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EUROPEAN SOCIAL CHARTER

5th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF THE NETHERLANDS

(Articles 1, 9, 10, 15, 18, 20, 24 and 25
for the period 01/01/2007 – 31/12/2010)

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CYCLE 2012

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Twenty-fourth Report

for the period 1 January 2007 - 31 December 2010

Report

For the period 1 January 2007 to 31 December 2010, 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

Contents

Article 1 – The right to work

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

Article 1§1

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

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

Before the onset of the recession, the main goal of employment policy was to increase the participation rate to solve problems caused by an ageing population and labour force, such as labour shortages and deficits in public finances. The government has committed itself to the ambitious target of 80% employment[1] by 2016.

Since the crisis began, attention has been mainly focused on measures to limit the impact of the crisis on the labour market. The government has introduced a comprehensive stimulus package which also contained several measures for the labour market. During the first phase of the crisis, measures were taken to prevent workers from losing their jobs because of a temporary economic shock. When the duration and size of the crisis became clearer, measures were more and more aimed at supporting labour mobility and employability, to make sure that people who lose their jobs find a new job instead of permanently losing touch with the economic process. This is important since a tight labour market situation is expected in the – possibly not too distant – future and everybody will be needed. Table 1 gives an overview of the main temporary crisis measures on the labour market.

Table 1: Crisis measures affecting the labour market

Scheme	**Aim**
Special scheme for reduction in working hours (*bijzondere WTV*)	Reduce the number of people becoming unemployed
Part-time unemployment benefit (*deeltijd-WW*)	Reduce the number of people becoming unemployed
Youth Unemployment Action Plan	Avoid a 'lost generation'; includes encouraging young people to stay longer in education
More and longer temporary contracts	Keep young people on the labour market
Mobility centres	Facilitate job-to-job transitions
Retraining bonus	Promote long-term employability
Recognition of Prior Learning certificates (EVC)	Promote long-term employability

[1] Definition includes persons in employment and persons seeking employment for 12 hours or more per week

The main temporary measures taken on the labour market in response to the crisis are briefly explained below.

Special scheme for reduction in working hours (bijzondere WTV)
The first reaction to the crisis was the introduction of a special scheme for a reduction in working hours. This scheme helped employers to deal with the impact of a sudden drop in demand and prevented a situation in which employees would suddenly have to be made redundant. It enabled companies to temporarily reduce the number of hours worked by employees, while at the same time keeping the income of employees on the same level.

Part-time unemployment benefit (deeltijd-WW)
A temporary scheme for part-time unemployment benefits was introduced as a successor of the special scheme for a reduction in working hours. This gave employers the option of reducing the working hours of employees by up to 50%. The employee receives unemployment benefit for the hours not worked. The maximum length of the scheme is dependent on the proportion of the personnel involved. Terms have been created to give companies an incentive not to use it to postpone necessary restructuring. Also, the employer is requested to reach an agreement with employee representatives about training or secondments for employees whose working hours are reduced.

Youth Unemployment Action Plan
The government has set up a youth unemployment action plan to combat youth unemployment. The action plan contains several measures: a programme to keep more young people in education for longer, strengthening the regional structure for implementing the plan, improving the match between young people's skills and demand on the labour market, agreements with the social partners on more jobs and work placements for young people, and strengthening the position of disadvantaged young people.

Mobility centres
In order to improve the match between supply and demand on the labour market, the government has created a system of mobility centres with nationwide coverage. These centres have been assigned the task of connecting the regional network of organisations in the field of employment, education and benefits. In addition, better utilisation of regional labour market information will improve efforts to match supply and demand.

Education and training
The government has introduced several measures to improve the employability of employees and the unemployed. To promote mobility and increase employability, the government has introduced a retraining bonus (*scholingsbonus*) for employees who might lose their job at one employer and start working at another. Also, the government has given financial incentives to employers who have to make personnel redundant to acquire Recognition of Prior Learning certificates (*EVC; erkenning van elders verworven competenties*) for them. Furthermore, training and employment helpdesks (*leerwerkloketten*) have been created at 30 employment centres to improve the connection between education and the labour market.

Structural measures
Despite the current economic crisis, the underlying structural challenges have not fundamentally changed; if anything, they have been intensified. Increasing participation remains as important as before. The most important measures are discussed below, categorised by specific groups of workers. Table 2 gives an overview of the main structural measures taken on the labour market.

Table 2: Structural measures relating to the labour market

Measure	Aim
Older workers: exemption from social insurance contributions for employers hiring older workers, bonus for employees over 62	Increasing labour market participation of older people and curbing early retirement.
Women: **- tax measures:** employed person's tax credit; income-based supplementary combination tax credit; phasing out transferability of general tax credit - 'part-time plus' task force - childcare facilities - expansion of parental leave scheme	All measures are aimed at increasing women's labour market participation
Young people: - reform of Incapacity Insurance (Young Disabled Persons) Act (WAJONG) - Investment in Young People Act (wet WIJ)	'Work first' approach: incentivising young people who are partially incapacitated to enter the labour market Incentivising young people to enter the labour market, take a training course or study

Older workers

Increasing the employment rate among older workers and improving their labour market position are important government goals. The government has deployed a variety of policy instruments to achieve that goal, aimed at both the supply and demand side of the labour market, as described below.

Financial incentives

Instruments which stimulate the demand for older workers include a social insurance contribution exemption for employers who hire former unemployed persons aged 50 years or over, or who retain workers aged 62 to 64. The government also introduced an arrangement to compensate employers who hire former long-term unemployed persons who become ill for a lengthy period. These policy initiatives lower the total wage costs of older workers, making it financially more attractive to employ them.

Also, measures are being taken to make work more financially attractive for older workers themselves. In addition to the existing higher employed person's tax credit, older workers are encouraged to stay longer in the labour market by means of a bonus (introduced on 1 January 2009) for people who continue to work after the age of 62. Furthermore, the rules on accepting a job when receiving unemployment benefit have changed and it is possible for a former unemployed person who accepts a job entailing a drop in income to receive a supplement to his wages.

Women

A number of measures designed to increase the employment rate and make it easier to combine work and care are outlined below. Although both women and men may benefit from them, they are expected to have a greater influence on women deciding whether to take up employment, since women on average have a lower employment rate, work fewer hours and respond more sensitively to financial incentives.

Tax measures
Tax measures have been introduced to increase labour participation. The measures, which are intended to make work pay, especially at the bottom end of the labour market, include the employed person's tax credit, income-based supplementary combination tax credit and the phasing out of the transferability of the general tax credit.

'Part-time plus' task force
A 'part-time plus' task force was set up at the beginning of 2008. The task force was involved in the development of an integrated vision on how to increase labour participation in the Netherlands within the near future, in particular among women working in part-time jobs for less than 24 hours a week. It focuses on gaining an understanding of the obstacles to women's participation in the labour market and ways of removing these obstacles. This task force presented its final report in March 2010.

Childcare
The take-up of childcare benefit has grown sharply in recent years, resulting in considerable strain on the available budget. The government responded by restructuring childminding as of 1 January 2010 to protect the system from abuse and make it financially better manageable. Stricter requirements have been introduced for childminders, making the system more professional.

Leave schemes
In order to make the combination of work and care more feasible, parental leave and the period during which the parental leave tax credit is available has been extended from 13 to 26 weeks for both partners as of 1 January 2009. It has also become simpler for parents to claim the parental leave tax credit because they no longer have to participate in the life-course savings scheme in order to qualify.

Young people
Investment in Young People Act
The Investment in Young People Act (*Wet Investeren in Jongeren; WIJ*) was introduced to promote sustainable participation by young people in the labour market. The Act requires municipalities to provide an offer of work or training to jobless young people up to the age of 27 who apply for social assistance benefit. They must make the offer within two months of the young person applying for benefit. Municipalities can offer young people training (courses, work placements or work experience positions) to maintain their skills at the required standard or to acquire new skills. Exceptions are made for young persons who are unable to work or train.

Incapacity Insurance (Young Disabled Persons) Act
The Incapacity Insurance (Young Disabled Persons) Act (WAJONG) was amended as of 1 January 2010 since when it has been known as the Work and Employment Support (Young Disabled Persons) Act. The amended Act aims to offer maximum support to young people who do have employment prospects (possibly at a lower level of productivity), helping them find and keep jobs. The aim is to help more people move off WAJONG benefits and not to write off young disabled people for life before they have even entered the labour market.

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

Table 3 : Labour market statistics for the Netherlands

	2005	**2006**	**2007**	**2008**	**2009**	**2010**
GDP growth	2.0	3.4	3.9	1.9	-3.9	1.3
Activity rate (% of population aged 15-64)	76.9	77.4	78.5	79.3	79.7	na
- Men	83.7	83.9	84.6	85.3	85.3	
- Women	70.0	70.7	72.2	73.3	74.1	
Labour force, employed (in thousands)	6973	7097	7309	7501	7469	7391
Men	4069	4100	4185	4266	4200	4119
Women	2904	2997	3124	3235	3269	3272
Aged 15-24	747	762	804	832	802	756
Aged 55-65	769	808	890	968	1015	1050
Non-Western	571	585	640	694	692	661
Native Dutch	5759	5862	6004	6109	6074	6042
Lacking a basic qualification	1657	1648	1663	1742	1695	1615
Gross participation rate (%)	68.1	68.5	69.8	70.9	71.2	71.0
Men	78.0	77.8	78.6	79.7	79.4	78.4
Women	58.1	59.2	60.8	62.1	63.0	63.4
Aged 15-24	44.2	43.7	45.3	45.9	45.2	42.7
Aged 55-65	41.7	42.7	45.8	48.4	50.1	51.3
Non-Western	59.0	58.0	59.7	62.5	61.9	60.4
Native Dutch	69..4	70.1	71.3	72.2	72.7	72.7
Lacking a basic qualification	50.3	50.0	51.0	52.5	52.5	51.8
Unemployment rate (%)	6.5	5.5	4.5	3.8	4.8	5.4
Men	5.5	4.4	3.5	3.2	4.5	5.0
Women	7.8	6.8	5.7	4.7	5.2	6.0
Aged 15-24	12.6	10.4	9.2	8.4	11.0	11.7
Aged 55-65	5.5	5.3	5.1	4.3	4.5	4.9
Non-Western	16.4	14.2	10.2	8.9	10.9	12.6
Native Dutch	5.2	4.3	3.7	3.1	3.9	4.5
Lacking a basic qualification	9.7	8.3	7.1	6.1	7.4	8.7
Labour force, unemployed (in thousands)	482	410	344	300	377	426
Men	236	191	154	142	197	218
Women	245	219	190	158	180	208
Aged 15-24	108	88	82	76	99	100
Aged 55-65	45	46	48	43	48	54
Non-Western	112	97	73	68	85	95
Native Dutch	315	266	231	195	246	282
Lacking a basic qualification	178	148	127	113	135	153
Long-term unemployment rate (% of labour force)	1.9	1.7	1.4	1.1	0.9	1.2B

Men	1.9	1.6	1.3	1.0	0.9	1.2B
Women	1.9	1.8	1.5	1.1	1.0	1.2B
Youth unemployment rate	8.2	6.6	5.9	5.3	6.6	na
Men	8.0	6.1	5.6	5.4	7.1	
Women	8.4	7.1	6.2	5.2	6.1	
Employment status						
Permanent employment contract	5542	5594	5703	5847	5851	5743
Flexible employment contract	498	541	601	615	579	598
Self-employed	933	962	1005	1038	1039	1049

na = not available, B = break in series
Source: CBS Statline, Eurostat, 2011
Gross participation rate = People who work twelve hours a week or more and people seeking work for twelve hours a week or more.
Labour force, employed = People aged between 15 and 65 who live in the Netherlands and are in paid employment for 12 hours a week or more.
Labour force, unemployed = People aged between 15 and 65 who are unemployed or work for less than 12 hours a week and are actively seeking – and are immediately available for – employment for 12 hours a week or more.

Table 4

	2005	**2006**	**2007**	**2008**	**2009**	**2010**
Jobs classified by economic activity						
Agriculture, fisheries and forestry		120	121	113	112	na
Industry and energy		1248	1261	1273	1205	na
Construction		377	379	380	364	na
Trade and transport		1685	1726	1729	1693	na
Commercial services		5096	5270	5206	5048	na
Business services		2761	2880	2820	2701	na
Non-commercial services		2564	2653	2718	2789	na
All economic activities		7661	7886	7892	7788	na
Vacancy rate (%)						
Agriculture, fisheries and forestry	25	36	31	19	14	12
Industry and energy	19	29	33	21	10	15
Construction	29	39	47	30	14	16
Trade and transport	38	52	57	36	23	28
Commercial services	25	35	36	25	16	19
Business services	25	35	34	25	16	16
Non-commercial services	15	19	21	23	17	11
All economic activities	21	29	30	24	15	16

Source: CBS Statline, 2011

Article 1§2

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

No new developments

Article 1§3

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

Public services to help jobseekers find employment have not changed between 2007 and 2010. The tasks of the implementing body responsible for providing these services are laid down in the Work and Income (Implementation Structure) Act (SUWI). In an amendment to the SUWI, which took effect on 1 January 2009, the Centres for Work and Income (CWIs) were merged with the Employee Insurance Agency (UWV), but job placement services have basically remained the same. The UWV is also obliged as of 1 January 2009 to work together more with the municipal authorities when serving its customers. Services, including job placement services, have become more integrated and are provided at employment centres designed to be more easily accessible to the public.

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

No new measures have been taken in the period 2007-2010 geared to free job placement services.

3) Please provide indicators, estimated if necessary, on the functioning and the performance of the employment services in practice, including the number of vacancies registered by employment services; placement rate (placements made by the employment services as a share of notified vacancies).

Table 5 shows the number of vacancies registered and filled by the Employee Insurance Agency's public employment service (UWV WERKbedrijf) compared with the total number of vacancies that arose and were filled in the period 2007-2010.

Table 5

	2007	2008	2009	2010
	in thousands			
Total vacancies	**1125**	**1028**	**725**	**743**
Vacancies notified to UWV	**279**	**289**	**239**	**268**
PES market reach	**25%**	**28%**	**33%**	**36%**
Total vacancies filled	**1105**	**1087**	**794**	**736**
Vacancies filled by UWV	**106**	**103**	**92**	**107**
UWV market share	**10%**	**10%**	**12%**	**15%**
UWV placement rate*	**38%**	**36%**	**38%**	**40%**

UWV = Employee Insurance Agency (public employment service)
* Vacancies filled by the UWV as a percentage of vacancies notified to the UWV
Source: Statistics Netherlands (CBS), UWV, 2011

Questions from the European Committee of Social Rights

arising from the previous (20th) Dutch report

Paragraph 1 - Policy of full employment

a. *With regard to ethnic minorities, the report mentions a number of initiatives on behalf of non-Western immigrants: the sharing of good practice at the instigation of the National Diversity Management Network (DIV)1, placement measures, individual follow-up, job fairs enabling young people to meet different employers and steps to promote entrepreneurship. Other measures are more specifically designed to attract skilled foreign labour. The Committee previously (Conclusions XVIII-1) asked for information about the results of the Centres for Work and Income (CWIs) and the Employee Insurance Schemes (UWVs). As there has been no response, it reiterates its request.*

The Centres for Work and Income were merged with the UWV as of 1 January 2009. Part of the UWV, the public employment service, is responsible for job placement services and reintegration. Table 6 shows the number of jobseekers registered with the public employment service (1), the influx of jobseekers (2), the number of registered vacancies on 1 January (3) and the number of vacancies reported to the public employment service during the year (4), and the number of vacancies filled by the public employment service as an absolute figure (5) and as a percentage of total vacancies notified (6).

