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

Answer D

Businesses receive funding through various channels for giving work placement opportunities to people in initial education:

- direct funding under the Salaries Tax and Social Insurance Contributions (Reduced Remittances) Act (businesses receive an allowance when they offer work placements to students in secondary vocational education (MBO));
- indirect funding, for example in the form of:
 - covering the costs of centres of expertise on vocational education, training and the labour market (€70 million per annum), which accredit work placement places and support businesses
 - project funding via the Economic Structure Enhancing Fund (FES): Reimbursement of the costs of further training for trainee supervisors in the companies concerned.

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.

Answer E

No new developments (see p. 41 of the Netherlands' 19th 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.

Answer F

No new developments (see p. 42 of the Netherlands' 19th report).

ARTICLE 10 PARA. 3

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

to provide or promote, as necessary:

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

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.

Answer A

The following supplements the information given in the Netherlands' 19th report (pages 42 and 43).

The Learning and Working Project Department mentioned in the Netherlands' 19th Report (see page 42) aims to give a boost to vocational training for workers and jobseekers and is adopting a three-pronged approach:

1. Dual courses combining learning and work experience

As of October 2006 arrangements have been made in cooperation agreements for a total of 23,117 dual courses, 32% of which had been set up by February 2007 (49% of the target 15,000). In April 2007 a new grant scheme was introduced with an additional target of 10,000 dual courses, to be achieved by 31 December 2008.

2. Training and employment helpdesks and EVC

As of October 2006 arrangements have been made in cooperation agreements for a total of 20,770 EVC programmes, 20% of which had been carried out by February 2007 (EVC is a system for the recognition of prior learning). Twenty regional training and employment helpdesks had also been set up by that date. In April 2007 a new grant scheme was introduced with an additional target of 20,000 EVC programmes, to be achieved by 31 December 2008.

3. Removal of obstacles, promotion and innovation

Here the aforementioned Learning and Working Project Department targets 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 advised the government early in 2007 on the best way to stimulate lifelong learning.
- The Department identifies successful training projects and transfers them to other regions or sectors. As of February 2007, 11 projects are in the process of being transferred.
- Fifty-seven Associate Degree Programmes (short programmes in higher education to meet the demand for shorter courses for people in employment) were approved in September 2006; 24 of these are already under way and the remaining 33 are due to start in September 2007.

Question B

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

Answer B

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.

Answer C

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 16.6% (2005) in the Netherlands, well over the European average. The Netherlands is therefore investing heavily in training. On the other hand, about 20-25% of the labour force still have no basic qualification (MBO level 2 = ISCED level 3), which means that less educated people are still not benefiting enough from the training opportunities available.

Otherwise see the Netherlands' 19th report, p. 43.

Question D

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

Answer D

No new developments (see p. 44 of the Netherlands' 19th report).

Question E

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

Answer E

No new developments (see p. 44 of the Netherlands' 19th report).

The following supplements the information given in the Netherlands' 19th report:

- The Ministry of Social Affairs and Employment has invested in the development and management of a website targeted at employers, and has 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 was collated and distributed nationwide in March 2006. Best practices have also been exchanged via the Ministry's *Gemeenteloket* website (a special helpdesk for local authorities) and the National Diversity Policy Network.
- As of June 2007 the Minister of Social Affairs and Employment is considering setting up a special task force to encourage women to resume employment or increase their weekly working hours.

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.

Answer F

No new developments (see p. 44 of the Netherlands' 19th report).

ARTICLE 10 PARA. 4

*"With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake;
to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;"*

Question

Please indicate the special measures taken to provide or promote the retraining and reintegration of long-term unemployed, including as far as possible information on the number of participants and the results achieved.

Answer

The Unemployment Insurance Act and training

Under section 72 of the Unemployment Insurance Act (WW), the Employee Insurance Agency (UWV) has the task of facilitating the return to work of:

- workers who are entitled to unemployment benefit;
- workers who can prove that their employment will terminate within four months and who, in the opinion of the Centre for Work and Income (CWI), can reasonably be assumed to be entitled to unemployment benefit.

The UWV contracts out reintegration services to private reintegration agencies, which ensures an individually tailored approach.

People who are registered unemployed can also choose to determine their own reintegration programme on the basis of an individual reintegration agreement. This gives unemployed benefit claimants control over their own reintegration and allows them to decide which instruments to use (e.g. job application training, job training, etc.). They can approach a reintegration agency of their own choosing and draw up a reintegration plan, either on their own or together with the agency. The UWV reviews the plan and purchases the reintegration services required from the agency with which an individual reintegration agreement has been concluded.

According to a client survey, more than 15% of the reintegration plans of people applying for an individual reintegration agreement include some form of job training. This kind of training tends to feature more often in individual reintegration programmes than in standard programmes.

In its capacity as an employer, the government has the same task of facilitating the return to work of public servants (section 72a of the Unemployment Insurance Act).

Workers who are entitled to unemployment benefit are also **entitled to support in returning to work** and to any facilities to help them get back to work deemed necessary by the UWV, or by the government in its capacity as employer (section 73 of the Unemployment Insurance Act).

If such workers are taking part or are planning to take part in training deemed necessary by the UWV, they retain entitlement to unemployment benefit for up to one year – in so far as entitlement does not cease earlier – and for up to two years in special cases.

Training is deemed necessary if:

- without it a worker cannot adequately exercise an occupation or perform a job;
- it leads to an occupation/job for which there is a demand;
- it does not chiefly involve performing productive work.

Unemployed workers who experience major problems finding work can receive support and guidance from a UWV reintegration counsellor.

The Work and Social Assistance Act and training

The Work and Social Assistance Act (WWB) offers local authorities a whole host of instruments to help people find work. This means that it can also be agreed that training is needed before an unemployed person can fulfil his or her obligation to accept work. Local authorities can formulate their own policy in this area, but this must be clearly specified in the reintegration regulations. Thus, training is a realistic option if it is expected to facilitate the return to work. It should be pointed out here that obtaining better qualifications is therefore never an end in itself, but rather a means of getting people back to work more quickly. Most

local authorities regard training that leads to a qualification as a useful instrument, provided it is used in a demand-driven way.

It is up to the local authority to decide whether training is necessary in individual cases; it is also able to offer solutions tailored to individual needs. It is in the local authority's interests to take full account of the individual's capabilities and previous training. Catering to personal preferences and ensuring candidates personal attention are important factors in successful reintegration. A proactive attitude on the part of benefit claimants in their dealings with their case manager and the reintegration agency is an important element in the ultimate choice of training programme. This means that the local authority has the discretion to decide, based on a claimant's personal situation, whether additional training is needed to enable the claimant to permanently leave the benefit system.

ARTICLE 10 PARA. 5

"With a view to ensuring the effective exercise of the right to vocational training, the 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.

Answer A

Students in secondary vocational education (MBO) who are under the age of 18 have not been required to pay fees since 1 August 2005.

MBO students aged 18 or over in full-time vocational training pay school fees. The fees for the coming school year (2007/2008) are €975 and are index-linked annually (€963 in 2006/2007).

MBO students aged 18 or over in full-time block or day release schemes pay course fees (about €200 per annum for level 1 and 2 courses and about €500 per annum for level 3 and 4 courses (2006/2007 school year)).

Students in full-time higher education pay tuition fees (€1,519 per annum in 2006/2007, index-linked annually).

Question B

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.). 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.

Answer B

Changes since the Netherlands' 19th report (p. 45 ff):

The available figures are shown below (changes due to index-linking).

New policies are to be introduced in higher education as of 1 September 2007:

- the tuition fee loan scheme, under which the full amount of tuition fees may be borrowed;
- the portability of higher education grants and loans to all countries in the world. The study programme in question must be of the same standard and level as Dutch higher education. Students wishing to qualify for portable financial assistance must have been resident in the Netherlands for at least three of the six years prior to commencing study abroad.

The portability of student finance in vocational education was expanded on 1 August 2007 and now includes all sectors in Germany and Flanders.

There have been several developments in the entitlement of foreign nationals. Since 15 March 2005 EU nationals who have lived in the Netherlands for five years or more have been entitled to full student finance. EU students who are not yet eligible for full student finance are entitled to an allowance towards their tuition fees. In MBO and higher education, the allowance until 1 September 2007 is 12 times the basic grant for students living at home. After 1 September 2007 the tuition fee loan scheme for higher education students will replace this. Non-EEA students are eligible for full student finance if they have the appropriate residence permit, i.e. either a permit issued to asylum seekers, a regular permanent residence permit or a temporary residence permit issued to people whose subsequent change from temporary to permanent status is considered a mere formality. The latter relates, for example, to a residence permit for the purpose of family reunification, adoption, etc. Residence permits issued for reasons of a temporary nature – such as study – do not give entitlement to financial assistance. This is not necessary in any case, as only people deemed to have sufficient means to support themselves may be granted a residence permit.

See also the arguments put forward earlier (pages 49 and 50 of the Netherlands' 19th report).

Date	Education	Living situation	Basic grant	Supplement . grant	Interest-bearing loan	Standard budget
1-9-2006	HE	Away from home	€248	€226	€492	€740
1-9-2006	HE	At home	€89	€207	€433	€562
1-8-2006	BOL	Away from home	€230	€311	€458	€688
1-8-2006	BOL	At home	€70	€293	€440	€510

HE = Higher education

BOL = Vocational training option, secondary vocational education

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.

Answer C

No new developments (see p. 47 of the Netherlands' 19th report).

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.

Answer D

The quality of practical training in the workplace is monitored by the Education Inspectorate. The Netherlands Court of Audit is currently conducting an audit to specifically examine the following questions:

- Do all parties involved contribute to the system in the manner expected of them?
- Are there sufficient practical training places at a suitable level for MBO students?
- Do the practical training places available meet the quality standards set?
- Do trainees in practical training places learn what they are supposed to learn?
- Are trainees properly supervised and is practical training in the workplace properly monitored?
- What interests do the various parties involved in practical training in the workplace have, and what influence does this have on the effectiveness of the system?
- What other factors explain problems in the system of practical training in the workplace?

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.

Answer E

Yes, with regard to student finance provisions. All students who fulfil the conditions are eligible for these provisions.

No new developments (see p. 47 of the Netherlands' 15th report).

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

ARTICLE 15 PARA. 1

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

to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or , where this is not possible, through specialised bodies, public or private;”

General

There have been no changes since the previous report.

With reference to the previous report, the following comments can be made:

- **page 64:**
 - There are currently about 870 private reintegration agencies; 29% have one employee, 46% between two and ten employees, 22% between 11 and 100 employees, and 3% more than 100 employees (Council for Work and Income survey, 2006).
 - More than two-thirds of the reintegration agencies offer their services regionally, the rest operate nationally.
 - Most focus on work-disabled people and sick employees.
 - One-third concentrate specifically on the long-term unemployed and people suffering from complaints such as burn-out or excessive stress.
 - One-quarter target people with back problems and/or RSI.