Table 6

	2009 actual figures *x 1000*	**2010 actual figures** *x 1000*
(1) Number of unemployed jobseekers on 1 January	417	508
(2) Influx of unemployed jobseekers	567	565
(3) Number of vacancies registered with UWV on 1 January	44	40
(4) Number of vacancies notified to UWV	239	268
(5) Number of vacancies filled by UWV	92	107
(6) Vacancies filled by UWV as % of total vacancies notified to UWV	38%	40%

UWV = Employee Insurance Agency (public employment service)
Source: UWV 2010 annual report, *Nieuwsflits Arbeidsmarkt*

b. *The Committee would like the next report to specify the total number of persons benefiting from all these employment measures, the proportion of long-term unemployed and the activation rate.*

The tables below give an overview of the number of reintegration programmes for different benefit schemes and the characteristics of the participants.

Table 7 Reintegration programmes and services for unemployment benefit claimants

Year started	No. of prog. and services started (x 1000)	Expenditure in calendar year 2007 (€ millions)	Expenditure in calendar year 2008 (€ millions)	Expenditure in calendar year 2009 (€ millions)	Expenditure in calendar year 2010 (€ millions)	Ongoing programmes and services at year-end 2010 (x 1000)
Prior to 2007		76	13	1	0	0
2007	44	51	48	6	1	0
2008	44		52	32	4	2
2009	94			97	74	19
2010	47				73	24
Unknown		15	5	14	9	
Total		**142**	**118**	**150**	**161**	**45**

Source: UVW 2011 annual report

Table 8 : Unemployment benefit claimants following a reintegration programme at the end of April 2010 compared with total number of unemployment benefit claimants at the end of April 2010 broken down by age group

	Ongoing reintegration programmes		**Unemployment benefit claimants**		**% following a programme**
Age	*x 1000*	*%*	*x 1000*	*%*	
15-24	1.5	2%	11.4	4%	13%
25-34	11.5	16%	47.9	17%	24%
35-44	23.9	33%	74.4	27%	32%
45-54	25.2	34%	77.8	28%	32%
55-64	11.0	15%	63.2	23%	17%
Total	**73.1**	**100%**	**274.7**	**100%**	**27%**

Table 9 Reintegration programmes and services for disabled persons claiming incapacity benefit[1]

Year started	No. of prog. and services started (x 1000)	Expenditure in calendar year 2007 (€ millions)	Expenditure in calendar year 2008 (€ millions)	Expenditure in calendar year 2009 (€ millions)	Expenditure in calendar year 2010 (€ millions)	Ongoing programmes and services at year-end 2010 (x 1000)
Prior to 2007		78	15	2	0	0
2007	36	56	54	8	2	1
2008	35		52	45	7	4
2009	39			63	38	14
2010	38				54	29
Unknown		0	5	7	7	
Total		**134**	**125**	**125**	**110**	**48**

[1] Under the Invalidity Insurance Act, the Work and Income (Capacity for Work) Act, the Incapacity Insurance (Self-employed Persons) Act, the Work and Employment Support (Young Disabled Persons) Act and the Incapacity Insurance (Young Disabled Persons) Act)
Source: UVW 2011 annual report

Table 10: Social assistance benefit claimants following a reintegration programme at the end of 2009 compared with total number of social assistance benefit claimants at the end of April 2010 broken down by ethnicity, length of benefit claim and age

	Ongoing reintegration programmes		Social assistance benefit claimants		% following a programme
	x 1000	%	x 1000	%	
Ethnicity					
native Dutch	61.7	42%	134.0	48%	46%
Non-Western minorities	64.7	44%	113.8	41%	57%
Western minorities	16.4	11%	33.1	12%	50%
Length of benefit claim					
< 1 year	33.6	23%	67.4	24%	50%
1-2 years	22.4	15%	37.2	13%	60%
2-3 years	14.8	10%	23.9	8%	62%
3-4 years	10.8	7%	18.1	6%	60%
4-5 years	9.0	6%	15.4	5%	59%
> = 5 years	55.2	38%	118.9	42%	46%
Age					
15-20	1.8	1%	4.0	1%	45%
21-24	7.7	5%	13.8	5%	56%
25-34	31.3	21%	51.0	18%	61%
35-44	43.3	30%	70.9	25%	61%
45-54	40.3	28%	75.2	27%	54%
55-64	21.5	15%	66.0	24%	33%
Total	**145.9**	**100%**	**280.8**	**100%**	**52%**

Source: Statistics Netherlands (CBS) 2011

Table 11: Municipal reintegration programmes started in 2008 and 2009 broken down by activity

	2009
Old schemes for subsidised jobs	7%
Wage cost subsidies	13%
Vocational training	8%
Work-oriented assistance programmes	26%
Support activities/instruments	25%
Social activation	21%
Other	1%
Total	**100%**

Source: Divosa-monitor 2010

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

c. The government has set up a national employment discrimination monitor to determine the nature and scale of employment discrimination on grounds of race, religion and nationality, and any trends over time. The first survey was launched on 15 December 2006. The aim is to publish a monitoring report on discrimination in all areas of employment every two years. The Committee asks for the main findings from these reports to be included in the next report.

A three-year agreement was concluded in 2006 between the Ministry of Social Affairs and Employment and the Netherlands Institute for Social Research to carry out the Discrimination Monitor surveys for 2007 and 2010 and a further in-depth study as part of the 2010 survey.

Discrimination Monitor 2007
The first survey was conducted in 2007 and was followed up with a conference on 15 November 2007. The survey showed that some ethnic minority groups are less likely to find jobs, permanent employment or positions in highly skilled professions than native Dutch people. Individual characteristics that are important in the labour market cannot entirely explain the difference between ethnic minorities and the native Dutch population. Discrimination is probably a factor.

The 2007 Discrimination Monitor survey and conference prompted the Ministry of Social Affairs and Employment to draw up an action plan to tackle discrimination in the labour market, which it presented to the House of Representatives on 23 April 2008. The plan contains the following elements:
- Positive portrayal of ethnic minorities.
- Roles of various partners.
- Action to reduce discrimination in recruitment and selection.
- Action to reduce discrimination on the work floor.

2010 Discrimination Monitor survey on non-Western immigrants in the labour market and practical experiments (report published by the Netherlands Institute for Social Research, 'Liever Mark dan Mohammed?' [Mark rather than Mohammed?])
The 2010 Discrimination Monitor survey on non-Western immigrants in the labour market sets out the results of quantitative analyses of databases and interviews with the actors involved (employers and agencies). The survey included practical experiments.

The principal results of the Discrimination Monitor survey are shown below.

- Non-Western immigrants have fewer prospects on the labour market than native Dutch people. The degree of discrimination varies according to the state of the economy. In times of strong growth, when the demand for labour is high, there is relatively little discrimination. Hence, in the period 2000-2002, there was relatively little inequality of opportunity between native Dutch people and non-Western immigrants. A subsequent increase in the supply of labour was accompanied by increasing inequality of opportunity.
- In the practical experiments, fictitious non-Western candidates who were in other respects equal to the native Dutch candidates were less likely to be invited to attend a job interview. On average, native Dutch applicants had a 44% chance of being invited for an interview, while comparable non-Western applicants had a 37% chance.
- The Discrimination Monitor survey also revealed statistical discrimination, in which people attribute characteristics to a particular group and then apply them to an individual

from that group (stereotyping). Although discrimination in the labour market is generally an unconscious reflex, it has proved possible to curb the influence of stereotyping on selection behaviour.

- Stereotyping and negative opinions about particular groups need not necessarily result in the exclusion of non-Western immigrants from the labour market. Employers point out that they wish to employ people of non-Western origin, motivated by a desire to improve their competitiveness, diversity and customer focus.
- The Discrimination Monitor survey also shows that discrimination is not the only reason why the prospects of non-Western immigrants in the labour market are not as good as those of native Dutch people. Other reasons include differences in qualifications (e.g. having a less impressive CV, moving sideways up the education ladder, job-hopping), poorer social skills (e.g. having a self-effacing attitude or failing to obey unwritten rules) and aspects related to ethnic or religious background (e.g. having a poorer command of Dutch or wearing a headscarf).

Discrimination Monitor survey for the period 2010-2012
In June 2010 the Ministry of Social Affairs and Employment commissioned another survey from the Netherlands Institute for Social Research on discrimination against immigrants in the labour market. The survey was started in September 2010 and will run until September 2012.

d. The Committee takes the view that the practice of employing prisoners for private enterprises, without the prisoners' consent and in conditions too far removed from those normally associated with a private employment relationship, is not consistent with the Charter prohibition on forced labour (Conclusions XVI-1, Germany). It therefore asks whether convicted prisoners can refuse to work for a private undertaking, whether inside or outside prison, and whether working conditions are similar to those in a free working relationship.

- *Can convicted prisoners refuse to work for a private undertaking inside prison?*

No, this is not an issue, because private enterprises do not come into contact with prisoners in prisons with a view to entering into an employment relationship. Private enterprises are not admitted to custodial institutions. It is not possible for a prisoner in a closed custodial institution to work directly for a private enterprise. Work is acquired by the management of the institution. The work is performed in and supervised by the institution itself.

Under section 47, subsection 1 of the Custodial Institutions Act, prisoners are in principle entitled to participate in the work available at the institution. Section 47, subsection 3 of the Act provides that prisoners on whom a custodial sentence has been imposed, regardless of whether the conviction may be appealed against, must do the work they are instructed to perform by the director of the institution. The work is generally simple and is not geared to a high level of output. Many prisoners have no work experience and the work is carried out at a slow pace.

The obligation to perform work does not apply to persons held in pre-trial or provisional detention. Also exempt are prisoners who have not been convicted of a criminal offence, such as persons committed for failure to comply with a judicial order or aliens held under the Aliens Act, people held in a custodial institution under the Psychiatric Hospitals (Committals) Act, and people over 65.

- *Can convicted prisoners refuse to work for a private undertaking outside the prison?*

Yes. This relates to work done by prisoners at minimum security facilities. Such work is not based on an employment contract between the prisoner and the private company. In effect it is a routine activity within the prison regime. The institution concludes a contract with the employer.

Prisoners have to agree to take part in activities that are part of the prison regime, including working outside the institution, before they can be selected for and assigned to a minimum security facility. The work experience they gain is designed to ease their reintegration into society upon release. If a prisoner wishes to go back on his agreement and stop working outside the institution he may do so, but this means he can be moved from the minimum security facility to a closed prison.

- *Are working conditions, when working inside the prison, similar to those in a free working relationship?*

No, the conditions of employment that apply to a working relationship between an employer and an employee do not apply to work performed by a prisoner in prison. As noted above, it is in effect a routine activity within the prison regime. Prisoners receive an allowance for taking part in work activities, but it is not comparable – even in a formal legal sense – with what would be viewed as a salary in society at large. The basic hourly rate of pay is €0.76. For certain activities the director of the prison may award a supplement of 100% of the basic rate. This is not unreasonable when it is borne in mind that inmates are provided for (food, clothing, health care etc.) entirely at the State's expense. The allowances that may be earned by working at the institution are not needed to meet living costs, but are generally used to purchase items at the prison shop.

That being said, the legislation governing the conditions under which work must be performed does of course apply to work inside prisons too. Working hours are laid down in the prison's internal rules, and do not exceed what is customary outside the prison (section 47, subsection 4 of the Custodial Institutions Act). Prisoners are not obliged to work on Sundays or public holidays as referred to in section 3, subsection 1 of the General Extension of Time Limits Act. Nor are they obliged to work on days on which they are attending, with the permission of their pastoral carer, a retreat, a triduum, a church conference or a non-denominational contemplative gathering (article 8, paragraph 1 of the Wages (Prisoners) Order). Also, the days on which prisoners who profess a religion that designates days other than those referred to above as days of rest, religious holidays or anniversaries are not obliged to work are determined annually by the Minister of Security and Justice (article 8, paragraph 2 of the Wages (Prisoners) Order).

- *Are working conditions when working outside the prison similar to those in a free working relationship?*

No, although the work takes place outside the custodial institution, no employment relationship exists between the prisoner and the private employer in which conditions of employment of the kind referred to apply. Prisoners receive a weekly allowance of €111.36 for the work they perform. This is considerably more than the amount received by prisoners who work in a closed institution but less than what can be earned in society at large. It should be remembered that inmates are provided for at the State's expense. The legislation governing the conditions under which the work must be performed does apply. The Working Hours Act also applies.

e. The data protection authority has published a report on employees' email correspondence. The Committee asks for an up-to-date description in the next report of the current state of the relevant legislation and case-law, to enable it to assess the situation with respect to Article 1§2 of the Revised Charter.

f. It also asks for information on aspects other than email to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, General Introduction to Conclusions 2006, §§ 13-21).

Employees' personal data is protected by the Personal Data Protection Act, which fully protects their rights, including the right to consult and request corrections of data and to object to the processing of data about them. The Act is based on Directive 95/46/EC. The Act provides for independent oversight by the Data Protection Authority of the processing of personal data, including data processed by employers in both the public and private sector. The Act also allows individuals recourse to the courts.

Under section 27 of the Works Councils Act, works councils have the right to approve or reject the adoption, cancellation or amendment of company rules on the processing and protection of personal data relating to the company's employees. Works councils have the same rights with regard to facilities that are designed or suitable for observing or monitoring the presence, behaviour or performance of employees.

Dutch courts have not handed down any important judgments in recent years concerning the protection of employees' personal data. In 2002 the Data Protection Authority adopted a background study on the protection of privacy in the workplace. This study has not been modified since then.

g. The Committee notes that current terrorism-related legislation in the Netherlands does not place any restrictions on individuals' right to occupy certain posts. However, legislation on the subject is currently being drafted. The Committee asks for information in the next report on the measures that are introduced and the categories of individual and jobs concerned.

The Netherlands takes the Committee's question to be referring to the extension of the scope for depriving convicted offenders of the right to practise certain professions by way of additional punishment. The Criminal Code provides that the courts may, in certain circumstances defined by law, impose an additional punishment on an offender by depriving him/her of the right, for a given period, to practise the profession in which the offence was committed. A court may not impose this sanction unless the person concerned has been convicted of a criminal offence. In cases where this sanction is considered, there is a close connection between the profession of the person concerned and the criminal offence for which the conviction was handed down. Depriving a person of the right to practise a certain profession or occupy a certain office is designed to prevent convicted persons from abusing their office or profession to commit criminal offences and create new victims or damage.

As of 1 April 2010, legislation has been in place which extends the scope for imposing this penalty for public order offences (including inciting the commission of criminal offences or acts of violence against public authority and incitement to hatred), including incitement to commit a terrorist offence. The proportionality of this sanction will have to be gauged in the

light of fundamental freedoms. This is one of the factors that the European Court of Human Rights will consider in forming a view on whether the sanction constitutes an impermissible breach of the freedom of expression or the freedom of religion.

Paragraph 3 – Free Placement Services

h. The Committee asks that figures concerning the rate of placement under the Employees' Insurance Schemes (UWVs) and by the local authorities be included in the next report.

Table 12 shows the number of benefit claimants and the influx of new claimants served by the Employee Insurance Agency (UWV) (in the case of incapacity benefit and unemployment benefit claimants) and by municipalities (in the case of social assistance benefit and surviving dependants benefit claimants and jobseekers who are ineligible for benefits), and the number of programmes started, ongoing and ended for these various target groups.

Further information about reintegration activities and the number of jobseekers who find work can be found in the Dutch-language publications *UWV Kwantitatieve informatie 2010* and *RWI Factsheet re-integratie 2010*.

Table 12

	Total	**AO**	**WW**	**Social ass.**	**Nug/Anw**
	(x 1000)				
Total benefit claimants and jobseekers ineligible for benefits at start of 2007	1411	861	249	301	.
Influx in 2007	381	51	254	77	.
Programmes started in 2007	171	39	41	88	3
Programmes ended in 2007	167	45	32	85	5
Ongoing programmes at year-end 2007	314	54	49	201	10
Total benefit claimants and jobseekers ineligible for benefits at start of 2008	1310	844	192	274	.
Influx in 2008	431	49	242	93	46
Programmes started in 2008	180	39	41	96	4
Programmes ended in 2008	167	37	53	74	3
Ongoing programmes at year-end 2008	307	46	46	204	11
Total benefit claimants and jobseekers ineligible for benefits at start of 2009	1265	835	171	259	.
Influx in 2009	629	53	428	119	29
Programmes started in 2009	240	48	82	105	5
Programmes ended in 2009	164	35	51	72	6
Ongoing programmes at year-end 2009	372	59	77	225	11
Total benefit claimants and jobseekers ineligible for benefits at start of 2010	1382	831	270	281	.
Influx in 2010 (estimate based on first six months of 2010)	643	56	415	140	32
Programmes started in first six months of 2010		40	51	63	3
Programmes ended in first six months of 2010		51	84	*41*	*2*
Ongoing programmes at end of June 2010		48	45	*231*	*11*

AO = incapacity benefit claimants
WW = unemployment benefit claimants
Nug/Anw = surviving dependants benefit claimants and jobseekers who are ineligible for benefits
Source: CBS, UWV, 2011

i. The Committee asks that additional indicators such as the number of people called for interview by the public employment services, the number of people put into contact with an employer and the average time taken to fill vacancies be included in the next report.

Table 13 shows the number of registered unemployed jobseekers and the number of vacancies notified to the Employee Insurance Agency (UWV). The latter figure, in relation to the average number of vacancies registered with the UWV at any one time, gives an indication of the average expected time taken to fill vacancies.

Table 13

	2007	**2008**	**2009**	**2010**
	(x 1000)			
Influx of unemployed jobseekers	465	435	567	565
Vacancies notified to the UWV	279	289	239	268
Number of vacancies registered with the UWV at any one time*	62	58	44	47
Average expected time to fill vacancies (in weeks)	11.5	10.4	9.5	9.1

*Average figure over the year
Source: CBS, UWV, 2011

j. It also requests up-to-date information about the total number of staff of the public employment services and the number of CWIs and private employment agencies.

At year-end 2010 the UWV employed 21,304 people (18,228 FTEs) of whom 5,570 FTEs at the public employment service (UWV WERKbedrijf, formerly CWIs). At year-end 2010 the UWV had 186 premises, including 120 employment centres. The number of private employment agencies in the Netherlands in 2010 was 3,280 (Source: 2010 annual report of the *International Confederation of Private Employment Agencies* - CIETT).

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.

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

The Social Participation Budget Act (Wet op het Participatiebudget) entered into force on 1 January 2009, combining the budgets for social rehabilitation (Ministry of Social Affairs and Employment), civic integration (Ministry of Housing, Communities and Integration) and adult education (Ministry of Education, Culture and Science) at municipal level. Local authorities now receive an annual social participation budget through the Ministry of Social Affairs and Employment which they may use, in principle, as they see fit to pursue the objectives of the three bodies of legislation concerned. Before these funds were merged, the House of Representatives voted to allocate €50 million from the adult education budget to finance a programme to boost standards in language and mathematics in secondary vocational education, under the motto 'Prevention is better than cure'. This was prompted by studies indicating that the language and numeracy skills of Dutch secondary vocational students were sub-standard. The funding for adult education (to date around €200 million per annum) makes up the smallest proportion of the social participation budget. To prevent regional training centres (ROCs) being faced with rapid swings in municipal demand for educational activities – which might also affect their ability to provide secondary vocational education – the funds for adult education in the new legislation have not yet been freed up. For the time being, they must continue to be spent at ROCs.

Otherwise no new developments (see p. 30 of the Netherlands' 20th report).

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

The above legislation and the consequences for secondary vocational education (MBO) were announced in the Strategic Agenda for Adult and Vocational Education covering the 2008-2011 period. Besides striving for a more integrated education policy, this agenda seeks a closer match between education and the job market, particularly at regional level, better-quality teaching (for instance by requiring a statutory minimum number of teaching hours (850 a year)) and closer cohesion within the vocational education sector. With this latter aim in mind, a trial with an integrated VMBO-MBO course has been launched, whereby pupils taking a basic vocational programme in pre-vocational secondary education (VMBO) study for their MBO level 2 diploma, enabling them to gain a basic qualification for the labour market. The VMBO examination is not compulsory and pupils remain at the same school throughout their training.

3) Please supply any relevant statistics or other information on public spending on vocational guidance services, their geographical distribution and the institutions that provide them, their staffing levels and the qualifications of those staff, and the number of persons served and their characteristics, in terms of age, sex, educational level and

occupation.

The adult and vocational education sector received more than €3.5 billion from the Ministry of Education, Culture and Science in 2009, divided between the various educational institutions on the basis of the number of participants, the number of diplomas awarded and the support services offered. These institutions can also provide courses (contract activities) for companies and individuals. In 2009 the municipalities received a total of €202 million from the Ministry for the purpose of adult education, apportioned according to the number of adult inhabitants, the number of adult immigrants and the number of adults with an educational disadvantage. They outsource training to the Regional Training Centres (ROCs).

Government funding for the centres of expertise on vocational education, training and the labour market (KBBs) is based on the number of qualification profiles they have developed and updated, the number of training companies they have officially recognised and the number of placements that are actually taken up. The KBBs had a total budget of €111 million in 2009.

For further details, including staffing levels, see section 7 of "Key Figures 2005-2009", available at:
http://www.rijksoverheid.nl/documenten-en-publicaties/publicaties-pb51/key-figures-2005-2009.html.

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (20th)

Paragraph 1 - Minimum age of admission to employment

a. *The national campaign entitled "Kom in het leerbedrijf" offers young people an opportunity to spend a day in a certified training company to familiarise them with various occupations. The Committee asks again whether this activity takes place every year.*

Yes, this is organised annually. See also www.kominhetleerbedrijf.nl (in Dutch only).

b. *The report provides no information at all on spending on guidance services in the education system, staffing numbers or total beneficiaries of guidance. It asks for this information to appear systematically in each report.*

Please see p. 31 of the 20th report (2007), where some figures are provided.

As indicated in the previous report, career orientation and guidance in the Netherlands is part of an integrated education strategy. Except for occasional incentive funding, schools and training centres use their annual block grant to fund this activity. No separate data is available on their spending, staffing levels or the number of students involved.

Institutions are encouraged to take a professional approach to career orientation and guidance by employing experts to structure and provide these services. The sector councils coordinate efforts to implement incentive plans in this area in the general secondary and secondary vocational sectors. Besides a quick scan, designed to support schools in further developing their career orientation and guidance services, the following activities are planned for the coming period: professional development of careers advisors in accordance

with schools' vision and needs, and improving communication/collaboration between the sectors.

In addition to the career orientation and guidance incentive plan currently being implemented in adult and vocational education, supplementary measures are in the pipeline. The plan should start producing results in 2011 and 2012; these will be applied sector-wide, with special emphasis on improving the quality of services. To ensure the smooth transfer of tools and methods, a needs analysis may be carried out in 2011, if necessary. This will identify which customised solutions are required.

Efforts are being stepped up to foster demonstrably effective initiatives and good practices in the regions. For example, some twenty good practices have been identified and their effects assessed, generating a list of characteristics they all share. The results were published in February 2009, and were discussed at regional meetings. Success factors are being disseminated at regional level by means of guidelines and a checklist.

c. In its previous conclusion (Conclusions XVIII-2), the Committee noted that the youth unemployment task force was working in co-operation with the work and income centres (WICs) on a learning package for students and careers advisers. WIC careers advisers are required to present their activities in secondary schools. In the absence of any reply, the Committee asks for information on the follow-up to this programme.

At each of the 30 larger local employment centres (*Werkpleinen*: these have replaced the Centres for Work and Income), which fulfil a central role in their region, training and employment helpdesks have been set up to form a nationwide system that, in principle, offers every jobseeker access to advice on careers or study options. Wherever possible, services revolve around the placement and reintegration instruments and activities available at the employment centres. The training and employment helpdesks also give presentations in secondary schools.

d. The Committee also noted that the WICs were working on a project to open skills testing centres intended to help everyone find an appropriate job more readily. The Committee also asks for information on the follow-up to this project.

Skills testing centres have been set up at the local employment offices (*Werkpleinen*, which have replaced the Centres for Work and Income). Using a computer model, specially trained staff ascertain jobseekers' skills, discuss the test results with the individual concerned and then prepare a report. Jobseekers can then be matched up with suitable job vacancies.

e. The Committee emphasises how important it is for it to have relevant information to be able to assess the situation and asks for up-to-date information in the next report on spending on vocational guidance in the labour market, numbers of staff and total numbers of beneficiaries. It asks for this information to appear systematically in each report.

None of the information requested is available.

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

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

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

Article 10§1

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

No new developments (see p. 34 of the Netherlands' 20th report (2007)).

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

No new developments (see p. 34 of the Netherlands' 20th report (2007)).

3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: the total amount of public expenditure devoted to vocational training; the number of vocational and technical training institutions and types of education and training provided; number of teachers and pupils.

See http://www.rijksoverheid.nl/documenten-en-publicaties/publicaties-pb51/key-figures-2005-2009.html, particularly:

- the section on lifelong learning in chapter 2, "Education national" (p.46), and
- the section on ethnic minorities in MBO (secondary vocational education) in chapter 7, "Vocational and adult education" (p.124).

Article 10§2

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

No new developments (see p. 34 of the Netherlands' 20th report (2007)).

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

In response to the economic recession, the Dutch government produced a youth unemployment action plan for the 2009-2011 period, containing measures to ensure sufficient placements during the crisis for students in block or day release schemes. In support of this action plan, a national protocol on practical training in the workplace (the 'BPV Protocol') was drawn up on 10 June 2009, setting down clear agreements on supervision of these students and the responsibilities of schools for secondary vocational education and placement providers.

3) *Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: the existence of apprenticeship and other training arrangements for young people; the number of young persons benefiting from training systems; how the arrangements for vocational training are divided between the various types of vocational activity; length of the apprenticeship; the total public spending (and private spending, if possible) on these types of training and the availability of places for all those seeking them; equality of access to apprenticeship training for all those interested, including national of the other States party.*

The following information can be provided for the various indicators.

A. The existence of apprenticeship arrangements is demonstrated by the number of students benefiting from them

Students enrolled in block or day release schemes (BBL) at levels 1, 2, 3 and 4, broken down by year of entry and differentiating between 'green' (i.e. agricultural) and 'non-green' education (total figures, not per level)

Table 14: **Students in adult or vocational education broken down by level (x 1,000)**

	2006	**2007**	**2008**	**2009**	**2010**
Total MBO	**464.4**	**477.1**	**479.6**	**486.1**	**495.2**
BBL					
Level 1	6.7	8.4	8.5	9.9	11.1
Level 2	51.9	60.5	65.0	59.2	58.7
Level 3	46.5	50.0	53.8	54.9	55.8
Level 4	24.3	28.1	29.5	31.4	32.0
Total MBO (green)	**25.8**	**26.2**	**27.1**	**29.4**	**30.2**
BBL green	8.8	9.2	10.2	11.7	11.5

Source: *Kerncijfers 2006-2010*, p. 123 (www.rijksoverheid.nl/bestanden/documenten-en-publicaties/publicaties-pb51/kerncijfers-2006-2010/08dw2011b004.pdf)

MBO: secondary vocational education
BBL: block or day release

B. Broken down by type of vocational training and gender

Table 15:

SECTORS	Male	Female
1. Business	22,537	18,789
2. Engineering and Technology	71,528	4,247
3. Personal and Social Services and Health Care	5,673	35,649
4. Agriculture	8,904	2,908
9. Combination	1,036	249
Total	**109,678**	**61,842**

Source: Kubus 2009nw

C. Length of apprenticeships

The duration of block or day release schemes is the responsibility of the schools, operating within the statutory framework (with the placement comprising at least 60% of the curriculum).

D. Total public spending on vocational training: total and pro capita

Table 16: Key financial figures for adult and vocational education

	2006	2007	2008	2009	2010
Total Expenditure and revenue (x € million)	3,147.2	3,204.3	3,345.2	3,517.5	3,512.5
Education ministry expenditure per participant (x €1,000)	4.5	4.6	4.8	4.9	4.8

Source: *Kerncijfers 2006-2010*, p. 117 (www.rijksoverheid.nl/bestanden/documenten-en-publicaties/publicaties-pb51/kerncijfers-2006-2010/08dw2011b004.pdf)

The total amount spent on block and day release schemes is as follows: sum of 2010 figures given under answer A multiplied by €4,800 = €144.96 million (approximate figure).

NB: 'Green' vocational training is financed by the Ministry of Economic Affairs, Agriculture and Innovation.

E. Availability of apprenticeship places

See the latest COLO Barometer: www.colo.nl/colo-barometer-juni-2011-verschenen.html?file=tl_files/publicaties/publicaties%202011/Colo-barometer-jun2011.pdf

Based on evidence in this quarterly monitor published by the umbrella organisation for the centres of expertise on vocational education, training and the labour market (COLO), the measures in the youth unemployment action plan have helped ensure that there has been no significant shortage of places for students in block or day release schemes during the economic crisis.

F. Equality of access for both genders (including nationals of other member states)

See table under answer B regarding gender. No specific statistics are kept on nationals of EU member states. The categories used are:

1. Dutch
2. Western non-nationals
3. Suriname
4. Aruba/Antilles
5. Turkey
6. Morocco
7. Other non-Western non-nationals

Article 10§3

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

No new developments (see pp. 35-37 of the Netherlands' 20th report (2007)).

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

No new developments (see pp. 35-37 of the Netherlands' 20th report (2007)).

3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: the existence of facilities for training and retraining of adult workers, in particular the arrangements for retraining redundant workers and workers affected by economic and technological change; the approximate number of adult workers who have participated in training or retraining measures; the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures; equal treatment of non-nationals with respect to access to continuing vocational training.

The training participation rate among people aged between 25 and 64 was 17% in both 2008 and 2009, based on Eurostat's lifelong learning indicator.

Article 10§4

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

Legal framework: no new developments (see 20th report, 2007).