- **p. 65:**
 - Since 1 January 2004 people who are unfit for work or unemployed and in receipt of benefit have been entitled to an individual reintegration agreement. They can approach a reintegration agency of their own choosing and draw up a reintegration plan, either on their own or together with the agency. The UWV reviews the plan and purchases the reintegration services required on behalf of the client. A total of 770 of the 870 or so reintegration agencies in existence offer individual reintegration agreements. Of these, 74% have ten employees or fewer. The regional and local/national breakdown is more or less the same as for reintegration agencies overall. Most agencies offering individual reintegration agreements focus on sick employees and, to a slightly lesser extent, people who have been made redundant.

 - 2006 expenditure (2006 annual report of the Ministry of Social Affairs and Employment, p. 43)
 Expenditure on reintegration of people in receipt of incapacity benefit was EUR308 million in 2006, down EUR85 million compared with 2005. This includes an increase in the use of facilities provided for employees. In this regard, UWV mentions substantial use of interpreters for the deaf in the education sector. It also includes a one-off increase connected with modification of the job coach payment system. The cost item "Extra reintegration expenditure for claimants of incapacity benefit under the Invalidity Insurance (Young Disabled Persons) Act (Wet arbeidsongeschiktheidsvoorziening jonggehandicapten, WAJONG)" was used mainly to promote the reintegration of this target group by means of special projects and

experiments. The cost item "Other" mainly refers to current expenditure on no-risk policies and incapacity benefits paid out under the Disability (Reintegration) Act (Wet reïntegratie arbeidsgehandicapten, REA).

- Prospect of Work Committee + new principle underlying reintegration policy
The Prospect of Work Committee (CWP) completed its work early in 2007 and, as planned, has now been disbanded. Since the introduction of the Work and Income (Capacity for Work) Act (Wet werk en inkomen naar arbeidsvermogen, WIA) in 2006, it has been standard practice to look at what someone can do despite illness or disability, rather than what he/she cannot do. Two national campaigns were therefore launched in 2006 to help partially disabled people find employment: an information campaign about the new Act and a publicity campaign designed to create a more positive image of the target group. The latter is a joint initiative of the government, trade unions and employers' associations.

Question A

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

Answer A

To establish whether disabled pupils are eligible for special education or additional support in mainstream primary and secondary schools, their degree of disability and special needs must be determined by one of the independent committees, based at the regional expertise centres. The nationally established assessment criteria are laid down in the Personal Budget (Education) Decree (Besluit leerlingengebonden financiering).

By the end of 2006, 63,000 pupils assessed as having special needs were in special education, 27,000 of these in special secondary schools for pupils aged 12 and over. In addition, 27,000 special needs pupils receiving extra support (in the form of a personal budget that travels with them, i.e. is allocated to the school they attend) were attending mainstream schools, 18,000 in primary schools and 9,000 in secondary schools. Both figures have increased sharply in recent years.

Otherwise no new developments since the Netherlands' 19th report (pp. 61-66).

Question B

Please describe the measures taken to provide persons with disabilities with education, guidance and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private, and provide information on the following points:

- a. assessment of the skills of persons with disabilities and criteria used to assess the prospects of rehabilitation of persons with disabilities;
- b. organisation of education for persons with disabilities in ordinary schools and/or specialised schools (access, number of persons and establishments);
- c. organisation of vocational guidance for persons with disabilities (access, number of persons with disabilities receiving guidance through mainstream or specialist provision);
- d. organisation of vocational training (access, number of persons with disabilities receiving vocational training through mainstream or specialist provision);
- e. adjustment of the methods of vocational rehabilitation in accordance with the needs of the labour market;

- f. financial assistance available to persons with disabilities undertaking vocational rehabilitation.

Answer B

Re a: Primary/secondary education

The school must draw up an individual education plan for each pupil with a disability, based on the assessment of the child's special needs. This plan should include the following information: the child's starting level, the objectives of the child's education, the efforts to be made to achieve those objectives, agreements on keeping progress records, agreements on consultations between the school and the child's parents and agreements on evaluating the education plan.

Re b: See question A and the Netherlands' 19th report.

Additional comment: An evaluation of the special needs system in primary and secondary schools (2005) revealed a number of problems as regards access to mainstream education for children with disabilities. Parents often have to approach several mainstream schools before their child is allocated a place. Several aspects of the system for determining degree of disability and special needs could also be simplified. With a view to improving the situation, a programme was launched in 2005 with the aim of ensuring that children receive an appropriate education commensurate with their needs. One element of this is the introduction of the principle of a "duty of care", which means that the school to which a special needs pupil applies is required to find an appropriate place in the education system for that pupil. Special schools and mainstream schools will have to agree on the best education option for specific pupils. Based on existing arrangements, a comprehensive strategy must be devised to ensure cooperation and coordination between the various educational establishments. No pupil should be allowed to fall through the cracks. Following an experimental phase, the plan is to introduce the relevant statutory amendment by 1 August 2011.

Re c and d: Secondary vocational education

Number of pupils in secondary vocational education (MBO) applying for a personal budget, as of 31 December 2006:

Category 1	110
Category 2	337
Category 3	299
Category 4	912
Total	1,658

NB. There are no special schools offering secondary vocational education.

With regard to the other two points, there have been no changes since the Netherlands' 19th report.

Question C

Please specify whether the measures mentioned above are available to all persons with disabilities irrespective of age, the nature and origin of their disability.

Answer C

All children with disabilities have access to education in the Netherlands.

Question D

Please specify:

- a. the number and nature of the principal institutions giving general education, guidance and vocational training and the number of places available;
- b. the number of persons undergoing such training;
- c. the number of staff, their qualifications and the measures taken to ensure their expertise;
- d. the organisation of co-operation between general and specialised services.

Answer D

Re a: Primary/secondary education

The Netherlands has about 7,000 primary schools with a total of approximately 1,500,000 pupils, and some 650 secondary schools with about 911,000 pupils. There are also 323 special schools with around 63,000 pupils.

Secondary vocational education (MBO)

There are 61 institutions providing general secondary vocational education: 44 regional training centres, 13 specialist colleges and four institutes of higher professional education that offer part-time MBO courses. In addition, there are two MBO institutions for deaf people and 12 agricultural training centres that offer secondary vocational education courses in agricultural subjects. These courses are open to anyone with the right previous education. No minimum admission requirements apply for the level 1 and 2 courses. Adult and vocational education institutions, with the exception of institutions for the deaf, are entitled to special funding in the form of a personal budget for each disabled participant assessed as having special needs.

Re b: Primary/secondary education

In primary education there are 106,000 full-time jobs, including 86,000 teaching posts; in special education there are 18,000 full-time jobs, including 10,000 teaching posts (greater use of social workers, various therapists and remedial educationalists/psychologists); and in secondary education there are 84,000 full-time jobs, including 60,000 teaching posts.

Secondary vocational education

Information is not yet available, but is currently being gathered by means of the personal budget monitor. The data already available can be found in the table in the answer to question B, c and d.

Re c: Primary/secondary education

Mainstream schools must use part of their pupils' personal budgets for peripatetic supervision provided by special schools. The remaining budget may be used as the schools wish.

Secondary vocational education

In 2006, 22,300 FTEs – or 28,200 people – were employed as teachers in the adult and vocational education sector.¹⁴ In addition, 252 FTEs – or 600 people – worked as teachers via temporary employment agencies.¹⁵ The agricultural training centres employed 3,840 FTEs – or 4,530 people – as teachers.¹⁶

¹⁴ Source: Education, Culture and Science in the Netherlands: Facts and Figures 2002-2006

¹⁵ Source: www.aandachtsgroepen.nl

¹⁶ Source: Education, Culture and Science in the Netherlands: Facts and Figures 2002-2006

Standards of competence

The Education Professions Act (Wet op de beroepen in het onderwijs, BIO) stipulates that for someone to be appointed as a teacher, he/she must fulfil certain minimum quality requirements, known as standards of competence. Depending, for example, on the regional situation or the type of education involved, it may also be necessary to supplement these minimum requirements with other skills. Adult and vocational education institutions wishing to appoint teaching staff may therefore ask for additional qualifications and/or skills. Employers, in this case the competent authority of the adult and vocational education institutions, are also responsible for ensuring that teachers are able to maintain their professional competence.

Exception

The competent authority may wish to appoint someone who does not yet meet the standards of competence. In this case, the individual in question can be appointed via the “lateral-entry” route, but must obtain a certificate of education valid for teaching in the adult and vocational education sector within two years (provided for in section 7a (4) of the Higher Education and Research Act (Wet op het hoger onderwijs en wetenschappelijk onderzoek, WHW)). The institution’s competent authority, the individual in question and a teacher training college agree how this is to be achieved.

Re d: As stated in answer a, adult and vocational education institutions are entitled to special funding in the form of a personal budget for each disabled learner assessed as having special needs. It is compulsory to use part of this personal budget for peripatetic supervision. This kind of supervision – expert and tailored to the individual’s disability – cannot be provided by the institution itself and must, therefore, be purchased from a regional expertise centre or a special school. The institution must draw up an individual education plan for each disabled learner assessed as having special needs, setting down the agreements between itself and the learner concerning the support to be provided by the institution and the peripatetic supervision to be purchased. The institution then makes specific agreements on peripatetic supervision with a regional expertise centre or a special school.

ARTICLE 15 PARA. 2

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

to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;”

Question A

Please describe the measures taken to promote the employment of persons with disabilities in an ordinary working environment and in particular the measures concerning the placing of persons with disabilities; incentives for employers to hire persons with disabilities and, where appropriate, measures obliging employers to adjust working conditions. Please provide information on employment obligation for persons with disabilities. Please specify the measures to ensure the retention of persons with disabilities in employment (duty of

occupational redeployment for persons who become disabled following an accident at work or an occupational disease, ban on dismissal of workers because of their disability, obligation for employers to adjust working conditions, provision of support for persons with disabilities to start their own business, etc.).

Answer A

No new developments (see p. 66 of the Netherlands' 19th report).

Question B

Please indicate the number (or an approximation) of persons with disabilities who during the reference period found paid employment (whether in specialised institutions or not; in the public or private sector).

Answer B

No new developments (see p. 66 of the Netherlands' 19th report).

Question C

Please provide information on sheltered employment structures (type, capacity, pay rates for persons with disabilities working there). Please indicate the opportunities which exist to transfer from sheltered employment to open employment.

Answer C

No new developments (see p. 66 of the Netherlands' 19th report).

ARTICLE 15 PARA. 3

*“With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:
to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”*

Question A

Please indicate how national policy promotes the independence, the full integration and participation in the life of the community of persons with disabilities. Please describe in particular how this applies to children with disabilities.