All jobseekers can register at their local employment centre (*Werkplein*) and get help finding work. During the reference period there were about 100 of these centres throughout the Netherlands, thus ensuring nationwide coverage. The purpose of the intake interview is to determine whether jobseekers can find work themselves or need help, ranging from job interview training to a reintegration programme. In the latter case, use of the various reintegration instruments available must be a viable option to overcome any obstacles jobseekers may experience. This requires a more detailed analysis to establish the nature and magnitude of the obstacle. If jobseekers fail to find work (with or without help), they are invited to come to the employment centre to discuss whether further support is needed. The length of time someone is unemployed is irrelevant to this question, but job prospects clearly diminish the longer a person is unemployed so that more support must be given.

Under the Comprehensive Strategy that was in place until 2008, all jobseekers received intensive support after a year (or six months in the case of young people) to help them find work. Following a detailed evaluation by the Ministry of Social Affairs and Employment, which published its findings in January 2008, it was decided that reintegration support services should be selective and demand-driven. Those needing help reintegrating are now selected at the initial intake stage (and at regular intervals thereafter, if necessary). Once an obstacle has been identified it is tackled without delay, which may entail immediate recourse to reintegration measures. Providing a demand-driven service means that labour market demand determines which reintegration instruments are used. This involves maintaining regular contact with employers to identify their labour requirements and focusing reintegration efforts on filling current and expected vacancies.

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

Support is provided at one of approximately 100 employment offices (*Werkpleinen*). Here, the Employee Insurance Agency (UWV) and the local authority work together to help jobseekers reintegrate, though each retains ultimate responsibility for the clients claiming benefits under the schemes they administer (UWV for unemployment and incapacity benefit claimants; the local authority for claimants of social assistance and surviving dependant's benefit and for individuals not entitled to claim benefits). Implementation of labour market policy has thus been decentralised. The system has been designed in such a way that local authorities have a financial incentive to minimise the number of people on social assistance benefit. The way in which they do so is at the discretion of the Municipal Executive and the Municipal Council (within the general framework set out in the relevant legislation). Each year the Ministry of Social Affairs and Employment allocates funds to local authorities for reintegration activities, which they may spend as they see fit, provided they use them demonstrably to help individual jobseekers find work or to equip them for the labour market. There is a similar arrangement with the UWV, but since it is an autonomous body, it also has to agree to a number of specific performance targets.

In response to the economic crisis, the Ministry has provided additional funding and substantive support to the employment centres to combat youth unemployment. Financial and material resources were also made available for the 2006-2010 period to improve collaboration between the vocational education sector and labour market parties, for instance by setting up training and employment helpdesks at the employment centres. However, this related to two one-off campaigns focusing on a specific group (young people) or a specific theme (matching vocational education courses to the needs of the labour market).

3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: types of training and retraining measures available; the number of persons in this type of training and the impact of the measures on reducing long-term unemployment; equal treatment of non-nationals with respect to access to training and retraining for long-term unemployed persons.

- Local authorities spent approximately 8% of their 2009 reintegration budget on training leading to a vocational qualification; this also corresponds to about 8% (i.e. approx. 18,000) of the total number of reintegration programmes. These figures are distorted, however, since a new employer is often asked to agree to bear at least some of the training

costs associated with reintegration (in cash or by allowing the employee in question to undergo training a few days a week).

- The UWV reports that almost 3,000 *disabled people* started a training programme in 2010 (7% of the total intake); 10% (i.e. more than 4,500) of the programmes under way at the end of that year were training programmes. A quarter of all programmes, however, involve individual reintegration agreements, where the clients themselves largely determine their own reintegration programme, which may include training. The number of *unemployed people* embarking on a training programme in 2010 was also 3,000 (almost 6% of the total). Here, too, 20% of the total intake opted for individual reintegration programmes. Since these individual schemes take longer to complete, training programmes account for just under 9% of all programmes under way at the end of 2010.

- Data are only available on take-up of employment by individual scheme (see table below), not by each type of programme. The criterion is that the person concerned must no longer be claiming any benefit.

Table 17: Take-up of employment within 24 months of starting reintegration programme (no longer claiming benefit)

Take-up in:	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
(programme started in)	(2002)	(2003)	(2004)	(2005)	(2006)	(2007)
Unemployment benefit	58%	63%	67%	71%	68%	62%
Incapacity benefit	48%	48%	51%	51%	51%	48%
Social assistance benefit	10%	15%	19%	47%	51%	47%
Non-claimants	47%	58%	61%	70%	72%	56%
Total	**26%**	**38%**	**41%**	**56%**	**61%**	**55%**

Source: Statistics Netherlands (CBS), *Uitstroom naar werk* (Take-up of employment), 2010

- None of these schemes differentiates between benefit claimants on the basis of their national or ethnic origin. Anyone who qualifies for benefit is entitled to support where a definite need has been identified.

Article 10§5

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

No new developments (see 20th report, 2007).

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

Implementation of the legal framework is monitored through enrolment figures (see Article 10§1**).** In addition, student surveys provide information on economic and social background and give an indication of policy effectiveness.

Pupils and students are obliged to pay fees, which are set by the government for both Dutch and EU students. Grants and loans are available to all Dutch pupils/students in secondary vocational education and higher professional education. Those whose income (or whose parents' income) is below a certain level (median income) can apply for additional grants to cover fees and living expenses. This ensures that aptitude is the key factor driving the decision to pursue a course of study.

Access for the disabled is enshrined in law.

Cooperation between employers and educational institutions is organised under the auspices of sectoral bodies for vocational education. In institutions of higher professional education, the employability of graduates is included in the accreditation requirements.

3) Please supply statistics or any other relevant information to show how this provision is applied in practice. The main indicators of compliance with this provision are: whether the vocation training is provided free of charge or that fees are reduced; existing system for providing financial assistance (allowances, grants, loans, etc.); measures taken to include time spent on training taken by workers in the normal working hours; supervision and evaluation measures taken in consultation with social partners to ensure the efficiency of apprenticeship for young workers.

In Key Figures 2005-2009 (see article 10§1 for reference), relevant statistics are provided in:
Chapter 2 Education national, Suitable education p. 34
Chapter 6 Secondary education, Ethnic minorities in secondary education, Table 6.13, p. 111
Chapter 7 Vocational and adult education, Ethnic minorities in MBO pp. 124-125
Chapter 9 Academic higher education, Ethnic minorities in tertiary education pp. 148-149
Chapter 10 Student grants and loans, Study Costs and School Fees Allowances Act, pp. 160-161, and School/course/tuition fees p. 162

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (20th)

Paragraph 2 – Apprenticeship

a. The Committee reiterates its question whether there are enough apprenticeship places to satisfy the demand.

Although the global recession continues to have an impact on supply, by and large there are sufficient work placement opportunities for students in secondary vocational education. The Dutch business sector is closely involved in aligning education and employment. Within each sector, representatives of employers, employees and educational institutions work together in 17 centres of expertise on vocational education, training and the labour market (KBBs) developing qualification profiles for occupations where they feel there is a demand for skilled labour. Possibly as a result of this system, and the tax concessions available for placement providers, businesses seem to be convinced of the importance of offering sufficient work placement opportunities.

There is, however, a slight imbalance in the type of placements available: many places are offered at the higher MBO levels (3 and 4), but too few at levels 1 and 2. As shown in the periodical 'Barometer' of Colo (the umbrella organisation of centres of expertise) on the availability of placements, a limited number of courses are facing (large) gaps, such as child care worker level 4, carpentry worker levels 2 and 3, assistant painter level 1 and junior lab assistant level 2. The government promotes close coordination between supply and demand through the internet (sites with search engines, such as stagemarkt.nl and workplacement.nl).

In higher education, there are sufficient practical training opportunities available.

Paragraph 4 – Long-term unemployed persons

b. Since the report does not provide information specifically on long-term unemployed persons, the Committee requests that the next report provide the number of long-term unemployed persons who participated in training measures, types of such measures and their impact on reducing long-term unemployment.

At any one time, about half of the people who have been claiming social assistance benefit for longer than 12 months are undergoing a programme aiming at labour market (re)integration. A programme normally lasts more than a year. The data available on the situation in the Netherlands is provided in the answer to question 3 under article 10, paragraph 4. Information about take-up of employment per type of programme, taking into account length of unemployment, is not available for the Netherlands.

Paragraph 5 – Facilities

c. However, it notes from the report that there have been developments in the entitlement of foreign nationals to financial assistance. Namely, since 15 March 2005 only those EU nationals who have lived in the Netherlands for five years or more are 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. The Committee asks how this change affects non-EU students and the situation which was previously (Conclusions XVIII-2) found to be in conformity with the Charter both for EU and non-EU students legally resident or regularly working in the Netherlands.

This change does not affect non-EU students.

d. The Committee notes that the quality of practical training in the workplace is monitored by the Education Inspectorate. It also observes that the Netherlands Court of Audit is conducting an audit to examine the efficiency of vocational training. The Committee wishes to be kept informed about the results of this audit.

Assuming that this question refers to the audit announced by the Netherlands Court of Audit in 2006, concerning practical training in the workplace for students in secondary vocational education (MBO), the following comments can be made about the findings, published in 2008.

The main factors prompting this audit were signs of a shortfall in the number of work experience placements available and the huge importance of the practical component within every MBO course (this component in fact being required by law). In its report, the Netherlands Court of Audit concluded that, while there were no long-term shortages in the field of practical training in the workplace, quality could be raised if schools improved supervision of their students. The agreements in this area between educational institutions, companies and centres of expertise were too informal in the Court of Audit's opinion. In response to a number of studies – including the aforementioned audit – examining the quality and other aspects of practical training in the workplace, on 10 June 2009 a voluntary agreement was signed at administrative level (by COLO, the MKB/VNO-NCW employers' organisation, the MBO Council and the Ministry of Education, Culture and Science). This voluntary agreement contains a clear code of conduct regarding the responsibilities and tasks of all parties involved in practical training in the workplace (schools, placement providers, centres of expertise on vocational education, training and the labour market (KBBs) and students) in order to ensure that practical training programmes are of a sufficiently high quality.

Sources (paragraphs 10.2 - 10.5):
* School leavers report by the Research Centre for Education and the Labour Market (ROA) on the labour market status of certificate holders 18 months after leaving school: Table A1.1 overview of key indicators (pp. 65-66): www.roa.unimaas.nl/pdf_publications/2010/ROA_R_2010_7.pdf.
* *BrancheMonitor 2010* (sector monitor) provides information on the activities and "market shares" of safety, health and welfare services, job coach organisations, intervention firms and reintegration service providers in 2009. Whereas the first signs of the impending economic and labour market crisis were not noticeable until the end of 2008, 2009 was a year of growing unemployment and job losses. See www.boaborea.nl/index.php?id=552&option=com_content&Itemid=77 and the full report: www.boaborea.nl/images/stories/Samenvatting_BrancheMonitor_2010_def_2.pdf.

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

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

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

Article 15§1

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

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

3) Please provide pertinent figures, statistics or any other relevant information to demonstrate effective access to education and vocational training for persons with disabilities (total number of persons with disabilities, number of persons with disabilities of 0-18 years of age, number of persons with disabilities in mainstreaming and special education and vocational training, including higher education; number of integrated classes and special education institutions, basic and in-service training for teachers).

The Social Support Act (Wet maatschappelijke ondersteuning, Wmo) serves as the general legal framework for the effective exercise of the right to independence, social integration and participation in the life of the community. This legislation gives local authorities full responsibility for providing citizens with all the assistance needed in these areas, and requires them to compensate for any disadvantages suffered by people with disabilities so that they can live as independently as possible. Another requirement is that local policy should be developed together with civil society organisations. Areas covered by the Act include measures to improve social cohesion, support for voluntary assistance, community shelters and drug addiction programmes. The present government is considering transferring responsibility in several areas of policy (e.g. transport and youth care) to local government level, but legislation has yet to be introduced. The Ministry of Health, Welfare and Sport and the Association of Netherlands Municipalities have jointly set up a transition office to help local authorities implement the Social Support Act. This office has a comprehensive website with web-based tools, guidelines for municipal decisions, etc. Furthermore, it helps organisations for people with disabilities to work with municipal services in implementing inclusion policies.

Article 15§2

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

People with a disability can claim income support and are entitled to reintegration services under the following legislation:

- *Work and Employment Support (Young Disabled Persons) Act (Wet werk en arbeidsondersteuning jonggehandicapten, WAJONG)*: young people who are unable to work due to illness or disability can claim incapacity benefit under this Act from the age of 18. They also receive help in finding and retaining suitable employment or support to undergo training.
- *Work and Income (Capacity for Work) Act (Wet werk en inkomen naar arbeidsvermogen, WIA):* people who suffer a loss of earning capacity during their working lives can claim incapacity benefit under this Act, provided this is established by a doctor or occupational expert. For two years prior to this, the employer is required to continue paying a sick employee's salary and to make every effort to reintegrate the individual concerned within the same or a different company. The Employee Insurance Agency (UWV) then takes over responsibility for reintegration. At this point a distinction is made between people deemed incapable of ever working again and those whose condition may improve in time. People in the latter group are required to exploit their existing earning capacity and are entitled to use the UWV's reintegration instruments to this end. Funds are also available for adapting the workplace once a job has been found. This means that new employers do not have to incur this expense, which might otherwise have led them not to hire a person with disabilities.
- *Sheltered Employment Act (Wet sociale werkvoorziening, WSW):* people who cannot earn the statutory minimum wage independently can request a medical examination to assess their eligibility for sheltered employment. Rather than looking to employ someone in a regular job, the emphasis here is on developing their capabilities. If necessary, they remain within the sheltered employment scheme throughout their working life. The sector has its own collective agreement, with wage levels at least equivalent to the statutory minimum wage.
- *Exceptional Medical Expenses Act (Algemene wet bijzondere ziektekosten, AWBZ):* under this Act, people with a very low earning capacity (less than 20% of the statutory minimum wage) can engage in daytime activities that are organised by care institutions responsible for providing support for this target group.

3) *Please provide pertinent figures, statistics or any other relevant information on the number of persons with disabilities in working age, in ordinary employment and in sheltered employment (estimated, if necessary). Please, also indicate whether the basic provisions of labour law applies to persons working in sheltered employment where production is the main activity.*

The table below shows the number of disabled people receiving some form of incapacity benefit, as well as the number of those who are also in work. In the latter case, earned income is supplemented with the appropriate benefit.

Table 18

Scheme	*Number of benefit claimants*	*Of whom in employment*
WIA	100,000	20,000
WAO	500,000	140,000
WAJONG	200,000	48,000

UWV, *2010 Annual Report, appendix*, Amsterdam, 2011.
WAO: Invalidity Insurance Act (Wet op de arbeidsongeschiktheidsverzekering)

Around 100,000 people work in sheltered employment, some 25,000 of whom receive incapacity benefit under the Work and Employment Support (Young Disabled Persons) Act (and are included in the figure of 48,000 in the table above). The standard provisions of labour law apply to people in sheltered employment, and they are also covered by their own collective agreement.

Article 15§3

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

All government departments have full responsibility for mainstreaming the rights and needs of people with disabilities in policies and regulations. However, there are specific schemes and regulations to provide this group with technical aids with a view to helping them overcome barriers to communication and mobility. For further information, see the answer to questions.

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (20th)

Paragraph 1 — Education and training for persons with disabilities

a. *The Committee notes from the report that in order to establish whether pupils with disabilities 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 relevant nationally established criteria are laid down in the Personal Budget (Education) Decree (Besluit leerlingengebonden financiering). The Committee asks whether these criteria are based on a more social definition such as that endorsed by the WHO in its International Classification of Functioning, Disability and Health – ICF 2001.*

In the context of needs assessment and the relevant nationally established criteria, the approach is to determine the degree of disability or impairment combined with an assessment of the resulting special educational needs. An independent committee determines whether a pupil meets the criteria and is therefore eligible for special education or may attend a mainstream school with extra support in the form of a personal budget. The budgets available depend on the type of education, not the severity of the pupil's disability. This method of needs assessment has met with a few problems, such as the red tape involved, the substantial

increase in the number of children assessed as having special needs and the limited scope for solutions tailored to individual needs. Work is therefore under way on a new system that will ensure that education is customised to children's needs; this will eventually replace the national needs assessment procedure. Regional consortiums will be responsible for allocating and providing extra support for pupils in both mainstream and special education.

b. The Committee reiterates its request to be systematically provided with figures concerning the total number of persons with disabilities, including the number of persons with disabilities below 18 years of age and of working age.

In 2010 there were 1,576,000 pupils in mainstream primary education, 22,000 of whom had a personal budget, and 948,000 in mainstream secondary education, including 17,000 with a personal budget. There were an additional 79,000 pupils in special education, equally divided between primary and secondary schools.

All children in the Netherlands are required to attend school, including those with a disability or impairment, no matter how serious. At the parents' request and based on assessment of the child by a doctor or psychologist, the school attendance officer does, however, have the power to grant an exemption if there are physical or psychological reasons preventing the child from going to school.

The answer to this question is based on information from the Netherlands Institute for Social Research (SCP) dating from 2006 (report on the disabled entitled *Meedoen met beperkingen*, SCP, July 2007, Table 2.4, p.36). This table contains figures for motor-disabled people (including those with a sensory disability) and gives the prevalence of total disabilities among individuals aged 6 and over (excluding those receiving institutional care), broken down by seriousness, age group and gender, as at 1 January 2006. The age categories differ slightly (e.g. 20-65), but this should not have a significant effect on prevalence, according to the SCP. The Institute is currently updating the 2006 prevalence figures, but these are not expected to be available until later in the year.

However, to provide us with a more up-to-date picture of the situation, we asked the Netherlands Institute for Health Services Research (NIVEL) to combine the figures from the above-mentioned report with the most recent population statistics from Statistics Netherlands (CBS) (1 January 2011 census on the CBS website, broken down by gender and age). The results are shown in the table below with an estimate of the prevalence of physical disabilities among the population, broken down by degree of disability, gender and age group. Note that people with a moderate or serious disability under the age of 20 have been grouped together, since this is not very prevalent among young people.

Table 19

number x 1,000												
	< 20 years old			**20-65 years old**			**> 65 years old**			**total**		
	male	female	total	male	female	total	male	female	total	male	female	total
none	1880	1761	3641	4234	3850	8084	568	443	1011	6682	6054	12736
minor	58	86	144	530	721	1251	226	336	562	814	1143	1957
moderate	*	*	*	245	358	603	214	410	624	459	768	1227
serious	64	65	129	92	116	208	132	265	397	288	446	734

* since it is relatively rare for young people to have disabilities, figures for moderate and serious conditions have been added together

Source: Statistics Netherlands (CBS), 25 July 2011

c. *In its previous conclusion (Conclusions XVIII-2), the Committee had highlighted that under Article 15§1, it considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general antidiscrimination legislation, specific legislation concerning education, or a combination of the two. The Committee had asked whether any such legislation existed in the Netherlands. Since the current report does not clarify whether the scope of either the 2003 Equal Treatment (Disabled and Chronically Ill People) Act or the 2003 Disability Act has been expanded to also cover education, the Committee reiterates its request.*

The Equal Treatment Act 2003 covers all educational schemes as from 1 August 2009.

d. *The Committee asks the next report to inform it about the concrete results of this programme, focusing in particular on:*
   - *attendance (number of students with intellectual disabilities) in mainstreaming or special compulsory and upper secondary schooling;*
   - *whether the educational offer in both mainstreaming and special education matches with the demand;*
   - *any relevant case law or complaint brought to the appropriate institutions concerning discrimination in access to education.*

In view of the fact that the legislation on appropriate education will not be introduced until 2012 (a year later than previously reported), it is not possible to comply with the request for concrete information. The intention is to monitor the effects of this programme, taking the three above questions on board. One point that can be made at this juncture is that there has been a considerable increase in the number of special needs pupils (including those who are learning disabled) attending a mainstream school with special funding in the form of a personal budget. Furthermore, legislation to improve the quality of special education, specifically to ensure that the curriculum is better tailored to pupils' needs, is currently being drafted.

With regard to the last question, the Equal treatment on the grounds of disability or chronic illness act (*Wet gelijke behandeling op grond van handicap of chronische ziekte, Wgbh/cz*) prohibits discrimination on the grounds of disability or chronic illness. If a parent or child feels that he or she is being discriminated against because of a disability (admission wrongly refused, for instance), he or she can invoke this Act and request the Equal Treatment Commission for its findings and/or the court for a ruling. The Commission is not often asked to decide on education matters; most of its findings concern schools that have not given sufficiently serious consideration to whether and which alterations are possible.

e. *The report recalls that in accordance with the Education Professions Act (Wet op de beroepen in het onderwijs, BIO) a teacher must fulfil certain minimum quality requirements, known as standards of competence. Depending on circumstances (e.g. regional situation or type of education), these minimum requirements may need to be supplemented with other skills. The Committee asks whether such skills include special needs education.*

As indicated, quality requirements for teachers are laid down in the Education Professions Act (*Wet op de beroepen in het onderwijs, BIO*) and relate to the minimum standards of competence with which teachers in a particular sector (and for a particular subject) must comply, irrespective of where they completed their teacher training. Teacher training colleges themselves, can also set additional, non-statutory requirements, usually in consultation with the schools for which they train teachers. These may vary according to type of education and may also apply to special needs education.

The statutory standards of competence stipulate that teachers must acquire the necessary skills to provide good-quality teaching to all pupils in a school, including those with special needs.

f. From the current report, the Committee further notes that adult and vocational educational institutions are entitled to special funding in the form of a personal budget for each disabled learner assessed as having special needs. The Committee asks the next report to highlight how many institutions used this special funding to assist adults attending such institutions.

As of 31 December 2010, the number of students with a personal budget attending secondary vocational education (including agricultural education) was as follows:

Table 20

Category	Number of students
1 *)	128
2	802
3	963
4	5,299

*) In this case, instead of students having a personal budget, institutions can apply for additional funding under the regulations governing visually impaired students in general secondary and secondary vocational education (*Regeling visueel gehandicapte leerlingen WVO en deelnemers WEB 2010-2012*) (Bulletin of Acts and Decrees 2009, 15638).

The classification into four categories is explained under g.

No data is available on the number of people in adult education with a personal budget.

g. The Committee notes that in reply to its request as to the number of persons with disabilities attending secondary vocational and higher education, the report indicates that as of 31 December 2006, the total number of pupils in secondary vocational education (MBO) applying for a personal budget was 1,658. The Committee asks for clarifications on the categories in which this figure is subdivided.

Clarification of categories

Category 1	Blind and partially sighted students
Category 2	Deaf and hearing-impaired students, students with serious speech and/or language impairments, students with multiple disabilities (hearing impairment + IQ lower than 70)
Category 3	Physically disabled students, physically disabled students with a long-term illness, students with severe learning difficulties and students with multiple disabilities (physical disability + IQ lower than 70 or a profoundly/seriously impaired intellectual development)
Category 4	Students with a severe mental disorder or serious behavioural problems.

h. It also requests the next report to indicate the total number of persons attending secondary vocational and higher education.

In the 2009/2010 academic year, there were a total of 489,700 students attending secondary vocational education (MBO), and 615,800 in higher education: 401,800 in higher professional education (HBO) and 214,000 at university (the latter includes students who are registered to sit exams but not to attend lectures). These figures include students in 'green' (i.e. agricultural) education, which, unlike other types of education, is funded by the Ministry of Economic Affairs, Agriculture and Innovation (formed in 2010), and not by the Ministry of Education, Culture and Science.

i. The Committee reiterates its previous question as regards the impact of training on the subsequent integration of persons with disabilities in the labour market.

Generally speaking, around 50% of disabled people who complete a reintegration programme find work within two years and are no longer claiming benefit. No specific figures are available, however, with regard to training.

j. The Committee requests the next report to inform it about the impact in practice of the WIA, including data concerning integration of persons with disabilities in the labour market following the conclusion of the above mentioned reintegration agreements.

The tables below break down spending on reintegration of disabled people, as well as the percentage subsequently taking up employment.

Table 21: Reintegration of disabled people (claiming incapacity benefit under WAO/WIA/WAZ/WAJONG): expenditure (€ million) and programmes and services (x 1000)

Year started	No. of prog. and services started (x 1000)	Expenditure in calendar year 2007 (€ millions)	Expenditure in calendar year 2008 (€ millions)	Expenditure in calendar year 2009 (€ millions)	Expenditure in calendar year 2010 (€ millions)	No. of programmes and services still under way at end of 2010 (x 1000)
Prior to 2007		78	15	2	0	0
2007	36	56	54	8	2	1
2008	35		52	45	7	4
2009	39			63	38	14
2010	38				54	29
Unknown		0	5	7	7	
Total		**134**	**125**	**125**	**110**	**48**

Source: Employee Insurance Agency (UWV), 2010 annual report
WAO: Invalidity Insurance Act
WIA: Work and Income (Capacity for Work) Act
WAZ: Incapacity Insurance (Self-employed Persons) Act
WAJONG: Work and Employment Support (Young Disabled Persons) Act

Table 22: Take-up of employment within 24 months of starting reintegration programme (no longer claiming benefit)

Take-up in:	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
(programme started in)	(2002)	(2003)	(2004)	(2005)	(2006)	(2007)
Disabled people	48%	48%	51%	51%	51%	48%

Source: Statistics Netherlands (CBS), *Uitstroom naar werk* (Take-up of employment), 2010

k. The Committee observes that, although requested in its previous conclusions (Conclusions XVI-2 and XVIII-2), up-to date figures concerning the number of persons with disabilities of working age, those in employment and those unemployed are lacking since 1999. The Committee underlines that should the next report not provide the requested information, nothing will demonstrate that the situation is in conformity with Article 15§2.

The table below gives an overview of the total number of incapacity benefit claimants, expressed in thousands of FTEs.

Table 23: Incapacity benefit claimants (FTE x 1000)

1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
757	766	788	798	806	811	796	773	725	710	701	696	700

Source: CPB Netherlands Bureau for Economic Policy Analysis, Central Economic Plan 2011, pp. 114-115

The table below shows the number of employed people receiving some form of incapacity benefit.

Table 24

	Number of incapacity benefit claimants (rounded off, x 1000)	*Of which in employment*
WIA[1]	100	20
WAO[1]	500	140
WAJONG[1]	200	48

Source: Employee Insurance Agency (UWV), 2010 annual report

[1] For a description of the various types of incapacity benefit, see article 15, paragraph 2, of this report.

l. However, to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities in practice, the Committee had asked (Conclusions XVIII-2) the next report to indicate:
- *How the reasonable accommodation obligation is implemented in practice.*
- *If the reasonable accommodation obligation gave rise to cases before courts.*
- *f the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market.*

Since no information has been provided in this regard, the Committee reiterates its requests.

Under the Equal Treatment of Disabled and Chronically Ill People Act (WGBH/CZ), effective alterations have to be made if requested by disabled or chronically ill people (unless this imposes an unreasonable burden on those required to put them in place). The required alterations must, however, be 'proportional' and several factors are relevant in this respect:
- the size of the organisation or institution;
- the investment and costs entailed in making the alterations;
- the financial assistance available (e.g. wage cost allowances);

- the operational and technical feasibility of the alterations;
- the financial capacity of the organisation or institution (if expensive alterations are needed for someone on a short-term or temporary contract, this may, under certain circumstances, be regarded as an unreasonable burden).

Funding is available for workplace alterations under the Work and Income (Capacity for Work) Act (WIA). The Employee Insurance Agency (UWV), which is responsible for implementing this Act, has the task of streamlining the application procedure and has reduced the average processing time to four weeks. Under the Act, facilities can be provided to enable disabled employees to work. They include transport to and from work, interpreters for the deaf and readers or other aids (e.g. Braille equipment) for the blind. Where a more permanent solution is required (such as alteration of the employer's premises), grants are available under section 36 of the Act. Since 1 January 2009 no minimum threshold has applied (set at €0).

In 2009, as part of the evaluation of the Equal treatment on the grounds of disability or chronic illness act, the Equal Treatment Commission reported that only a few of its employment-related findings concern effective alterations. No data is available on the number of disputes between employees and employers or on the type and cost of alterations.

The Prospect of Work Committee (CWP), which worked for four years to improve the employment prospects of people with health problems or disabilities, suspected that the obligations incumbent on employers under new legislation made them reluctant to hire disabled people, specifically the legislation on compulsory sick pay. Employers are required to continue paying a sick employee's wages for a period of two years and are responsible for reintegration.

However, as mentioned above, funding is available for essential workplace alterations under the Work and Income (Capacity for Work) Act. Social security legislation also makes provision for a no-risk policy, which covers employers who hire or retain partially disabled workers; if an employee becomes sick within five years of starting to claim incapacity benefit, the wages that the employer continues to pay are offset against sick pay.

No data is available to substantiate whether the obligation to make effective alterations has led to an increase in employment of disabled people.

m. In its previous conclusion, to assess the effectiveness of the measures in place to promote employment, the Committee had asked the next report to indicate:
– the number or percentage of all persons with disabilities employed in the open labour market;
– the number of beneficiaries of the system of supported employment, as well as the rate of progress of such persons into the open market.
Since such information continues to lack, the Committee reiterates its requests. Again, the Committee points out, that should the next report not provide the requested information, nothing will demonstrate that the situation is in conformity with Article 15§2.

Table 20 gives an overview of the number of employed people receiving some form of incapacity benefit.

Approximately 100,000 people work in sheltered employment. Of these, the number moving on to a regular job is negligible. The Netherlands has no other system of supported employment, apart from the support offered as part of a reintegration programme (see articles 9 and 10 in this report for further details).

n. The Committee notes that the 2003 Equal Treatment (Disabled and Chronically Ill People) Act and the 2003 Disability Act prohibit discrimination on the ground of disability. It notes from another source1 that the 2003 Equal Treatment Act covers access to the buildings and infrastructure associated with the public transport. The Committee asks for the next report to provide more details on the relevant legislation and case-law covering questions such as housing, transport, telecommunications and cultural and recreational activities for persons with disabilities.

The Equal treatment on the grounds of disability or chonic illness act (Wgbh/cz) entered into force for the areas of employment and vocational training in December 2003. Its scope was extended to include housing on 15 March 2009. No-one may be refused accommodation on the grounds of disability or chronic illness. The legislation also gives entitlement to immaterial concessions, such as permission to park a mobility scooter in the hall of a building. Material facilities, such as a stair lift or other structural or home accessibility modifications, fall under the Social Support Act (Wmo), not the Equal treatment on the grounds disability or chronic illness act. The latter Act has also covered primary and secondary education (both mainstream and special schools) since 1 August 2009.