Answer A

There are more than one and a half million people with a physical, mental or sensory disability living in the Netherlands. All of them are entitled to play a full part in society. This is the principle underlying the policy in relation to people with a disability. Their rights, obligations and responsibilities are the same as those of all Dutch people. People with a disability must be encouraged to function independently. They must be able to make use of general services wherever possible. Extra services are needed only when this is not possible. The principles underlying government policy on people with disabilities are enshrined in law.

The aim of the Social Support Act (Wet maatschappelijke ondersteuning, WMO) is for everyone to be able to participate in society. Under this Act, people who need help in their daily lives can get support from their local authority in the form of home help, a wheelchair or

adaptations to their home. The Act also provides for individuals such as informal carers and voluntary workers who help people with disabilities, and includes support measures to prevent people subsequently needing more extreme forms of help.

To enable people with disabilities to participate in society, it is important to guarantee their right to equal treatment. The Equal Treatment (Disabled and Chronically Ill People) Act (Wet gelijke behandeling op grond van handicap of chronische ziekte, WGBH/CZ) prohibits unjustified discrimination against disabled people on the basis of their disability. This includes refusing them a service or refusing to carry out adaptations. The Act covers the areas of employment and vocational training and will gradually also be extended to public transport.

Question B

Please describe:

- a. the measures taken to overcome barriers to communication and mobility;
- b. the measures taken to enable access to transport, housing, cultural activities and leisure for persons with disabilities.

Answer B

a. Communication

For the benefit of people who are visually impaired, new government websites must meet certain requirements. They must conform with all current government web guidelines, supplemented with the requirements for “Constructing a website in accordance with the Web Content Accessibility Guidelines (WCAG 1.0) of the W3C”. A simple test can be carried out to determine whether a website fulfils all the necessary requirements. For the benefit of the hearing impaired, the national public broadcasting network and the major national commercial broadcasting companies are required to subtitle some of their Dutch-language television programmes.

Mobility

People with a chronic illness or disability and elderly people whose mobility is demonstrably restricted by their illness or disability are eligible for a “personal kilometre budget”, which they can use to pay for a taxi to take them to destinations outside the town in which they live. The local authority provides social and recreational transport over shorter distances. The public transport system in the Netherlands will in due course also be fully accessible to people with disabilities.

b. Access to transport

At present it is possible for people with a functional impairment to travel by train to and from a large number of stations. Travel information is already available via various channels, e.g. the internet, textphone and SMS text messaging services, and there are many new measures in the pipeline, such as a colour-coded system for departure schedules and the “speaking departure schedule” at railway stations (InfoPlus project). Various measures are currently being implemented to improve access to stations and platforms (e.g. tactile guide strips for the blind, anti-slip floors and adapted ticket machines). Railway staff are on hand at many stations to assist passengers who are unable to travel independently. People with a medically certified functional impairment are entitled to have a companion travel with them free of charge. It has been agreed that urban and regional transport will be accessible to all by 2010.

Access to housing

Since 2003 it has been required by law that new buildings should be generically adaptable and accessible in order to minimise the need for specific adaptation subsequently. Moreover, technically speaking, housing can be adapted more easily because many of the most common

alterations that people make have already been taken into account at the construction stage. If specific work is necessary, the local authority can provide financial assistance.

Access to cultural activities and leisure

Under the Social Support Act, local authorities are required to fulfil their responsibility to help disabled people take part in these activities.

Question C

Please indicate how organisations representing or assisting persons with disabilities are consulted or involved in the formulation and implementation of the social integration policies for persons with disabilities.

Answer C

The government provides financial assistance to help set up and maintain patient organisations and pressure groups (including disabled groups) to enable them to act as a mouthpiece for their members. Consultation with these organisations takes place on a more or less regular basis. Local authorities must allow citizens to have a say in matters such as participation and integration and must ensure that the various groups are represented in these civic participation bodies.

ARTICLE 18: THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER CONTRACTING PARTIES

ARTICLE 18 PARA. 1

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake: to apply existing regulations in a spirit of liberality;"

Question A

How is this paragraph observed in your country, both with regard to wage-earners and with regard to others?

Answer A

Following the publication of the 17th report, the Netherlands introduced a number of measures to facilitate access to the labour market for foreign workers:

1. Artists who perform only occasionally (no more than four weeks in a 13-week period) do not require a work permit.
2. For some categories of musicians residing in the Netherlands for longer periods (especially higher-earning job groups), job vacancies do not need to be reported and the criterion that no priority-status labour supply must be available is not applied.
3. No work permit is required for short-term instruction activities stemming from the delivery of tools, machinery, equipment or software.
4. Employers do not need a work permit for "knowledge migrants" or members of their family. Knowledge migrants are highly skilled foreign workers and include scientific researchers, PhD students, teachers in higher education, doctors training to be specialists and employees earning a minimum gross annual salary of €34,130 (employees under the age of 30) or €46,541 (employees over 30). Employers wishing to make use of this scheme must first register with the Immigration and Naturalisation Service (IND). The IND aims to reach a decision on applications concerning knowledge migrants within two weeks.
5. A work permit is not required for individuals performing work in the Netherlands in the form of cross-border services on behalf of service providers based in an EU/EEA country or Switzerland, where these providers work with people from countries in which the principle of freedom of movement for workers is not applicable. A notification obligation applies instead, meaning that service providers must provide the Centre for Work and Income (CWI) with information about the nature of the work before it commences.
6. Victims or witnesses of human trafficking do not require a work permit during their stay in the Netherlands in connection with the criminal investigation of the matter.
7. In application of Directive 2003/109/EC, access to the labour market has been made easier for foreign nationals from non-EU countries who have resided legally in an EU member state for at least five years, and have subsequently resided legally in the Netherlands for at least one year.
8. Students studying in the Netherlands do not require a work permit to do work placement.
9. On the basis of agreements between the Netherlands and Serbia, Serbian trainees on inland vessels may be issued a work permit for longer than the usual maximum period of a year.
10. On 1 May 2007 the Netherlands lifted all restrictions on workers from the eight Central and Eastern European countries. A transition period of two years applies for Bulgaria and Romania.

11. No work permit is required for asylum seekers undertaking a training course in the Netherlands and doing work placement in this context.

The following measures are envisaged in the second half of 2007:

12. A work permit may be granted to professional athletes after as well as before the start of the season; no work permit is required to take part in trial training sessions. This already applied to professional football, but is to be extended to all sports.
13. For the clergy, job vacancies do not need to be reported and the criterion that no priority-status labour supply must be available is not applied.
14. Asylum seekers awaiting a decision on their asylum application may work for 24 weeks a year instead of the current 12 weeks.
15. The period of time during which foreign students may look for a highly skilled job (i.e. "knowledge migrant" level) after they have completed their studies in the Netherlands is to be increased from three months to a year.

Question B

Please indicate the number of permits granted compared with the number of applications made.

Answer B

The number of work permits granted compared with the number of applications made has risen in the past few years.

	2003	2004	2005	2006
Applications	44,726	50,604	52,536	79,499
Work permits granted	38,036	44,113	46,114	74,056
Percentage of permits granted	85%	87%	88%	93%

Question C

Please state whether your country applies restrictions to the right to engage in a gainful occupation by nationals of other states and if so, please mention the grounds.

Answer C

No restrictions apply for nationals of EEA countries, as the principle of freedom of movement for workers is applicable in their case. Workers from Bulgaria and Romania are required to have a work permit, but may work in the Netherlands on a self-employed basis. Under the Foreign Nationals (Employment) Act (WAV), workers from countries other than those mentioned above must have a work permit (see p. 81 of the Netherlands' 17th report).

ARTICLE 18 PARA. 2

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake: to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;"

Question A

Please describe the formalities which must be observed by nationals of the other Contracting Parties and the members of their families or by their employers, with regard to their residence in the country and the exercise of an occupation, whether they are seeking paid employment or wish to engage as self-employed, distinguishing between wage-earners or salaried employees, self-employed traders or craftsmen, heads of agricultural or non-agricultural concerns, various professions.

Please state what derogations have been made to the rules normally applicable and with regard to what categories of persons.

Answer A

Knowledge migrants from all countries and EU-based service providers providing cross-border services enjoy more flexible access to the Dutch labour market and a simplified procedure applies (see p. 1, under 4 and 5).

Question B

Please indicate what chancery dues or other charges are payable by foreign workers or their employers.

Answer B

No charges are payable by foreign workers or their employers in connection with performing work in the Netherlands.

Question C

Please indicate the steps taken to simplify the formalities described in Question A and to reduce the charges referred to in Question B.

Answer C

The Netherlands is currently looking at ways of simplifying procedures, for example by creating a “one-stop shop” for employers.

ARTICLE 18 PARA. 3

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake: to liberalise, individually or collectively, regulations governing the employment of foreign workers;"

Question A

Please specify whether, and if so under which conditions, a foreign worker may:

- a. change his place of occupation;
- b. change his occupation;
- c. claim the renewal of the permit.

Answer A

a+b. Supplementary to the Netherlands' 17th report (p. 83), the following applies to knowledge migrants. A work permit is no longer required for knowledge migrants (see answer A, under 4). In principle, they may work for any employer, provided the employer in question has registered with the Immigration and Naturalisation Service (IND) and fulfils the salary payment requirements. The employer is required to inform the IND when the employment relationship ends.

c. No new developments (see p. 83 of the Netherlands' 17th report).

Question B

Please describe the situation of the holder of a work permit if he loses or gives up his job while the permit is still valid.

Answer B

A work permit is granted for specific activities performed for a specific employer. If a foreign worker changes jobs, the new employer must apply for a new work permit. The rules for knowledge migrants are more flexible, in that they may work for any employer who has registered with the IND.

Question C

Please indicate the other steps taken to apply this provision of the Charter.

Answer C

See p. 1.

ARTICLE 18 PARA. 4

*"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:
the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties."*

Please indicate whether there are any restrictions or special conditions affecting the right of such persons to leave the country for this reason and, if so, what the regulations are.

Answer

No new developments (see p. 83 of the Netherlands' 17th report).

Negative conclusion of the European Committee of Social Rights

paragraph 3

The Committee concludes that the situation in the Netherlands is not in conformity with Article 18§3 of the Charter on the ground that the regulations governing the access of nationals of State Parties not being members of the European Union or the European Economic Area to the national labour market remain restrictive.

Comment

The Foreign Nationals (Employment) Act (WAV) is one of the instruments governing the Dutch labour market. The basic principle is that as many inhabitants of the Netherlands as possible should be in employment (including people who are not of Dutch nationality) and that priority should be given to jobseekers living in the Netherlands when filling job vacancies. In line with the Netherlands' obligations under the Charter, workers from EEA countries have free access to the Dutch labour market, with the exception of Bulgarians and Romanians (see p. 1).

The Netherlands' policy has been made less restrictive in the past few years. The Foreign Nationals (Employment) Act introduced many measures to facilitate access to the labour

market and simplify procedures, not only for EU nationals, but also for nationals of other countries. See pages 1 and 2 for a summary.

Questions from the European Committee of Social Rights

paragraph 1

Question 1

The report provides statistics on the number of work permits granted and refused between 2000 and 2002 to nationals of the different Contracting Parties which are not members of the European Union or Parties to the European Economic Area. Whereas in 1999, 90% of applications resulted in the granting of a work permit, a figure that remained relatively stable in 2000 (86%) and 2001 (88%), the ratio declined to 78% in 2002. The Committee wishes to receive the Government's comments on this development in the next report as well as updated figures on the refusal rates for first time and renewal work permit applications by nationals of Contracting Parties not being members of the European Union or Parties to the European Economic Area.

Answer 1

The ratio of the number of work permits granted to the number of applications made increased to 93% in 2006.

The tables below show the number of work permits refused and granted, broken down by nationality. At the moment it is not possible to break the information down into first-time applications and renewal applications.

Number of work permits refused

Report date: 29 January 2007 (CWI)

Activity	Nationality	2006	2005	2004	2003
	Total	5,443	6,422	6,491	6,690
	ABKHAZIAN		1	1	1
	AFGHAN	32	69	159	304
	ALBANIAN	2	7	6	8
	ALGERIAN	2	6	9	14
	AMERICAN	62	71	83	91
	ANGOLAN	26	56	85	174
	ARGENTINIAN	6	7	16	16
	ARMENIAN	14	19	14	43
	AUSTRALIAN	17	19	30	38
	AZERBAIJANI	11	31	39	103
	BAHAMIAN			1	
	BASOTHO (LESOTHO)			2	1
	BELARUSIAN	11	5	13	10
	BELIZIAN		1	1	1
	BENGALI	8	13	11	8
	BENINESE			8	3
	BOLIVIAN	1	1		1
	BOSNIAN	8	15	32	46
	BOTSWANAN	2			
	BRAZILIAN	12	10	21	16
	BRITISH (GUYANA)				1
	BRITISH (HONG KONG)		1	7	6
	BULGARIAN	100	68	92	137

BURKINESE	1	2		1
BURUNDIAN	11	12	9	27
CAMBODIAN			1	
CAMEROON	43	48	55	48
CANADIAN	100	34	21	38
CAPE VERDEAN	28	3	20	4
CHADIAN		1	1	2
CHILEAN	4	3	7	19
CHINESE	408	672	606	569
COLOMBIAN	7	5	8	9
CONGOLESE (CONGO)	6	8	27	46
CROATIAN	7	42	7	33
CUBAN	2	12	3	6
CYPRIOT			1	
CZECH	133	263	253	267
DOMINICAN			1	2
DOMINICAN REP.	2	1	1	3
ECUADORIAN		4	5	2
EGYPTIAN	11	10	18	30
ERITREAN	5	4	6	15
ESTONIAN	9	12	10	27
ETHIOPIAN	9	8	11	19
FILIPINO	17	14	25	46
GABONESE			1	
GAMBIAN	1	1	1	
GEORGIAN	2	10	7	10
GHANAIAN	8	12	7	13
GUATEMALAN	1		1	
GUINEA-BISSAUAN				1
GUINEAN	13	19	42	100
GUYANESE			1	
HONDURAN			1	1
HUNGARIAN	104	164	226	229
INDIAN	57	71	54	94
INDONESIAN	69	134	109	110
IRANIAN	27	46	62	154
IRAQI	53	125	245	345
ISRAELI	15	17	25	24
IVORIAN		11	10	7
JAPANESE	15	42	47	48
JORDANIAN			2	3
KAZAKHSTANI	3	7	5	7
KENYAN	12	5	3	5
KUWAITI	1			
KYRGYZSTANI	3	1	4	7
LATVIAN	10	10	24	3
LEBANESE	6	10	7	6
LIBERIAN	9	30	22	14
LIBYAN	6	1	6	11
LITHUANIAN	37	112	109	16
MACEDONIAN	5	11	7	13
MALAYSIAN	5	7	3	8

MALIAN				1
MALTESE				1
MAURETANIAN		1	2	1
MAURITIAN			1	9
MEXICAN	13	10	6	6
MOLDAVIAN	3	7	8	5
MONGOLIAN	7	2	7	11
MOROCCAN	55	62	88	80
MYANMARESE		4	3	3
NAMIBIAN		1		1
NEPALESE	34	18	4	11
NEW ZEALAND	4	2	3	12
NIGERIAN	10	18	43	59
NIGERIEN	3	2	13	20
NORTH KOREAN		3	1	3
OMANI		1		
PAKISTANI	42	20	9	17
PALESTINIAN				3
PANAMANIAN		1		1
PARAGUAYAN		1		
PERUVIAN	6	6	2	4
POLISH	2,905	2,547	1,975	853
QATARI			2	
ROMANIAN	125	260	190	247
RUSSIAN	63	58	81	102
RWANDAN		1	12	16
SALVADOREAN		2	1	1
SAUDI ARABIAN	1	3		2
SENEGALESE			1	1
SERBIAN				1
SIERRA LEONEAN	9	30	99	178
SINGAPOREAN	5	3	5	5
SLOVAKIAN	152	211	241	130
SLOVENIAN	6	8	5	9
SOMALI	7	8	19	58
SOUTH AFRICAN	21	29	26	34
SOUTH KOREAN	8	7	41	14
SRI LANKAN	8	9	14	37
STATELESS	7	16	33	39
SUDANESE	9	18	60	157
SURINAMESE	57	93	104	104
SYRIAN	9	25	56	89
TAIWANESE	7	17	11	9
TAJK		1		6
TANZANIAN	2	3	4	8
THAI	18	16	4	8
TOGOLESE		6	20	28
TUNISIAN	4	2	3	2
TURKISH	119	281	281	441
UGANDAN	3	2	8	3
UKRAINIAN	45	38	42	52
UNKNOWN	24	52	61	110
URUGUAYAN		1		1

UZBEK	6		7	5
VENEZUELAN	3	5	8	7
VIETNAMESE	20	40	35	38
YEMENI		4	4	3
YUGOSLAVIAN	32	47	62	113
ZAIRIAN (CONGOLESE)	6	13	24	54
ZAMBIAN	1		2	2
ZIMBABWEAN	5	3	3	11

Number of work permits granted

Report date: 29 January 2007 (CWI)

Activity	Nationality	2006	2005	2004	2003
	Total	74,056	46,114	44,113	38,036
	ABKHAZIAN	6	2	5	1
	AFGHAN	64	163	556	1,010
	ALBANIAN	16	32	22	28
	ALGERIAN	4	20	26	45
	AMERICAN	1,178	1,234	2,024	2,564
	ANGOLAN	65	170	428	754
	ANTIGUAN/BARBUDAN			1	
	ARGENTINIAN	47	59	65	74
	ARMENIAN	31	42	82	156
	AUSTRALIAN	149	145	300	324
	AUSTRIAN	1			
	AZERBAIJANI	39	77	167	301
	BAHAMIAN				1
	BARBADIAN		2	4	2
	BASOTHO (LESOTHO)	3	3	2	1
	BELARUSIAN	73	81	109	184
	BELIZIAN		5	1	4
	BENGALI	24	20	21	34
	BENINESE	7	9	24	26
	BHUTANESE	4	1	1	3
	BOLIVIAN	5	6	9	10
	BOSNIAN	59	74	57	92
	BOTSWANAN	1	1		
	BRAZILIAN	179	184	204	176
	BRITISH (ANGUILLA)				1
	BRITISH (GUYANA)		1		
	BRITISH (HONG KONG)	9	15	16	44
	BRITISH (ISLE OF MAN)		1	1	
	BRUNEIAN	1	3	3	4
	BULGARIAN	739	544	400	381
	BURKINESE	17	5	5	10
	BURUNDIAN	70	76	65	190
	CAMBODIAN				7
	CAMEROON	163	228	251	322
	CANADIAN	259	400	446	406
	CAPE VERDEAN	11	8	8	22

CENTRAL AFRICAN	2			
CHADIAN		0	0	7
CHILEAN	14	28	54	16
CHINESE	2,536	2,494	2,401	2,248
COLOMBIAN	71	79	74	87
COMORAN		0	0	2
CONGOLESE (CONGO)	30	59	110	159
COSTA RICAN	1	6	8	8
CROATIAN	103	140	113	142
CUBAN	29	14	46	45
CYPRIOT			1	1
CZECH	1,402	1,161	1,455	967
DJIBOUTIAN				1
DOMINICAN		1	1	4
DOMINICAN REP.	2	1	3	6
ECUADORIAN	17	12	18	21
EGYPTIAN	41	37	46	56
EMIRATE		3	4	3
EQUATORIAL GUINEAN				2
ERITREAN	23	29	37	40
ESTONIAN	36	32	37	50
ETHIOPIAN	27	39	55	87
FILIPINO	153	133	140	128
FINNISH	1			
GABONESE	1		4	6
GAMBIAN	3	5	4	2
GEORGIAN	18	24	30	54
GHANAIAN	48	49	78	78
GRENADIAN		0	1	1
GUATEMALAN	2	5	5	2
GUINEA-BISSAUAN	1	1	2	7
GUINEAN	29	69	203	370
GUYANESE			1	
HAITIAN		1	1	2
HONDURAN	2	2	1	2
HUNGARIAN	633	646	1,080	953
INDIAN	1,572	1,279	1,050	845
INDONESIAN	569	557	578	870
IRANIAN	167	165	250	469
IRAQI	195	260	663	786
ISRAELI	86	121	154	186
IVORIAN	19	60	74	54
JAMAICAN	2	1	19	25
JAPANESE	683	768	823	1,204
JORDANIAN	10	14	17	32
KAZAKHSTANI	23	44	56	77
KENYAN	34	29	41	58
KUWAITI	9	16	4	7
KYRGYZSTANI	7	12	16	23
LAOTIAN		1	1	
LATVIAN	171	61	73	48
LEBANESE	22	14	24	37
LIBERIAN	62	120	123	79