With regard to the case law on equal treatment in the area of housing, two cases involved a refusal by the Owners' Association to allow a mobility scooter to be parked in the communal car park or communal area. The Equal Treatment Commission published its findings in both instances[2].

The Equal treatment on the grount of disability or chronic illness act is due to be extended to public transport in the autumn of 2011. Anyone who feels discriminated against on public transport because of a disability or chronic illness will then be entitled to take the matter to court or file a complaint with the Equal Treatment Commission. Public transport is also being made accessible to disabled people. The Act does not cover telecommunications or cultural and recreational activities.

o. Similarly, it asks whether integrated programming is applied by all authorities involved in the implementation of the policy for persons with disabilities.

The Social Support Act (*Wet maatschappelijke ondersteuning, Wmo*) is an important instrument in the Netherlands for ensuring an integrated policy strategy aimed at people with disabilities. This Act stipulates that local authorities are responsible for compensating citizens for any limitations they experience in their ability to function independently and participate in society. The aim is to achieve an integrated policy for people with disabilities: local authorities should therefore involve the target group and executive and administrative agencies in developing, implementing and accounting for municipal policy.

The Netherlands also has a policy programme in specific areas (e.g. housing) for physically disabled people. Market parties such as housing corporations are working with local authorities to make residential property and the living environment suitable for this target group so that they can live independently for as long as possible. Specific measures include new housing, shared accommodation, conversion and the provision of community support services.

[2] Findings 2010-35 and 2011-30.

Dutch policy on accessibility of public transport also favours an integrated approach, with the focus on ensuring that public and private operators coordinate the services they provide. Since 2005 they have been drawing up policy plans and have developed financially sound implementation programmes, for instance to improve access to bus, tram and train stops. Clear standards have also been established, technical recommendations made, and the requisite knowledge collated and shared. The Equal Treatment of Disabled and Chronically Ill People Act will soon provide legal protection from unequal treatment in the area of public transport.

p. The Government gives financial support to organisations and pressure groups which protect persons with disabilities. These groups are consulted relatively regularly, and local authorities must allow them to have their say on subjects such as the participation and integration of people with disabilities. The Committee wishes the next report to provide information on how these organisations are consulted in the design, review and implementation of measures for persons with disabilities.

Here, too, the Social Support Act has a very important part to play, as it requires local authorities to involve executive organisations and pressure groups in deciding and implementing policy. In 96% of municipalities, client organisations are involved in policymaking in the area of social support. The vast majority have set up consultation forums where both policymaking and policy implementation are discussed during regularly scheduled meetings.[3] At national level, the umbrella organisation of groups representing the disabled has been involved, for example, in the ratification of the UN Convention on the Rights of Persons with Disabilities and in the process to have the Equal Treatment of Disabled and Chronically Ill People Act extended to cover public transport.

q. The Committee also wishes for the next report to provide more information on the obligation on local authorities to consult with organisations which protect persons with disabilities.

For the past three years a government-appointed task force – working in close collaboration with local organisations representing the target group – has focused on encouraging local authorities to ensure that their policy includes measures to promote equal treatment of people with disabilities. This approach has led to agreements aimed at creating a more inclusive society. The method used is an interpretation and adaptation of the UN's Agenda 22, an essential feature of which is that its application is not optional and requires commitment from local organisations and administrators, working together on an equal footing. The method and lessons learned are now being passed on to the Association of Netherlands Municipalities (VNG) so that other local authorities can benefit from the knowledge and experience gained.

The introduction of the Social Support Act (Wmo), specifically the provisions of sections 11 and 12, also prompted many local authorities to set up Wmo councils. Under section 11, local authorities must involve citizens in preparing policy, while section 12 requires them to request advice on proposed policy from organisations representing people applying for social support assistance, i.e. those with physical, sensory, psychiatric or learning disabilities, the homeless, addicts, chronically ill and elderly people, informal carers, voluntary workers, young people and immigrants.

[3] *Op weg met de Wmo*, an evaluation of the Social Support Act (Wmo) 2007-2009, Netherlands Institute for Social Research (SCP), sections 5.2 - 5.3.2.

r. The Committee asks for the next report to provide details on all benefits and other forms of financial assistance available to persons with disabilities.

Healthcare Insurance Act (Zorgverzekeringswet, ZVW): health insurance companies reimburse the cost of most healthcare services, which are covered by the compulsory standard package. Optional insurance can be taken out for services not covered by the standard package. People pay a fixed monthly amount (flat-rate premium) for their insurance. Each health insurer offers the same standard package, but the premiums they charge may differ. Children up to the age of 18 pay no premiums. People with income from employment or benefit also pay an income-related contribution. Depending on their income, some may be eligible for healthcare benefit, which can be used to pay part of the flat-rate premium. Under certain circumstances, chronically ill people aged 18 and over may receive an allowance towards their compulsory excess.

Under the regulations on patient transport services, individuals be reimbursed for the cost of seated transport for the purpose of receiving treatment covered under the Healthcare Insurance Act (transport to and from approved institutions and care providers). The following four groups of people are eligible:

- chemotherapy/radiotherapy patients
- wheelchair users
- the visually impaired and
- dialysis patients.

Seated transport for chemotherapy/radiotherapy patients and dialysis patients is exclusively the transport needed in order to undergo chemo- or radiotherapy, or dialysis. The regulations also contain a hardship clause and are implemented by the health insurance companies. To prevent abuse, the insurer determines the appropriate form of transport (car etc.) to and from the destination. Patients have to pay an excess. Medically essential transport by car is reimbursed on an actual mileage basis, and any additional costs are for the patient.

Exceptional Medical Expenses Act (Algemene Wet Bijzondere Ziektekosten, AWBZ): this Act pays for long-term care for people with a serious condition as a result of disability, chronic illness or old age and covers costs that are unaffordable for most people. Every Dutch citizen therefore pays contributions. The Act provides for five types of care (at home or in an approved institution):

• personal care: e.g. help with taking a shower, bed baths, dressing, shaving, skin care, going to the toilet, eating and drinking;
• nursing: e.g. dressing wounds, giving injections, showing clients how to self-inject, advising on how to cope with illness;
• guidance, aimed at maintaining or improving clients' ability to live as independently as possible to enable them to continue living at home longer;
• treatment: e.g. care in connection with an ailment or disability;
• accommodation: e.g. in an institution or in sheltered housing.

People may choose to receive care in kind or in the form of a personal budget, which recipients can use to pay for care services themselves; a combination of the two is also possible. Everyone aged 18 and over must pay a personal contribution for care provided under the exceptional medical expenses scheme.

Social Support Act (Wet maatschappelijke ondersteuning, Wmo): this Act ensures that everyone is able to participate in society and can continue to live independently as long as

possible. Anyone who cannot do so without help can receive support from their local authority. The type of support is at the local authority's discretion and may include:
• home help: e.g. cleaning;
• modifications to the home: e.g. a stair lift or a raised toilet;
• transport within the region, for people who have difficulty walking and cannot use public transport: e.g. taxibus, mobility scooter or reimbursement of taxi fares;
• support for voluntary workers and informal carers;
• help bringing up children;
• a wheelchair;
• meals-on-wheels service.

Local authorities can require a personal contribution, set at their own discretion. If someone receives services under this Act and care under the Exceptional Medical Expenses Act, a single bill is issued detailing their own contribution. Total personal contributions are fixed at a specific ceiling. Young people under the age of 18 and wheelchair users do not have to pay any contribution towards services provided under the Social Support Act. All clients have the option of receiving their entitlement under this Act in kind or in the form of a personal budget.

Chronically Ill and Disabled People (Allowances) Act (Wet tegemoetkoming chronisch zieken en gehandicapten, WTCG): this Act replaces the exceptional expenditure fiscal scheme and comprises five measures:
- a general allowance of €150, €300, €350 or €500 for chronically ill and disabled people;
- reduced personal contribution for services provided under the Exceptional Medical Expenses Act (in-patient and out-patient care) and the Social Support Act;
- income compensation for the elderly;
- income compensation for disabled people, in the form of an annual allowance of €336 for those who are at least 35% incapacitated for work;
- a new fiscal scheme for specific care costs (see chapter 9).

Tax-deductible specific care costs (Personal Income Tax Act 2001 (Wet inkomstenbelasting 2001): if the costs of illness or disability cannot be reimbursed under any scheme, it is possible to deduct them from taxes. This means that people pay less tax or can get a tax refund from the Tax and Customs Administration. The costs in question may be incurred by:
• the taxpayer, their partner (for tax purposes) or children under the age of 27;
• seriously disabled people aged 27 and over who are part of the taxpayer's household;
• parents, brothers and sisters who are members of the taxpayer's household and need looking after.

To be tax-deductible, these costs must be directly related to an illness or disability and must exceed the income-related 'threshold amount'. They include, for example:
• medicines;
• dietary costs;
• aids (except glasses and contact lenses);
• additional transport costs;
• additional costs for clothing and bedding.

Work and Social Assistance Act (Wet Werk en Bijstand, WWB) (crisis payments): local authorities can provide financial support to cover a range of special costs, such as medical expenses (e.g. glasses), extra heating costs (for rheumatism sufferers) and costs associated with wear and tear of clothing as a result of using a wheelchair. There are two conditions:

- the expenditure must be absolutely necessary;
- the claimants' income or means are insufficient for them to pay the costs themselves.

Anyone over the age of 21 whose income is at or around minimum subsistence level is eligible for crisis payments.

Care allowance for disabled children living at home: this income-related scheme is intended for parents and carers who look after a child aged between 3 and 18 who has a serious physical or learning disability and is living at home. The amount of the allowance, which is a form of supplementary child benefit, is €211.45 per quarter. To be eligible, the child must receive at least ten hours' care per week under the Exceptional Medical Expenses Act, the parent or carer must live in the Netherlands and the child must be part of the household.

Young disabled person's tax credit: this is a financial bonus for people who have become disabled at a young age or have a congenital disability and are thus entitled to benefit or employment support under the Work and Employment Support (Young Disabled Persons) Act. Under this tax credit scheme, less is deducted in salaries tax and social insurance contributions from a person's benefit, resulting in a higher monthly net income. The young disabled person's tax credit is for people between the ages of 18 and 65 who are entitled to receive benefit under the aforementioned Act.

Higher rate of incapacity benefit: anyone who becomes unfit for work is entitled to up to 75% of their last-earned wage (with a maximum of €183.15 per day) or the minimum wage. Where a person is completely incapacitated for work and is dependent on extra help to cope with daily life, this can be increased to 85% or 100%, depending on the seriousness of the situation. This scheme is intended for people who are totally incapacitated, requiring intensive care and attention, and are in receipt of some form of incapacity benefit. Recipients must be certified at least 80% disabled and require more or less permanent assistance. If any help or support is provided from another source, such as the Exceptional Medical Expenses Act, the 100% rate is reduced to 85% or to the standard 75%. The higher rate no longer applies if the recipient is admitted to hospital or a nursing home and his or her health insurer covers the costs incurred.

s. It asks whether persons with disabilities have a right to ask for other technical aids (such as orthopaedic prostheses, hearing and other aids) and if these are provided free of charge or they must cover a part of their cost.

Aids of this kind are provided under the care insurance scheme governed by the Healthcare Insurance Act. In some cases, individuals must pay their own contribution towards certain medicines and aids, defined under the Act. Aids usually become the property of the recipients, but can be issued on loan at the health insurer's discretion. There must be a clear medical need[4] and in some instances the scheme contains a number of restrictions, including age and assessment criteria. Where reimbursements (e.g. for hearing aids, post-op shoes and non-allergenic shoes) are subject to a maximum, the aim is to encourage careful use. These maximums are usually based on the purchase price of the cheapest suitable aid. People who have to wear specially adapted shoes are asked to contribute the cost of normal shoes.

[4] Healthcare Insurance Decree: '… individuals are entitled to a type of care or service only in so far as they are in all reasonableness dependent on it in terms of content and extent.'

t. The Committee asks if measures have been taken to promote access to the new telecommunication technologies.

The new telecommunications bill will require telecom operators to ensure that telecommunications are accessible to visually and hearing-impaired users. The possibility of including access to the internet in the Equal Treatment (Disabled and Chronically Ill People) Act has also been examined and the conclusion was that this was not feasible for a country like the Netherlands, because of the inherently global nature of the web. More can be expected from the implementation of the UN Convention on the Rights of Persons with Disabilities or a possible broad EU Directive.

u. It also asks what the legal status of sign language is.

In the Netherlands the use of Dutch Sign Language (NGT) is recognised in both political and social life and the government has introduced various measures to promote its use, including financing the work of the Dutch Sign Language Centre in developing and managing the NGT database. The Ministry of Education, Culture and Science also funds the development of bilingual teaching material (Dutch and sign language) for use in special schools for deaf children. Finally, the government funds higher professional training for sign language interpreters and teachers, and financial schemes are in place for interpreters in a work, education or social setting. The NGT is not recognised by law as a language, but neither is Dutch.

v. The Committee asks what has been done to ensure that this Act is implemented in practice and how access to public road, air and sea transport is guaranteed.

At the moment the Equal Treatment (on the grounds of disability or chronic illness) Act does not extend to the public highway or to air and sea transport. The Netherlands is promoting access to transport by air and sea for people with disabilities in line with the relevant provisions in the European legislation governing these sectors. The Inspectorate for Transport, Public Works and Water Management is responsible for monitoring compliance.

Since the Netherlands is unsure whether this question refers to access to public road transport or the public highway, both will be discussed in brief. Ensuring access to the public highway is the responsibility of road authorities such as local or provincial authorities, water authorities and central government. They are responsible for setting requirements in relation to accessibility for companies carrying out road works.

Policy and implementation plans have been in place for passenger transport by rail and for urban and regional transport since 2005. Dutch policy is based on a two-pronged approach. The first entails facilitation and encouragement. One important aspect is to improve accessibility on the basis of specific sectoral legislation, such as the Railways Act, the Passenger Transport Act 2000 and the Road Traffic Act 1994, which set out the obligations of public transport operators in this area, in addition to provisions on enforcement,. The technical specifications of interoperability relating to persons with reduced mobility (PRM TSI) are also of importance to rail transport, while the European regulations on passenger rights cover both the bus and rail transport sectors.

Secondly, policy is aimed at improving individual legal protection, through the Equal Treatment (on the grounds of disability or chronic illness) Act, for instance. Under this Act, anyone discriminated against on the grounds of disability or chronic illness can readily seek

legal redress. Once public transport is brought within its scope, people will be able to put complaints before the Equal Treatment Commission and/or the court.

w. It also asks for information on whether free or reduced fares are available for persons with disabilities, where necessary to cover additional costs.