LIBYAN	7	8	24	27
LITHUANIAN	346	378	301	213
MACEDONIAN	30	39	66	59
MALAGASY (MADAGASCAR)			3	
MALAWIAN	3	3	2	2
MALAYSIAN	72	71	70	98
MALDIVIAN	1	2		
MALIAN	4	5	6	17
MALTESE		1	3	9
MAURETANIAN	1	3	6	14
MAURITIAN	2	2	4	10
MEXICAN	88	88	80	75
MOLDAVIAN	46	68	50	69
MONGOLIAN	10	10	25	51
MOROCCAN	81	102	129	195
MOZAMBICAN			2	3
MYANMAR	4	5	10	17
NAMIBIAN	2			5
NEPALESE	97	58	13	20
NEW ZEALAND	39	30	63	74
NICARAGUAN		1	1	3
NIGERIAN	79	106	170	138
NIGERIEN	16	18	70	91
NORTH KOREAN	2	4	3	2
NORWEGIAN		1		
OMANI	2	9	7	11
PAKISTANI	112	68	45	54
PALESTINIAN	3	2	5	11
PANAMANIAN	3	2	1	3
PAPUA NEW GUINEAN			1	
PARAGUAYAN			1	1
PERUVIAN	15	24	18	25
POLISH	53,981	26,079	20,190	9,512
PORTUGUESE		1		
QATARI		3	1	1
ROMANIAN	2,266	1,885	1,300	1,095
RUSSIAN	973	949	863	1,283
RWANDAN	12	17	28	65
SAINT LUCIAN		1		1
SALVADOREAN	1	4	1	
SAUDI ARABIAN	9	6	22	17
SENEGALESE	26	1	12	29
SERBIAN	15	1	5	1
SEYCHELLOIS	1			
SIERRA LEONEAN	54	161	560	1,252
SINGAPOREAN	29	32	55	50
SLOVAKIAN	1,505	1,036	1,238	686
SLOVENIAN	54	53	47	104
SOMALI	27	74	69	142
SOUTH AFRICAN	239	264	358	402
SOUTH KOREAN	159	217	187	168
SRI LANKAN	14	20	40	85

STATELESS	20	47	88	154
SUDANESE	31	61	196	463
SURINAMESE	245	217	240	313
SWAZI				1
SWEDISH	1		1	
SWISS				2
SYRIAN	24	58	145	208
TAIWANESE	106	151	125	153
TAJIK	3	4	4	15
TANZANIAN	17	28	23	42
THAI	117	143	124	94
TOGOLESE	13	28	67	113
TRINIDADIAN	1	6	2	5
TUNISIAN	5	10	13	14
TURKISH	289	369	478	1,276
TURKMEN		1	1	4
UGANDAN	23	41	37	30
UKRAINIAN	223	305	322	337
UNKNOWN	45	86	173	240
URUGUAYAN	6	3	3	10
UZBEK	27	12	36	43
VENEZUELAN	47	33	43	31
VIETNAMESE	156	216	207	225
YEMENI	5	2	10	19
YUGOSLAVIAN	87	100	173	333
ZAIRIAN (CONGOLESE)	38	53	123	144
ZAMBIAN	6	10	21	18
ZIMBABWEAN	11	15	21	25

*paragraph 2*Question 2

In reply to the Committee's question as to what are the formalities for obtaining a permit for self-employment, the report indicates that prior to admission of a foreigner to the country for the purpose of self-employment it will be assessed whether and to which extent the interests of the Netherlands are served by such admission. The Committee wishes the next report to provide further information on the admission procedure and the formalities to be observed in this respect.

Answer 2

Foreigners can obtain a work permit for self-employment in the Netherlands if, in the opinion of the Minister of Justice, this would serve essential Dutch interests. The Minister of Economic Affairs advises the Minister of Justice on whether or not there are essential Dutch interests involved. In theory, the Minister's recommendation is made with the help of a points system, which is currently not yet operational but will be introduced in the near future. Using the points system, the added value – and hence the likely contribution to the Dutch economy – is assessed against the following criteria:

- the foreigner's personal strong points, such as qualifications and education;
- the content of the business plan;
- the added value for the Dutch economy, for example the number of jobs to be created or the number of graduates to be offered employment.

Question 3

The Committee recalls that pursuant to the Aliens Employment Act 1995 a decision on the issue of a work permit must be taken by the competent authorities within five weeks

following the application. It wishes to receive clarification whether this five week's period adds to the abovementioned five week's period for notification of the application to the CWI, thus amounting to a total period of ten weeks between notification of the application and granting of the permit.

Answer 3

Under the Foreign Nationals (Employment) Act, employers must report a job vacancy to the CWI five weeks before they can apply to the CWI for a work permit in relation to that job. This applies only to work permits where there is a requirement to search the Western European labour market first. This gives the CWI the opportunity to seek suitable priority-status candidates for the job (EU and EEA nationals). The CWI then has a maximum of five weeks to reach a decision on the application. This means that the whole process may take ten weeks in total.

Question 4

In reply to the Committee's question regarding information on how this time limit is met in practice, the report provides data on the proportion of applications processed within the above time limit for the period 1999 to 2002. The Committee notes that according to the data provided, it seems that in 2002, 51.6% of applications were not considered in time and wishes to receive the Government's comments in this regard.

Answer 4

In 2002 the proportion of permit applications processed in time (i.e. within five weeks) was 66.2% and not 51.6%, as the Committee seems to infer from the table. The processing time is now shorter and the proportion of applications processed in time has increased substantially, to 91.9% in 2006.

	2003	2004	2005	2006
% applications processed within 5 weeks	77,1 %	82,7%	87,9 %	91,9 %

paragraph 3

Question 5

The Committee notes the liberalisations regarding access to the national labour market introduced with respect to the abovementioned categories of foreign workers. However, given the nature of the remaining restrictions, in particular with respect to the grounds on which work permits may be refused, it concludes that the situation in the Netherlands is not in conformity with Article 18§3 of the Charter and wishes the next report to provide information on further measures aiming at liberalising the employment of foreign workers.

Answer 5

See pages 1 and 2 for a summary of the measures implemented and planned to facilitate access to the labour market. Currently, the Netherlands is also looking at ways of simplifying the residence and work permit application procedures. One option being considered is a "one-stop shop" for employers and migrant workers.

ARTICLE 20: RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATIONS WITHOUT DISCRIMINATION ON GROUNDS OF SEX

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

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

Question A

Please state how the rights contained in this provision have been protected in legislation. This information should be specified according to the areas listed in paragraph 1 of Article 20.

Answer A

The *Equal Treatment Act Evaluation Act* (Evaluatiewet Algemene wet gelijke behandeling) entered into force on 1 November 2005. This legislation provides for an extension of the Equal Treatment Commission’s powers to allow it to institute investigations on its own initiative. Until that date, the Commission had only been able to conduct sector-wide investigations on its own initiative. However, this required so much manpower that the Commission conducted few such investigations. Since 1 November 2005 it has been able to conduct its own investigations in individual companies.

The *Equal Treatment (Men and Women) Act* (Wet gelijke behandeling van mannen en vrouwen) was amended in October 2006 to implement Directive 2002/73/EC (Directive of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions). As a result of this amendment, the legislation now expressly states that harassment on the grounds of sex and sexual harassment constitute a form of banned discrimination, thus extending the protection that the law offers employees. The Act also states that any person who has rejected or has submitted to harassment, sexual or otherwise, may not suffer any disadvantage. The legislation puts employees in a slightly stronger legal position as regards harassment and sexual harassment, in a number of ways:

- the burden of proof in cases of harassment and sexual harassment has been shifted;
- there is now extra scope for applying to the Equal Treatment Commission as well as to the civil courts;
- employees are now afforded more protection from disadvantage because they have invoked the Act.

Question B

Please indicate whether legislation provides a right for a worker to take legal action before a court or other competent authority in order to ensure the effective implementation and exercise of his rights under this provision. The information shall cover the four areas specified in the provision.

Answer B

Employees can take legal action both in the civil courts and before the Equal Treatment Commission if they believe that they have been discriminated against on grounds of sex. The

Equal Treatment Commission issues findings on sex discrimination cases. It bases its findings on the Equal Treatment Act (Algemene wet gelijke behandeling, AWGB) and the Equal Treatment (Men and Women) Act. Section 3 of the latter relates to job advertisements, section 4 to training, sections 7-12 to equal pay, and section 12a-f to pensions. Section 5 of the Equal Treatment Act bans discrimination in advertisements for job vacancies and procedures leading to the filling of vacancies, in job placement, in entering into and terminating an employment relationship, in terms and conditions of employment, in provision of education and training prior to or during an employment relationship, in promotion and in working conditions. The Commission's findings are not binding, but they are adhered to in 74% of all cases.

Employees may also have recourse to the civil courts. Article 7:646 of the Civil Code states that men and women must be treated equally. It stipulates that an employer may not discriminate between men and women in entering into an employment contract with them, in providing training to the employee, in terms and conditions of employment, in promotion and in terminating contacts of employment. A court judgment is binding and the employer must comply with it.

Question C

Please state whether clauses in collective agreements and employment contracts that contravene the principles of non-discrimination may be declared null and void and according to which procedure.

Answer C

Section 9 of the Equal Treatment Act stipulates that clauses that do not comply with the law are null and void. Article 7:646, paragraph 11 of the Civil Code contains the same provision. An employee may seek redress either with the Equal Treatment Commission or in a civil court. The Commission offers an easily accessible complaints procedure. Collective provisions can also be presented to the Commission for assessment. Courts issue a judgment that has the force of law and is binding on the employer.

Question D

Please describe which safeguards legislation provides against gender discrimination and against retaliatory measures undertaken by the employer. Please state how it provides for the rectification of the situation (reinstatement in cases of dismissal, financial compensation, etc.). Please indicate also whether there are other sanctions against an employer who is guilty of such discrimination.

Answer D

Both equal treatment legislation and the civil law provide protection in the event of dismissal. An employee may opt to bring his or her case before either the Equal Treatment Commission or a civil court. Both bodies can declare a termination of employment null and void (under article 7:646 of the Civil Code or section 8 of the Equal Treatment Act). Article 7:646, paragraph 9 of the Civil Code states that an employer may not disadvantage any employee who has rejected or submitted to harassment, sexual or otherwise. Section 8a of the Equal Treatment Act stipulates that it is unlawful to disadvantage any person who has invoked the Act, in or out of court, or who has assisted others in this connection.

As regards other forms of disadvantage besides dismissal of people who invoke equal treatment legislation, the law does not provide for sanctions against the employer. However, such protection does exist in the form of the general provision in civil law concerning unlawful acts and reasonableness and equity. Article 7:611 of the Civil Code states that

employers must act according to certain standards. This general provision allows claims to be brought at law against an employer for various types of behaviour that an employee may regard as undesirable. The courts can impose various sanctions: the employer may be obliged to alter his behaviour, pay compensation, reverse a particular decision, reinstate the person concerned or pay any wages owing.

Question E

Please describe who has the burden of proof in cases of alleged gender discrimination in your country and whether this issue is regulated in legislation or case law. If the latter is the case, please enclose some decisions based on this case law.

Answer E

In principle, the person making the claim has the burden of proof, as stipulated in the Code of Civil Procedure. Since this can lead to unfair situations, the Civil Code and the Equal Treatment Act include provisions that protect the plaintiff, who is in a weaker position. Article 7:646, paragraph 12 of the Civil Code, section 6a of the Equal Treatment (Men and Women) Act and section 10 of the Equal Treatment Act stipulate that, if the person who believes he is a victim of discrimination adduces facts in support of this claim, the defendant must prove that he did not act unlawfully. This shift in the burden of proof is regularly applied by both the Equal Treatment Commission and the civil courts.

Question F

Please describe the specific measures to prevent discrimination against women in matters of employment and occupation, particularly in cases of pregnancy, confinement and during the post-natal period.

Answer F

Section 1 of the Equal Treatment (Men and Women) Act states that direct discrimination is also taken to mean discrimination on the grounds of pregnancy, childbirth and motherhood. Such discrimination is not permitted. The same provision appears in the Equal Treatment Act. In the event that an employer engages in such discrimination, the employee may seek redress in the courts. The ban on discrimination on the grounds of sex does not apply in cases where the discrimination concerns protection of women, particularly in connection with pregnancy and motherhood. Similarly, the ban does not apply if it is intended to place female employees in a privileged position in order to end *de facto* inequalities and the discrimination is in reasonable proportion to the goal. This is stipulated in article 7:646, paragraphs 3 and 4 of the Civil Code.

An employer may not terminate the employment contract of a pregnant employee during her pregnancy or her maternity leave, as stipulated in the Work and Care Act (see article 7:760, Civil Code). If an employer nevertheless dismisses a pregnant employee, she may demand reinstatement or claim financial compensation in a court of law.

Question G

Please indicate whether there are occupations (if so, which ones) that are reserved exclusively for one or other sex, specifying whether this is due to the nature of the activity or the conditions in which it is carried out.

Answer G

The Gender-Specific Occupations Decree (Besluit beroepsactiviteiten waarvoor het geslacht bepalend kan zijn) (Appendix 1) governs occupations that may be restricted to one sex. Only occupations and training in the following categories are regarded as occupations and the

necessary training which, given their nature or the conditions for their performance, are specific to a particular sex:

- occupations which, for physical reasons, can be performed only by persons of a particular sex;
- the occupation of male or female model, who is required to show certain items of clothing by wearing them;
- the occupation of artist's, photographer's, cinematographer's, hairdresser's, make-up artist's or beautician's model;
- the occupation of actor, singer, dancer or artist, in so far as the work concerns the performance of certain roles;
- occupations in private households that involve personal service, care, nursing or education or provision of assistance to one or more persons;
- occupations involving personal care, nursing or education of persons if, within the work organisation as a whole, the proper fulfilment of the duties attaching to the post offered requires that they be performed by a person of a particular sex;
- occupations involving the treatment of persons if, in view of feelings of severe embarrassment on the part of those persons, within the work organisation as a whole the proper fulfilment of the duties attaching to the post offered requires that they be performed by a person of a particular sex;
- occupations whose performance by persons of a particular sex is actually restricted by legislative provisions concerning the protection of persons of that sex at work;
- occupations engaged in abroad, if under the laws of that country those occupations are restricted to persons of a particular sex;
- occupations in the Royal Netherlands Marine Corps and the Netherlands Submarine Service.

Question H

Please indicate whether measures of positive action in favour of one sex aimed at removing *de facto* inequalities are allowed under the legislation and, if so, whether such measures were taken during the reference period.

Answer H

Derogations from the ban on discrimination on the grounds of sex are permitted under both civil law and equal treatment legislation if the aim is to favour female employees in order to remove or reduce disadvantages, and the discrimination is in reasonable proportion to the aim. As regards entering into a contract of employment and providing training, discrimination is permitted if it is based on a characteristic related to sex and that characteristic, given the nature of the specific occupation in question or the context in which it is performed, is an essential requirement, provided the aim is legitimate and the requirement is proportionate to the aim. Section 5 of the Equal Treatment (Men and Women) Act contains a similar provision for the preferential treatment of women. Employers are free to decide how they apply this in employment contracts or in work processes.

Question I

Please provide information on the situation in practice covering the four areas specified in the provision, i.e. on:

- a. the employment situation of both sexes (i.e. the number of men and women who are in employment, unemployed, working part-time or on fixed-term contracts or other forms of temporary contracts);

- b. access to and participation in vocational guidance, training, retraining and rehabilitation and the extent to which women train for jobs which have traditionally been occupied by men and *vice versa*;
- c. differences in terms of employment and working conditions, including remuneration (with an indication of the differences between full-time workers on permanent contracts and part-time workers or workers on fixed-term contracts or other forms of temporary contracts);
- d. differences in career advancement between the sexes in the various sectors of the economy.

Answer I

a) Information on the employment situation of men and women

	2002	2003	2004	2005
Population aged 15-64	10935 ¹⁷	10977	11000	11014
Labour force aged 15-64	7337	7401	7398	7401
Benefit claimants (unemployment, incapacity, sickness, social assistance)	1981	2005	1990	1889
Participation rate of men in %	83	83	82	82
Participation rate of women in %	59	61	61	62
Inactive labour force in %	4.1	5.4	6.5	6.5
Male unemployment %	3.4	4.8	5.8	5.6
Female unemployment %	5.1	6.3	7.4	7.7
Men working part-time %	-	14.0	-	14.3
Women working part-time %	-	66.1	-	67.8
Men on permanent contracts %	-	81	-	79
Women on permanent contracts %	-	84	-	81
Men working on flexible contracts, as temps, on standby, other %	-	12	-	14
Women working on flexible contracts, as temps, on standby, other %	-	14	-	18

Source: Statistics Netherlands, Labour Force Survey 2000-2005

b) Access to training

Every two years the Social and Cultural Planning Office publishes the Emancipation Monitor. This reference work examines, among other things, participation in education by women and occupational segregation. A number of tables are enclosed (Appendix 2).

Adult female participants in education, aged 24-65, 2005

Women	14%
Women 25-34	22%
Women 35-44	15%
Women 45-54	12%
Women 55-64	6%

Source: Statistics Netherlands, Labour Force Survey 2005

c) Differences in terms and conditions, including pay and differentiation in terms of permanent/temporary, full-time/part-time

The Labour Inspectorate investigates the pay gap every two years, looking at the gap between men and women, full-time and part-time workers, and the indigenous population and ethnic

¹⁷ In thousands of persons

groups. The latest figures, based on 2004, were sent to the House of Representatives in October 2006. There has been little change in these figures over the years:

Private sector	Uncorrected		Corrected	
	2002	2004	2002	2004
Men/women	22%	21%	7%	7%
Indigenous/ethnic	19%	21%	4%	5%
Full/part-time < 12 hours a week	42%	43%	5%	2%
Full/part-time > 12 hours a week	22%	21%	5%	4%
Fixed-term/other forms	23%	26%	3%	6%

Public sector	Uncorrected		Corrected	
	2002	2004	2002	2004
Men/women	15%	14%	3%	4%
Full/part-time < 12 hours a week	10%	14%	1%	6%
Full/part-time > 12 hours a week	6%	8%	0%	1%

The Labour Inspectorate distinguishes between uncorrected and corrected pay differentials. The uncorrected pay gap is an indication of the general level of equality. Uncorrected pay differentials reflect the gaps in pay between two groups, such as men and women, according to the study.

Part of the gap can be explained by objective and legitimate reasons, such as functional or personal characteristics. Functional characteristics can explain the difference between men and women in different economic sectors or positions. Women tend to work in lower-paid jobs and are overrepresented in the service and care sectors. Examples of personal characteristics include age, education and length of employment with the same employer. The percentage that remains is the corrected pay differential.

The corrected pay differential does not necessarily reflect pay discrimination. The percentage remaining may be caused by the research method, as it is not possible to take all relevant characteristics into account. Nevertheless, a small percentage of the corrected pay gap may reflect pay discrimination.

The reason for the increase in the corrected pay gap for full/part-time workers working < 12 hours a week lies mainly in the fact that the research population for public sector employees had a very different composition (more low-paid jobs, more women and fewer jobs requiring higher qualifications).

In May 2006 Statistics Netherlands (CBS) made an analysis of the pay gap for ethnic minority public sector employees. The study showed an uncorrected pay gap of 20% and a corrected gap of 4%.

A 2003 study looked at discrimination by number of working hours in collective labour agreements. It found that 17 of the 111 agreements examined discriminated between part-timers working a relatively large number of hours and part-timers working few hours (fewer than 12 hours a week). In two cases, 'small part-timers' were entirely excluded from the collective labour agreement. In the other 15 cases, they were partially excluded from certain terms and conditions. In six cases they did not receive a supplement for working at certain times, in three cases they were excluded from other supplements and in the other cases they were not admitted to the childcare scheme, were not permitted to regulate their own hours, did

not receive overtime pay, were excluded from the early retirement pension, could not take leave in lieu of pay (elderly people) or were not allowed to save up leave. It is not possible to assess the lawfulness of the discrimination in the collective labour agreements on the basis of these research results. Each case would have to be examined on its merits. In view of this, in 2004 parties to collective labour agreements were asked to include an explanation of any discrimination in the agreement itself. This makes the rationale behind the provisions clear to all.

The study will be repeated in 2008 in order to track developments in this area.

d) Differences in career prospects and different sectors

Women in management (Emancipation Monitor 2006)

Proportion of women	Total	Senior posts	Managers
Agriculture/fisheries	26%	23%	14%
Manufacturing and construction	17%	18%	5%
Commercial services	39%	28%	14%
Non-commercial services	64%	57%	36%
Public administration	38%	36%	21%
Education	60%	59%	31%
Care sector	80%	67%	57%
Culture and other services	56%	49%	26%

Women in senior positions (Emancipation Monitor 2006)

Proportion of women	Board of Directors/SG	Supervisory Board/DG	Senior management/director
For-profit sector (top 250)	5.8 %	7.1%	13.2%
Non-profit (social and economic)	25%	21%	27%
Non-profit (care and social welfare)	34%	30%	41%
Public sector	8%	20%	17%
2010 target	20-25%	20-25%	30%

Question J

Please indicate what active policies carried out by your authorities to achieve equal opportunities and equal treatment in employment and what practical measures have been taken to implement these policies.

Answer J

A special equal pay working group entitled 'Equal Pay Works!' (Gelijk beloning, dat werkt!) was set up in December 2005. It included representatives of all labour and employers' organisations, as well as interest groups campaigning for improved pay and conditions and co-determination for staff, and representatives of the Dutch Equal Treatment Commission. The task of the working group was to promote awareness of and compliance with the law on equal pay for work of equal value and equal treatment in terms of working conditions, regardless of sex, race, working hours and type of contract (temporary/permanent).

The working group took a bottom-up approach, focusing on good practice. The special website (www.gelijkloon.nl) provides employees and employers with essential information and tips on equal pay. Before it was wound up in March 2007 the working group presented the Minister with a set of recommendations on equal pay policy for the public and private sectors and for employers and employees. The Government's response to the recommendations has been sent to the House of Representatives.