Many local authorities run schemes offering concessionary fares on public transport and discounted cultural and recreational activities for people entitled to services under the Social Support Act or to social assistance benefit. Several also offer reduced parking fees for disabled parking permit holders. At national level, disabled people can obtain a public transport companion pass (with which a travelling companion travels free) and can make use of Valys, a nationwide cross-regional door-to-door transport system by taxi, based on public transport fares. People can apply for a Valys pass if they are entitled to transport, a wheelchair or a mobility scooter under the Social Support Act, or if they have a disabled parking permit from their local authority or a public transport companion pass. Anyone who is visually impaired can benefit from a low-price public transport smart card.

x. The Committee asks for the next report to provide information on grants available for individual persons with disabilities for housing renovation, lift construction and removal of obstacles to movement, as well as on the number of beneficiaries and the results achieved in promoting accessible housing

The answer to the question about available grants and number of beneficiaries is based on old legislation for two reasons. Firstly, the housing services referred to were provided under the Services for the Disabled Act (*Wet voorzieningen gehandicapten, WVG*) until 1 January 2007. While this Act was in effect (from 1994 until the end of 2006), the issue of aids to people with physical disabilities was closely monitored by means of an annual survey. Secondly, the help available under the Social Support Act, which entered into force on 1 January 2007, goes much further than simply providing aids. No statistics have therefore been kept since 2007.

Table 25: Newly granted home adaptations (number and expenditure) per cost category[5] (national figures)

Home adaptations costs eligible for grant	Number of adaptations granted (national)	Average grant per adaptation (based on commitments)	Total national cost (based on commitments)	
Up to €900	38,580	€ 441	€ 17 m	10.8%
€900 - €6,800	27,000	€ 3,133	€ 84.2m	53.5%
€6,800 - €20,420	3,200	€ 12,379	€ 40.0m	25.2%
> €20,420	620	€ 25,712	€ 16.6m	10.5%
total (data extrapolated to all local authorities)	69,400		€ 157.8m	100%

(Services for the Disabled Act 2006: Facts & Figures)

The Social Support Act gives local authorities scope to provide tailored support, which means that they have considerable discretionary power to decide on the size of grants. It also means

[5] The categorisation of costs eligible for a grant is similar to that used in the earlier scheme, based on the Services for the Disabled Act.

that a greater effort is made to coordinate policy in this area with policy on promoting social cohesion and quality of life, and with housing policy. This was briefly discussed above in the answer to question o on integrated policy.

Together with various market parties, local authorities are developing a joint approach to make residential property and the living environment suitable for physically disabled people. In the past three years, new housing and shared accommodation projects have done much to achieve this goal. Other options include conversion and the provision of community support services.

As a result of these measures, the number of single-storey homes[6] rose from 1.7 to 1.83 million between 2006 and 2009. At the end of 2009 more than a quarter of the Dutch housing stock was classed as suitable housing for the disabled, almost half of these being one-family homes *(NB data obtained from the draft version of MIT 2009 – Invest in the Future Monitor).*

y. Under the Social Support Act, local authorities must take responsibility for helping people with disabilities to take part in cultural and leisure activities. The Committee asks what is done to promote accessibility of sport and cultural activities (access, fees, special programmes, etc).

The Ministry of Health, Welfare and Sport is supporting a project implemented by an association that promotes sport in the community, aimed at strengthening and consolidating the link between sport and the Social Support Act at local level. The project encourages primarily local authorities, but also welfare and sports organisations, to pool their expertise to achieve this goal. The aim is to publish a magazine before the summer, intended for these three groups; this will feature inspiring examples of ways to use sport to promote social participation, including items on sport and physical exercise for people with disabilities.

There is much more to report in this area:

- The Special Heroes programme, developed in consultation with schools, aims to give special needs children a taste of how much fun sport can be by offering as many of them as possible the chance to try various kinds of sport, dance and other forms of exercise. The project focuses on school-time activities, with plans to extend the scope to after-school activities to encourage children to join sports clubs. Special Heroes is currently being implemented in all schools in category 1 (blind and partially sighted children) and category 3 (physically disabled children), and pilot schemes are running in a small number of schools in categories 2 (deaf and hearing-impaired children) and 4 (children with serious behavioural problems). The government plans to extend this initiative to all schools within these categories. NOC*NSF (the federation of national sports organisations) and the Dutch Disability Sports Association are responsible for implementing the programme.
- The *Zo kan het ook!* programme encourages learning disabled people to lead a more active lifestyle, with the emphasis on more physical exercise and sport. Day-care and residential facilities are instrumental, as they play a key part in reaching this target group. During 2009 and the first half of 2010 a total of 30 care institutions throughout the Netherlands entered a partnership with the Dutch Disability Sports Association. The aim,

A single-storey home meets the following criteria: the lounge is accessible directly from the street without the need to climb stairs and is on the same level as the kitchen, toilet, bathroom and at least one bedroom.

by 2012, is to convince all centres for the learning disabled of the need to make sport a regular part of their clients' lives. Sport must be an integrated feature of their policy.

- Provision of transport for seriously physically disabled members of sports teams to ensure that they get to training sessions, matches, events and championships on time.
- Organisational integration: since 31 March 2011 all organisations for sports for disabled people have been integrated into mainstream sports federations, which now include adapted sports in their policy as standard. If you wish to practise a sport as a member of a local sports club, it should therefore, in theory, make no difference whether you are disabled or not. One key issue is whether the sports federations' policy of integration will be reflected in practice.Sporting Challenge: on behalf of the Ministry of Health, Welfare and Sport, NOC*NSF and 25 sports federations are implementing this intensive programme aimed at boosting the status of disability sport (for instance by encouraging federations to include talent development for disabled athletes in their programmes, offer specific training for the disabled, organise disabled competitions/tournaments, attract disabled athletes, ensure disabled access to sports clubs, etc.).

  This raises the question of how things actually stand with regard to the integration of disabled people and what all parties concerned can do to make even more facilities available to this group. These will be key issues in deciding policy on disability sport over the next few years. Each sports federation must have a clear idea of where there is room for improvement and which specific areas need to be addressed. To find out more about this, the Dutch Disability Sports Association (in partnership with NOC*NSF) has commissioned the W.J.H. Mulier Institute to conduct an independent survey of sports federations, special schools and care institutions. In relation to sport, the survey will help assess the current situation as regards the integration of disability sport and disabled athletes into mainstream sport.

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

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:
1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise:
4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties

Article 18§1

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

Amendments to regulations since the previous report
The previous report (20th, 2007, p. 51) announced a number of measures in paragraph 1 of article 18 (numbers 12-15, under question A). These have been implemented as follows:
- Numbers 12 and 13: amendment of the implementation rules, Government Gazette 138, June 2007
- Number 14: Bulletin of Acts and Decrees 2008, 38
- Number 15: Bulletin of Acts and Decrees 2007, 502.

There have been no other amendments to regulations pertaining to article 18.

Article 18§2

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

There have been no changes since the Netherlands' previous report (20th, p. 52).

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

There have been no changes since the Netherlands' previous report (20th, p. 52).

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

Work permits are issued free of charge. An application for a residence permit (required for stays longer than three months) costs €401. As reported earlier, only employers may apply for a work permit, not individual employees.

Article 18§3

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

There have been no changes since the Netherlands' previous report (20th, pp. 52 and 53).

Article 18§4

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

There have been no changes since the Netherlands' previous report (20th, p. 53).

Negative conclusion of the European Committee of Social Rights

Paragraph 3 – Liberalising regulations

A. The Committee concludes that the situation in the Netherlands is not in conformity with Article 18§3 of the Revised Charter on the ground that the regulations governing access to the national labour market for foreign nationals are too restrictive.

The Committee feels that the situation in the Netherlands is not in conformity with this article because the regulations governing access to the labour market for foreign nationals are too restrictive. The main reason for this opinion is that no changes have been discerned in the grounds for refusing work permits. The Committee mentions the age limit of 45 by way of example.

Reaction to this conclusion:
This concerns an optional ground for refusal, one that is rarely applied in practice. The reason this limit has been set is that older workers are more likely to claim social security benefits. The age limit is only considered when a work permit application requires a resident labour market test and the permit is to be granted for three years.

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (20th)

Paragraph 1 – Applying existing regulations in a spirit of liberality

a. The Committee points out that foreign nationals who wish to be self-employed are granted a special residence permit for the purpose. The Committee asks for confirmation that there have been no changes to the rules on the subject.

There have in fact been changes in the policy on self-employed people since 2007. On 13 October 2010 the Minister of Economic Affairs added an administrative rule to the points system which forms the basis of his recommendations to the Immigration and Naturalisation Service (IND) on the 'essential contribution' made by foreigners to the Dutch economy. Introduced in 2007, the points system is fairly comprehensive, with points needing to be scored in many individual categories. Apart from a few cosmetic adjustments to ensure the system more accurately reflects reality, the only substantial change to be introduced is that highly educated applicants who score fewer than 30 points for the added value category may be granted a residence permit, provided they obtain a minimum of 45 points for 'personal experience' and 'business plan' (normally at least 30 points are required for each of these three categories). This does not apply to Turkish nationals wishing to be self-employed in the Netherlands, in view of the standstill clause in the Additional Protocol to the Association Agreement with Turkey.

(Source: Administrative Rule of the Minister of Economic Affairs of 13 October 2010, no. WJZ / 9201649, concerning a points system used as the basis for recommendations on the admission of foreign nationals to work on a self-employed basis in the Netherlands (Beleidsregel advisering toelating vreemdelingen als zelfstandig ondernemer in Nederland 2010))

b. The statistics provided in the report show that the number of work permits granted to these people increased from 14,009 to 61,133 during the reference period (while the refusal rate decreased from 7 to 2.7%) meaning that over three quarters of the permits granted in 2006 went to nationals of these countries. A large portion of the increase is accounted for by Polish workers. Conversely, there was a decrease in the number of permits granted to nationals of non-EU States Parties (Albania, Armenia, Azerbaijan, Croatia, Georgia, Turkey, Ukraine, "the former Yugoslav Republic of Macedonia"), as well as in the percentage of rejected applications, apart from Turkish nationals, for whom the proportion of rejections increased from 25 to 29% during the reference period. The Committee asks what are the reasons for this increase.

No information is available on this subject. The number of work permits granted to Turkish nationals during the reference period was as follows:
2004: 479
2005: 369
2006: 290
2007: 274

For the record, no distinction is made on the basis of nationality when considering work permit applications.

c. Although the figures relating to applications for renewal are not available, given the low overall rate of refusal, the Committee concludes that the situation is in conformity with Article 18§1 of the Revised Charter. However, it does ask for the next report to provide figures relating to applications for renewal, as well as up-to-date statistics on first-time applications for work permits and for residence permits by persons wishing to be selfemployed.

The number of work permits granted is as follows:
2007: 50,027

2008: 15,584 (from 1 May 2007, Polish nationals, amongst others, no longer require a work permit in connection with the free movement of workers from Central and Eastern European countries)
2009: 13,681
2010: 16,173

The number of residence permits granted to self-employed persons is as follows:
2007: 40
2008: 40
2009: 50
2010: 110

Paragraph 2 – Simplifying formalities and reducing dues and taxes

d. It asks for the next report to provide further information on the formalities for obtaining work permits, particularly the documents required.

The following documents must be submitted with the application:

Regarding the foreign national:
- Copy of passport
- Copy of residence permit or proof that a first-time application or application for renewal has been made
- Proof that an application for a visa or an authorisation for temporary stay has been made
- Copies of qualifications and references (certified and translated into Dutch)

Regarding the employer:
- Recent excerpt from the Trade Register
- In the case of a proxy: authorisation (unless a lawyer is used)

Regarding the job:
- Draft contract of employment
- If salary is not in accordance with the collective labour agreement: documentary proof that salary is in line with market practice

Regarding the vacancy:
- Copy of paperwork reporting a job vacancy to the Employee Insurance Agency (UWV)
- Documentary evidence of recruitment efforts made by employer (e.g. employment advertisements)
- Information on results of recruitment efforts

e. The Committee points out that residence permits for self-employed activities are issued on the condition that the planned activity will be of benefit to the country. In reply to the Committee's question, the report states that it is for the Ministry of Justice to decide whether this is so. For the purpose, it consults the Ministry of Economic Affairs, which presents it with an opinion based on a points system determining whether the proposed activity is advantageous for the Dutch economy. Points are attributed according to criteria relating to the applicant (qualifications, level of education, etc.), the planned activity (what it will involve) and the added value of the activity for the Dutch economy (e.g. the number of jobs it will create). According to the report, the system is not operational yet, but will be in the near future. The Committee asks the next report to be

informed about the setting-up of this points system and to provide further information on the formalities for obtaining a residence permit to engage in a self-employed activity.

A points system for the admission of self-employed workers has been in operation in the Netherlands since 2 January 2008. A foreign national from a non-EU country who wishes to come to the Netherlands to work on a self-employed basis must serve essential Dutch interests, embodied in three specific criteria:

1. personal experience;
2. business plan;
3. added value of the planned activities for the Dutch economy.

To be granted a residence permit, the foreigner must score at least 30 points out of a possible 100 for each of these criteria. In October 2010 the rules were relaxed slightly: now, if at least 45 points are earned for the first two criteria, a score of fewer than 30 points is acceptable for the third.

The 'personal experience' category is subdivided into:
- education (max. 35 points);
- entrepreneurial experience (max. 35 points);
- work experience (max. 10 points);
- personal income (max. 10 points); and
- experience of the Netherlands (max. 10 points).

The 'business plan' category is subdivided into:
- market potential (max. 30 points);
- organisation of the business (max. 10 points); and
- funding (max. 60 points).

The 'added value for the Dutch economy' category is subdivided into:
- innovativeness (max. 20 points);
- job creation (max. 40 points); and
- investment (max. 40 points).

The Ministry of Economic Affairs, Agriculture and Innovation advises the Immigration and Naturalisation Service (IND) on whether a foreigner meets the aforementioned criteria. If so, and if the foreigner also fulfils the other entry requirements (i.e. does not pose a threat to public order, public safety or public health), the IND issues a residence permit.

Thanks to this points system, the Netherlands' policy on admission of self-employed workers is both transparent and selective: transparent because foreigners' chances of being granted a residence permit can be assessed in advance, and selective because the quality of the planned activities is one of the key factors.

The points system does not apply to European Union citizens or Turkish nationals wishing to start their own business in the Netherlands. EU nationals need only have sufficient means of subsistence and pose no threat to public order, public safety or public health. Under the standstill clause contained in the Association Agreement between the EU and Turkey, the applications from self-employed Turks are examined in the light of the economic situation, i.e. competition in the relevant market sector and the employment situation.

f. It asks in particular whether the application for such a permit can be made from the foreign worker's country of origin.

Generally speaking, foreigners applying for a residence permit must first have an authorisation for temporary stay (MVV), which must be obtained in their main country of residence. The MVV application has to meet all the entry requirements for the Netherlands. Foreigners may not travel to the Netherlands and apply for a residence permit there without an MVV. Nationals of EU member states, the US, Canada, Australia, New Zealand, Japan and South Korea are, however, exempt.

g. The procedures for applying for a work permit and a residence permit are interlinked. Obtaining a work permit is a prerequisite to obtaining a temporary residence permit, which is valid for as long as the holder is working legally in the Netherlands. In this connection, the report states that the Government is planning to simplify these formalities, doing away with the two-stage process whereby employers must obtain a work permit, then their employees must apply for a residence permit. The Committee asks for the next report to provide information on the progress made on these changes.