The working group organised the first Equal Pay Day on 24 October 2006. As of 2008, Equal Pay Day will be held in March each year.

A Glass Ceiling Ambassadors Network was established in 2000. This group has a changing membership of 15-20 top business people and managers who spend one or two years boosting the promotion of women to senior posts. Each ambassador is responsible for three action points targeted at their own company and sector, and further afield. The network was set up by the Ministry of Social Affairs and Employment's Equality Department, in collaboration with the Ministry of Economic Affairs. The impact of the network was evaluated in 2005. It was found that the promotion of women in participating companies had risen more than in other companies. The network's biggest impact had been in setting the agenda, i.e. encouraging the private sector to focus more on the added value of gender diversity and the 'business case' for breaking the glass ceiling. The fifth network has now been launched, and the Ministry of Economic Affairs has taken over its coordination from the Ministry of Social Affairs and Employment. Though the new government has transferred the Equality Department to the Ministry of Education, Culture and Science, it is still involved in the network. VNO-NCW, the largest employers' organisation in the Netherlands, is also involved, presenting the Diversity Award every two years to the company with the best performance in terms of gender diversity.

Other measures include benchmarking and a focus on the public sector as an employer. Benchmarking: a digital self-screening tool has been developed to allow companies to compare their gender diversity performance with other organisations in their sector: www.glazenplafondindex.nl. They also receive advice – based on their score – about how to improve the situation. Public sector as employer: the target is that by 2010 25% of senior civil servants should be women.

Question K

Please indicate if social security matters as well as provisions concerning unemployment benefit, old age benefit and survivor's benefit are considered to be within the scope of this provision.

Answer K

Social security benefits such as unemployment benefit, incapacity benefit and social assistance are gender-neutral. A claimant's working history is the only criterion for assessing benefit applications. Social assistance is a safety net.

Negative conclusion of the European Committee of Social Rights:

As to the right to equal pay, the Committee recently concluded under Article 4§3 (Conclusions XVI-2, pp. 523-527) that the situation was not in conformity with the Charter, on the ground that the notion of remuneration is not sufficiently wide as it excludes benefits or rights linked to a pension scheme. The report makes no reference to any changes in the legal situation. For the same reasons as before, therefore, the Committee considers that the situation is not in conformity with Article 1 of the Protocol.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 1 of the Additional Protocol on the ground that the notion of remuneration used for the application of the principle of equal pay is not sufficiently large.

Comment

There has apparently been a misunderstanding. The thirteenth report on article 1 of the Additional Protocol indicated that equal treatment of men and women in terms of pensions has been governed since April 1998 by the implementation of Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, in the form of a bill amending bill 20890 amending the Civil Code and the Equal Treatment (Men and Women) Act (implementation of the Barber Directive). The Act was published in Staatsblad 188 of 9 April 1998 (Appendix 3).

Questions of the European Committee of Social Rights

Question 1

It is also planned to enhance protection against retaliatory measures. To complement Article 8 of the AWGB, under which all discriminatory dismissals are considered null and void, a new provision is to be added specifically protecting employees against any detriment arising from a demand for equal treatment. The Committee understands that these new rules will be regarded as exceptional measures vis-à-vis the general rules of civil law on tort and good faith. It wishes to know whether this interpretation is correct.

Answer 1

The Committee's interpretation is not entirely correct. Under the Dutch legal system, an employee may resort to the Equal Treatment Commission or to the civil courts (or first to the Commission and then to the courts). Many opt for the Commission, as this is a more accessible procedure. If an employee claims before the Commission that his dismissal contravened equal treatment legislation and the Commission upholds this claim, section 8 of the Equal Treatment Act applies. This provision also applies in civil proceedings, under article 7:646 of the Civil Code.

The provisions concerning unlawful acts and reasonableness and equity refer to the level of any financial compensation. If the court has found the dismissal to be in contravention of article 7:646 of the Civil Code, the general rules pertaining to proper conduct on the part of employers (article 7:611 of the Civil Code), unlawful acts and reasonableness and equity (article 6:163 of the Civil Code) apply to the amount of financial compensation awarded.

Question 2

The Committee asks for information in the next report on differences in the treatment of employees on short part-time contracts (working for fewer than 12 hours a week), resulting mainly from the total or partial exclusion of these employees from the scope of 19 collective agreements. This information should cover not just pay but also all the other aspects covered by Article 1 of the Protocol, including social security.

Answer 2

The study of part-timers in collective labour agreements conducted in April 1999 showed that 19 such agreements, mainly in the retail sector, discriminated between 'small' and 'large' part-timers, the dividing line between the two usually lying at 12 or 13 hours a week. In six of the 19 agreements, this limit meant that part-timers on contracts for fewer hours were entirely excluded from the collective labour agreement. In eleven agreements small part-timers were partially excluded. The 13-hour limit in two collective labour agreements also meant that no one could be employed for fewer than this minimum number of hours per week. The definition of terms in these agreements did not lead to the exclusion of all or certain groups of part-timers. Looking at the specific terms and conditions, it was found in 1999 that some collective agreements discriminated in terms of supplements for working at certain times,

extra pay for certain qualifications, benefits over and above the statutory entitlement, early retirement pensions, contributions towards the costs of health insurance, leave in lieu of pay, general leave and special leave.

The study was repeated in 2003. This most recent study found that 17 of the 111 agreements examined discriminated between part-timers working a relatively large number of hours and part-timers working few hours (fewer than 12 hours a week). In two cases, small part-timers were entirely excluded from the collective labour agreement. In the other 15 cases, they were partially excluded from certain terms and conditions. In six cases they did not receive a supplement for working at certain times, in three cases they were excluded from other supplements and in the other cases they were not admitted to the childcare scheme, were not permitted to regulate their own hours, did not receive overtime pay, were excluded from the early retirement pension, could not take leave in lieu of pay (elderly people) or were not allowed to save up leave.

It is not possible to assess the lawfulness of the discrimination in the collective labour agreements on the basis of these research results. Each case would have to be examined on its merits. In view of this, in 2004 parties to collective labour agreements were asked to include an explanation of any discrimination in the agreement itself. This makes the rationale behind the provisions clear to all.

The study will be repeated again in 2008 in order to monitor developments in this area.

Question 3

Specific protection measures Gender-based restrictions on access still apply to certain professions and are listed in the decree of 19 May 1989 on gender-specific occupations. These restrictions were reviewed when Directive 2002/73/EC of the European Parliament and Council of 23 September 2002 amending Directive 76/207/EEC of the Council on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions was transposed into Dutch law. In this context, it was decided to amend Article 1 (h) and remove the provision under which jobs in other member states of the European Union could be reserved for persons of a particular sex. The restriction was retained however for nationals working in non-EU countries. To enable it to assess the situation, the Committee asks for the next report to explain the reasons for this restriction and the type of jobs actually involved.

Answer 3

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Official Journal L 39 (amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (Official Journal L 269) allows Member States to introduce certain exceptions to the principle of equal treatment of men and women. The Netherlands has availed itself of the possibility, provided for in article 2, paragraph six of the amended Directive, of excluding gender-specific occupations, in section 5, paragraph three of the Equal Treatment (Men and Women) Act and the Gender-Specific Occupations Decree.

Article 1 (h) (now 1 (i)) has been simplified in the sense that a general exception has been put in place for occupations engaged in abroad. These occupations are regarded as gender-specific occupations if the law applying in the country in question restricts them exclusively to men or women. It should be noted that this will probably have little impact on occupations engaged in

in another Member State of the European Union, as exceptions similar to those in the Netherlands will apply in most EU countries.

Prior to the amendment there were actually two parts to this provision. The first concerned an exception for occupations engaged in in another Member State of the European Communities, as well as in the other states party to the Agreement creating the European Economic Area. The Netherlands opted to word the exception in point h more generally, and draw no distinction between countries inside or outside the EU.

Question 4

It was also decided to restrict Article 1 i) of the decree – which grants the Minister of Defence authority to indicate which professional activities in the armed forces are gender-specific – to the Netherlands Marine Corps and the Netherlands Submarine Service. To enable it to assess the situation, the Committee asks for the next report to state whether these restrictions are applied generally or limited to certain functions.

Answer 4

This amendment to article 1 (i) (now 1 (j)) of the Gender-Specific Occupations Decree restricts the generally worded exception applying to the Ministry of Defence to two posts for which the Minister of Defence has used his power of instruction, namely occupations in the Royal Netherlands Marine Corps and the Netherlands Submarine Service.

It is the aim of the Ministry of Defence to open all posts to men and women, provided they fulfil the job requirements. However, the Marine Corps and Submarine Service have been excepted. All posts in the Marine Corps are combat posts which involve operating in small combat units in the front line. The Marine Corps has very high standards in terms of the physical abilities of candidates. The likelihood that a woman would meet those standards is so small that only a very small number of women would make it through the selection process. This has been confirmed by medical examinations of women for other physically demanding posts in the armed forces. The presence of a very small number of women within a unit, coupled with the fact that there is no privacy whatsoever under operational conditions, could lead to great tensions, which might disrupt deployment. In the Submarine Service, too, operational deployability might be compromised by the lack of privacy combined with the fact that members of the Service are often obliged to spend long periods of time in a confined space. Separate facilities would require too great an investment.

Question 5

2002 saw the launch of the Mixed Project, financed by ESF-Equal, to improve women's mobility and career opportunities in business, the non-profit sector and politics. The project comprises 30 pilot schemes in companies to capitalise on the potential of the female workforce and promote measures to ensure that the principle of equal opportunities becomes an integral part of all personnel policies. The Committee will examine the results achieved when it next considers Article 1 of the Additional Protocol.

Bearing in mind that company schemes to promote increased gender equality help to secure the right to equal opportunities, the Committee asks what the situation is in this respect.

Answer 5

The ESF-Equal 'Mixed Project' is a practical strategy developed by companies and institutions wishing to more fully exploit the potential of their female workforce. The site www.mixed-equal.nl contains all the available information on the now completed project: tools, activities, publications, participants and partners. Results, tools and experiences from the project have been described in a special gender diversity guide entitled 'Mixed

management', which contains practical tips for anyone wishing to ensure more women are promoted to senior posts in their organisation.

The evaluation of the project immediately after it ended found that there had been a clear increase in the amount of attention focused on gender diversity in the participating companies. The project also generated a great deal of publicity for the issue. Many participants have continued and expanded their activities in this field. There are signs of an actual increase in the promotion of women in the participating companies. However, this will only become clear in the longer term. The project's most important result has been to produce a tried and tested set of tools for all aspects of diversity policy (recruitment, selection, coaching, mentoring, management development, work-life balance, cultural change, mainstreaming). Information on these tools is publicly accessible (including in the guide), and has been incorporated into the glass ceiling index (see J). Companies requiring extra support can turn to organisations specialising in this field.

ARTICLE 24: THE RIGHT TO PROTECTION IN CASES OF TERMINATION OF EMPLOYMENT

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

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

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

Question A

Please state the valid grounds for termination of employment provided by national legislation and whether national legislation prohibits certain cases of termination of employment¹⁸.

Please specify whether these grounds appear in legislation or regulations or whether they are derived from court decisions or other sources and provide examples of case law on this point.

Please state whether termination of employment is notified in writing, and if so, whether the employer is required to state the reasons for dismissal in the notification.

Please state what are the workers’ rights in cases of unilateral amendments by the employer to the substantive conditions of the employment contract.

Answer A

Protection in the event of termination of employment by the employer is governed by the Labour Relations Decree 1945 (Buitengewoon Besluit Arbeidsverhoudingen 1945, BBA) and Book 7, Title 10, section 9 of the Civil Code.

Labour Relations Decree/via CWI

Under the Labour Relations Decree, an employer may not terminate an employment contract (except in exceptional circumstances, see below) without the prior permission of the Central Work and Income Authority (Centrale organisatie van werk en inkomen, CWI). The CWI will assess the employer’s application on the basis of the criteria in the Termination of Employment Decree (Ontslagbesluit). The CWI can issue a permit for:

- termination on personal grounds;
- termination in the event of long-term incapacity for work (lasting longer than two years) or repeated sickness absence; or
- termination for commercial reasons.

An employer need not apply for a permit if the contract is being terminated for compelling reasons (improper conduct on the part of the employee), during a probationary period or in the event of bankruptcy.

Civil law/Dissolution procedure

In order to terminate a contract of employment, an employer may request a court to dissolve the contract due to compelling reasons. The law regards changed circumstances or grounds

¹⁸ See paras. 1 and 3 of the Appendix to Article 24.

for immediate termination as compelling reasons for dissolution of a contract. Dissolution may also be requested after the CWI has refused permission to terminate a contract.

An employer may request termination (dissolution) if he cannot reasonably be expected to continue the employee's contract of employment. This general standard is interpreted in the case law on the basis of the individual and situational circumstances and the conditions under which termination may be permitted.

In practice, grounds for termination of an employment contract include serious breakdown of the employment relationship, inadequate functioning or long-term incapacity for work on the part of the employee, commercial reasons or improper conduct by the employee. Improper conduct – culpable acts that are explicitly defined in article 7:678 of the Civil Code – on the part of the employee constitutes a compelling reason for termination. In such situations, summary dismissal is also permitted.

When terminating a contract of employment, the statutory provisions prohibiting termination of employment in certain circumstances (article 7:670, Civil Code) must be taken into account. Employment may not be terminated during illness, pregnancy, adoption leave, parental leave, care leave, military service, membership of the works council, membership of a trade union, during transfer of the company to new ownership and on the grounds that the employee refuses to work on Sundays.

An employment contract may be terminated verbally or in writing, but reasons must be given. Failure to do so may lead to the decision being declared null and void or to liability for financial compensation. An employer must substantiate his request for termination to both the CWI and the courts, and make a persuasive case that there is no alternative to this course of action.

The basic rule is that an employer may not unilaterally alter the terms and conditions of employment (article 7:613, Civil Code). An exception may only be made if this has been stipulated in writing and the employer has a compelling reason, on the grounds of which any fair and reasonable change will be permitted. If the employee does not agree to the change, he or she may ask a court to review the reasons adduced by the employer. If the employer has failed to make a persuasive case, the court will assess whether the interests of the employer are so compelling that the employee can reasonably be expected to accede to the changes.

Question B

Please state whether workers who consider that they have been dismissed without valid reason have a right of appeal to a tribunal or an impartial authority.

Please indicate the time-limit which workers must observe to exercise this right of appeal.

Please state where the burden of proof lies.

Answer B

In assessing whether termination of employment is permitted, the CWI or civil court will give the employee an opportunity to present counterarguments. The CWI may reject the request for termination, in which case the employer will not be permitted to terminate the contract. In dissolution proceedings, too, the court may conclude that there is insufficient reason for dissolution, and that the employment contract should remain in force.

If the employer does receive permission from the CWI, the employee has six months to apply to the court for reinstatement or financial compensation if he is of the opinion that the termination was manifestly unreasonable (articles 7:681 and 7:682, Civil Code). This may be the case if it was not reasonable for the employer to decide to terminate the contract, for instance if the consequences for the employee are very serious in comparison with the employer's interest in terminating the contract, or if the employee is of the opinion that the employer failed to give reasons or gave false reasons for the termination of the contract.

If the employer terminates the contract in contravention of a ban on termination, the termination can be declared null and void. The employee must inform the employer within two months of notice being given (article 7:677, paragraph 5).

The employer must present and substantiate at first instance the reasons for his request for termination or dissolution by the CWI or court. The employee is given an opportunity to make his views known during this procedure, and may present counterarguments. If the employee has recourse to the courts himself because he believes his dismissal was manifestly unreasonable, he must present persuasive arguments to substantiate his case.

Question C

If the court or tribunal to which the appeal lies considers that the termination of employment is unjustified, please indicate whether the worker is entitled to adequate damages (and describe how the level of damages is determined) or to any other form of compensation (and indicate what such compensation consists of).

Inasmuch as the remedy for unfair or unlawful termination of employment is monetary, please indicate:

- a. whether this applies to all enterprises, regardless of their size;
- b. whether there is a minimum level of damages;
- c. whether the choice of damages (instead of reinstatement) is left to the worker, the employer or the court.

Answer C

If he is not reinstated (and any pay owing for the intervening period paid) an employee who has been unfairly dismissed may apply for damages. Other forms of financial compensation also exist.

If the CWI grants the application, the employer is only able to terminate the contract subject to the applicable notice period, which is laid down in law (article 7:672, paragraph 2, Civil Code), though deviation is permitted (deviation to the disadvantage of the employee is possible only under the terms of a collective labour agreement; an extension of the notice period may be agreed in writing). During the notice period, the employee's wages must continue to be paid in full. Apart from the payments (lump sum payments, or in the form of training/outplacement, supplementation of unemployment benefit) agreed by the employer and employee (e.g. under a redundancy programme), the employer is not obliged to pay any damages if he has received permission from the CWI.

In the event of dismissal via dissolution of contract, the compensation available to the employee on termination is generally monetary compensation, usually taking the form of a lump-sum payment. The law does not set out criteria for compensation on termination of contract. The level of compensation is determined by the court and depends on the employee's age, length of service, personal circumstances (the impact of termination on the employee) and the extent to which the employer or employee is responsible for the termination of employment.

When compensation for termination of contract is awarded, no distinction is made on the basis of the size of the company, and no statutory minimum applies. The amount is calculated on the basis of a general guideline applied by the courts (limited jurisdiction division formula). The guidelines do however stipulate a maximum: except for emotional distress, the compensation must not exceed the expected loss of income up to retirement.

Question D

Please list the categories of workers excluded from this protection and indicate how they are in conformity with item 2 of the Appendix to Article 24.

If workers who are employed under a fixed-term contract are excluded (item 2 of the Appendix to Article 24) from this protection, please provide a definition of a fixed term contract.

If there is a trial period of employment for this protection, please indicate its length.

Answer D

The Labour Relations Decree 1945 (preventive assessment by CWI) covers all persons who personally perform work in the service of another. The government preventive assessment does not apply to termination of the employment contract of public servants, teachers, ministers of religion and domestic staff.

Public servants

Protection of public servants in the event of termination of contract is regulated in detail in the regulations governing the legal status of public servants (e.g. the General Civil Service Regulations, ARAR), which lists all the grounds on which a public servant may be dismissed. These regulations, which have their statutory basis in the Central and Local Government Personnel Act (Military Personnel Act, Police Act or education legislation), can be regarded as delegated legislation.

The chief grounds for dismissal in the ARAR are reorganisation, incapacity due to illness, incompetence/incapacity other than due to illness, dereliction of duty and 'dismissal on other grounds'. Legal protection is offered internally in the objection phase, and externally in the review and appeal stages.

Employees

The protection in the event of termination of employment afforded by the Civil Code applies to all employees with an open-ended contract of employment. Protection from unilateral termination of the contract of employment as provided for in the Civil Code does not apply to employees on a fixed-term contract. Fixed-term contracts must however include a notice period (after the probationary period has ended), unless agreed otherwise in writing.

ARTICLE 25: THE RIGHT OF WORKERS TO THE PROTECTION OF THEIR CLAIMS IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER

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

Question A

Please indicate whether workers’ claims in the event of the insolvency of their employer, are secured by means of a guarantee institution, a privilege, a combination thereof or by other means.

Answer A

In the event of their employer’s insolvency, employees have the statutory right to payment under part IV of the Unemployment Benefits Act (Werkloosheidswet).

Question B

Please state how the term “insolvency” has been defined and to which situations it has been applied.

Answer B

An employer is insolvent in the event of:

- bankruptcy;
- application for protection from creditors;
- being subject to a personal debt repayment programme;
- being in a permanent state of inability to pay.

The court will determine on the grounds of bankruptcy laws whether the employer is bankrupt, may apply for protection from creditors or must be subjected to a personal debt repayment programme.

Whether the employer actually is in a permanent state of inability to pay will depend on the particular circumstances.

Question C¹⁹

Please indicate which claims are protected in case of the insolvency of the employer.

Answer C

In the event of the employer’s inability to pay, the employee has the right to payment of:

1. pay arrears for up to 13 weeks immediately prior to:
 - the day on which the employment relationship was terminated by means of dissolution of the employment contract;
 - the day on which the employment relationship was terminated by mutual agreement;
 - the day on which the employment relationship ended by operation of law;
 - the day that notice of termination was given.
2. the pay for the applicable notice period, up to a maximum of six weeks; and

¹⁹ See paragraph 3 of the appendix to Article 25.

3. holiday pay, holiday supplements and any sums that the employer owes to third parties (e.g. a pension fund) in connection with the employment relationship, over a period of up to one year prior to the point at which the notice period ends.

Question D

Please indicate whether there are any categories of workers not covered by the protection offered in this field by reason of the special nature of their employment relationship.

Answer D

The definition of employee applying to the claim to any obligations ensuing from the employment relationship in the event of the insolvency of the employer is the same as that laid down in chapter 2, division 2 of the Unemployment Benefits Act: an employee is a natural person who is in employment under public or private law (section 3, Unemployment Benefits Act). Sections 4 and 5 of the Unemployment Benefits Act defines certain employment relationships as employment (extending the concept of employee) and section 6 sets out what types of employment are not regarded as employment relationships (restricting the concept of employee).

Question E

Please indicate whether workers' claims are limited to a prescribed amount. If so, state what the amount is and how it is determined.

Answer E

Employees' claims are not subject to any prescribed amount. Certain restrictions do however apply (see answer C).