An electronic one-stop shop for employers wishing to recruit migrant workers was set up on 1 October 2008 (www.arbeidsmigratie.nl) and is run jointly by the Immigration and Naturalisation Service (IND) and the Employee Insurance Agency's public employment service (UWV WERKbedrif). On 1 January 2009 the IND was given a mandate to process joint work permit and residence permit applications where a resident labour market test was not required. The IND and the UWV spent the first six months of 2009 perfecting the technical aspects of the online service, for example opening up access to the employment service's network, arranging the transfer of administrative tasks and training staff. This helped reduce application processing times in the second half of the year. A meeting was held in September 2009 to evaluate the service. Clients expressed their appreciation of the efforts of the IND and the UWV and suggested possible improvements. Collaboration continued in 2010.
(Source: public employment service/IND 2009 annual plan)

h. It also asks what formalities need to be met to be issued a residence permit on the basis of a work permit.

Employers can submit combined applications for an authorisation for temporary stay (MVV) and work permit through the online service at www.arbeidsmigratie.nl. On the basis of the answers given to a series of questions, the right application form for one or both is generated. In the case of combined applications, the UWV deals with the work permit component when a resident labour market test is required. If it isn't, the IND processes both components. When submitting a combined application, employers must provide specific documentation, such as a valid travel document, and copies of qualifications and references (certified and translated into Dutch). Applications are usually processed within two to seven weeks. Once the foreigner has arrived in the Netherlands, he can apply to the IND for a residence permit, appending the necessary documentation, i.e. work permit, MVV and a valid travel document. He should also sign a declaration confirming whether or not he has a criminal record.

i. In its previous conclusions, the Committee noted that the work permit renewal procedure had been simplified and that the Government had stated that it would provide information on this change in the next report. In the absence of any other information, the Committee asks for the next report to provide information on the requirements for the renewal of residence permits.

Foreigners wishing to stay longer in the Netherlands must apply to the IND in writing for renewal. In most cases, the IND will send out a renewal form three months before the residence permit expires, or this document can be downloaded from the IND website. Renewal applications must be submitted in good time to enable the IND to check whether the conditions are still being met. Residence permits are renewed subject to the following requirements:

- The foreigner is in possession of a valid temporary residence permit.
- The foreigner wishes to renew his residence permit for the same purpose.
- The foreigner has adequate health insurance coverage.
- There have been no changes in the foreigner's situation that might affect his rights of residence.

The validity of the residence permit is extended with effect from the date on which the foreigner demonstrates that he fulfils all the requirements, but no earlier than the date on which the current permit expires.

j. It asks for the next report to provide information on the time required to process applications for residence permits by persons wishing to engage in a self-employed activity.

By law, a decision must be made on residence permits within six months; in practice, the IND takes 13 weeks to process applications. The MVV procedure could take up to three months, but normally a decision is made within seven weeks.

Paragraph 3 – Liberalising regulations

k. According to the report, access to the labour market has also been simplified for non-EU nationals who have resided legally for at least five years in an EU member state and then for at least one year in the Netherlands. The Committee asks in what way it has been simplified.

Non-EU nationals who hold an EU residence permit for long-term residents issued by another member state need a work permit for the first twelve months, after which they have free access to the labour market.

l. Foreigners who are dismissed while their work permit issued is still valid can register at a Centre for Work and Income (CWI) and make use of the mediation and training services offered there. The Committee asks whether, in such cases, foreign workers may apply for an extension of their residence permit to give them time to look for a new job.

A residence permit and a work permit are valid for the same period. The residence permit of unemployed foreign workers is not withdrawn if they lose their job, except in cases of voluntary unemployment, such as:

- if the worker is dismissed as a result of his own conduct; this will usually be the case where he is summarily dismissed and does not contest it or if he himself has resigned;
- if the worker has not registered as a jobseeker with the UWV; or
- if the worker has refused several offers of suitable work.

(Source: B5/5.3.2 + B5/5.3.3 Aliens Act Implementation Guidelines)

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

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

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

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

No new developments.

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

No new developments.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on employment and unemployment rates by sex and percentage differences in earnings.

Table 26

Employment rate	2005	2010
Total (15-65 years old)	63.7	67.1
Women	53.3	59.7

Unemployment rate	2005	2010
Total (15-65 years old)	6.5	5.4
Women	7.8	6.0

Source: Statistics Netherlands (CBS), reworked by the Ministry of Social Affairs and Employment, December 2010

Table 27: Pay differentials between women and men broken down by age (2008)

Age	Public sector	Private sector
23-35	0.2%	-7.9%
35-45	-7.4%	-19.3%
45-55	-16.2%	-27.4%
55-65	-18.6%	-27.8%

Statistics Netherlands (CBS)

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (20th)

a. Noting therefore that the principle of equal treatment also appliesto benefits or rights linked with a pension scheme, the Committee considers that thedefinition of pay is sufficiently wide, and in conformity with the requirements of the Revised Charter. The Committee nevertheless asks if legislation permits, in equal litigation cases, to make comparisons of pay and jobs outside the company directly concerned.

In equal pay cases, a comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (ECJ, 17 September 2002, Case C-320/00 (Lawrence) and ECJ, 13 January 2004, C-256/01 (Allonby)).

b. An Equal Pay working group was established in 2005. Representatives of the social partners and the Equal Treatment Commission, supported by representatives of the Ministry of Social Affairs, participated in this group. Its main objective was to stimulate knowledge about equal pay legislation and enhance implementation of this legislation. The recommendations of the working group were presented to the Minister in March 2007. The Government's response to these recommendations have been sent to the House of Representatives. The Committee asks to be kept informed on any follow-up given to the aforementioned recommendations.

The text below was sent to the House of Representatives in April 2011.

Progress report on equal pay for men and women

In a letter of 23 December 2009, the then State Secretary for Social Affairs and Employment promised to submit the tenth progress report on equal pay for men and women to the House of Representatives once Statistics Netherlands had completed its biennial study of pay differentials. This study used to be carried out by the Labour Inspectorate. Statistics Netherlands published its report on equal pay for equal work at the end of November 2010. One of the findings was that, in 2008, women employed in the private sector earned 22% less than men, and in the public sector 15% less. The smaller pay differential in the latter case is partly explained by less variation in educational and professional level than in the private sector. Statistics Netherlands' analysis of the reasons behind these pay differences did not reveal any single dominant factor. The main unequivocal explanatory factor is that the average age of working women is lower than that of working men and women have therefore had less time to build their careers. In the private sector, professional level is a significant factor, while being in a managerial position is decisive in the public sector. Other contributory factors include choice of studies, level of education and company size. Concepts such as "glass ceiling" and "glass walls" are therefore only partly to blame for salary differences between men and women.

There are two possible root causes of pay differentials: unequal career opportunities for men and women, and unequal pay for equal work. It is not possible to infer from the Statistics Netherlands study whether and to what extent pay discrimination exists. In so far as this may be the case, the data indicates that pay discrimination is of minor importance in the overall scheme of things.

The Netherlands is at the forefront in Europe in terms of women in paid employment. It is now routine for women to carry on working and earning their own income. Less than a

generation ago it was taken for granted that they would do the opposite. This new mindset is also reflected in the fact that the wage gap is smaller for women setting out on their careers (see Table 22 on the previous page).

These figures illustrate that the present generation of young women have more or less the same career opportunities as men. By maximising their potential they can avoid being at a disadvantage in the labour market, as is the case with older generations of women. This is only possible if women are given more freedom to pursue their career and earn their own income. At the moment, when a decision is made to work part-time, especially for the purpose of raising a family, it is still almost always women who choose this option, even though these days they have as much to lose by doing so as men.

During his meeting with the parliamentary committee on 10 November 2010 to discuss the issues of work and care, the Minister of Social Affairs and Employment announced a number of policy measures designed to promote more paid employment among women. The government intends to eliminate unnecessary legal obstacles to flexible working arrangements, particularly home-based working, and will shortly send the House of Representatives an analysis of the existing problem areas, together with proposed changes to current regulations based on its conclusions. A bill amending existing legislation on work and care and extending the scope of these regulations is also expected to make its way through Parliament in the near future.

As mentioned above, it is likely that pay differentials are only partly caused by unequal pay. Pay discrimination is prohibited by law. Anyone who feels they have been a victim of such discrimination must have ready access to effective legal remedies. The Equal Treatment Commission will examine any complaints of this nature, and employers can also seek its advice on whether their remuneration system satisfies equal treatment requirements.

In the ninth progress report on equal pay, the previous government announced that the Labour Inspectorate – supplementing the role of the Equal Treatment Commission – would be given the task of preventing unequal pay by confronting employers on the issue and requiring them to undergo an audit. When this proposal was examined in more depth, however, it was concluded that its scale, cost and implications were not commensurate with the magnitude of the problem. It was therefore abandoned.

c. The Committee recalls that the promotion of equal treatment of the sexes and equal opportunities for women and men by means of collective agreements is a prerequisite for the effectiveness of the right in Article 20 of the Revised Charter, and therefore requests that the next report contain information on any developments in this respect.

There are no new developments.

Article 24 – Right of workers 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 a valid reason to adequate compensation or other appropriate relief.

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

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

Book 7, Title 10 of the Civil Code, Labour Relations Decree 1945 (*Buitengewoon Besluit Arbeidsverhoudingen 1945*, BBA) and Termination of Employment Decree (*Ontslagbesluit*).

In the Netherlands, a contract of employment can, generally speaking, be terminated:

1. Automatically by operation of law
   If an employment contract is subject to termination by operation of law, termination occurs automatically and, in principle, without notice. Accordingly, there are no notice periods, the prohibitions on termination do not apply and employers are not required to request a dismissal permit.

   Employment contracts terminate by operation of law in the following situations:
   a. *the employment contract was concluded for a specific term and that term has expired*
   Fixed-term employment contracts terminate automatically at the end of the term agreed by the parties. The only exception to this is when the employer and employee have agreed that prior written notice is required to end the contract, but this is rare. It is not possible to conclude one fixed-term contract after another indefinitely. To protect employees, the law prescribes that after multiple consecutive fixed-term contracts have been concluded an open-ended (permanent) employment contract ensues. This occurs automatically in the following two situations:
   - the employer and employee have concluded successive fixed-term employment contracts covering a period totalling more than 36 months; or
   - the employer and employee have concluded a series of three fixed-term employment contracts and they then conclude a fourth.

   A series of employment contracts is deemed to have been interrupted if there is an interval of more than three months between two fixed-term contracts. Since 9 July 2010 the provisions on successive fixed-term employment contracts have been eased temporarily for workers under the age of 27. A contract becomes open-ended only if a series of successive contracts exceeds 48 months or if a fifth contract is concluded. This is a temporary measure prompted by current economic conditions. The measure is set to end on 31 December 2011. If the economic crisis continues to affect the labour market, the measure may be extended to 31 December 2013.

   A collective labour agreement (CAO) may contain arrangements that deviate from the

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

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

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

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

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

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

d. *the employee dies*
Under the law, an employment contract terminates when the employee dies. The employer is required to pay a lump-sum death benefit to the employee's surviving relatives. The death benefit is equal to the deceased's most recent monthly salary. The employer is permitted to reduce the death benefit by the amount of the benefit which

the surviving relatives receive in relation to the employee's death under a mandatory health or occupational incapacity insurance policy.

2. By mutual agreement (by means of a termination agreement or a settlement agreement)
An employer and employee can terminate an employment contract by mutual agreement, which is expressed in a termination agreement, or settlement agreement. There are no specific provisions of law governing termination agreements, which means that the general rules of contract law apply. Under these rules, a contract arises when one party accepts another party's offer to enter into a contract and the latter receives the former's acceptance. Until that time, the offer may be withdrawn.

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

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

3. By the employee or employer giving notice
Termination of an employment contract by giving notice is a unilateral act by either the employer or the employee, independent of the wishes of the other party. There are many rules in Dutch law governing this method of terminating employment contracts, most of which are intended to protect employees. One of the most important rules is the general prohibition on dismissal: in many cases, employers must obtain a dismissal permit from the Employee Insurance Agency's public employment service (UWV WERKbedrijf, UWV) before terminating an employment contract. If an employer gives notice of termination without first obtaining a permit, the termination can be declared null and void. If the employee whose contract has been terminated invokes this as a ground for nullification within six months, the termination will be deemed null and void with retroactive effect. This means it is invalid and notice will be deemed never to have been given. Consequently, the employment contract remains in force. The termination will remain in effect as long as the employee does not invoke his right to have it declared null and void.

   In a number of cases employers are, in principle, under no obligation to give notice of termination, for example if notice is given during the probationary period (see below) or if the employee is summarily dismissed (see below).

> Unlike employers, employees may give notice of termination of an employment contract without the involvement of the UWV. However, resigning in this fashion has major financial consequences for an employee. He or she will no longer receive salary and will probably not be entitled to unemployment benefit. In most cases, the UWV will deem the person to be culpable for their own unemployment. When in doubt, an employer must investigate to determine whether the employee genuinely intended to resign. An employer may not exercise undue influence to compel an employee to resign. There is a chance that the employee will have the termination declared null and void due to abuse of circumstances, fraudulent misrepresentation or even duress, in which case the contract will be deemed to have been valid all along and the employer will be required to pay the employee's salary.

The Labour Relations Decree 1945 and Termination of Employment Decree set out the rules for establishing whether the prior consent of the UWV is necessary and assessing the merits of applications for permits to terminate employment contracts by giving notice. Termination by notice by the employer can be based on several grounds, such as unsatisfactory performance by the employee, long-term incapacity for work or operational/financial reasons. The reason for termination determines how the dismissal application is substantiated and what information must be provided. For example, if consent is being sought to dismiss an employee due to unsatisfactory performance, the employer will have to submit job performance reports. This is not necessary if the reason for termination has to do with the company's operational or financial situation, but in such a case the employer must substantiate its decision to cut jobs. An employment contract does not end automatically when the UWV issues a dismissal permit to an employer. The employer must give notice of termination, taking into account the applicable rules, such as those concerning notice periods.

In some cases, special prohibitions on dismissal apply in addition to the general prohibition on dismissal, for example the prohibitions that apply during the first two years of sick leave, during pregnancy, maternity leave and the first six weeks back at work following maternity leave, and membership of the works council. The special prohibitions on dismissal apply even if the employer has a UWV permit. The permit may therefore not be used immediately if a situation that is subject to a prohibition exists. If an employer gives notice in violation of one of the special prohibitions on dismissal, the termination of the contract will be deemed null and void. If the employee invokes his right to have his dismissal declared null and void within two months, the dismissal will be deemed invalid and the contract will consequently be deemed not to have been terminated.

The prohibition on dismissal for the first two years of sick leave is an important element in employment law. A few specific aspects of this prohibition bear mentioning:

- If the employer fails to make an adequate effort to reintegrate the employee during the first 104 weeks of sick leave, the UWV is authorised during that period to extend the time the employer is required to pay the employee's salary by up to 52 weeks. The prohibition on dismissal applies during the extension too.
- The dismissal prohibition does not apply if an employee reports sick after the UWV receives an application for a dismissal permit from the employer. For this reason, employers often refrain from notifying employees that they have applied for a permit until the UWV confirms receipt.
- The prohibition on dismissal during illness does not apply if the employee fails to cooperate satisfactorily with reintegration efforts without a good reason. In such situations, the employer may apply for a dismissal permit.

In addition to the dismissal prohibitions mentioned above, a milder form of protection is provided in the legislation on employee participation, working conditions and data protection. Employers can give notice of termination but only after obtaining the consent of the limited jurisdiction sector of the district court. Absent the court's consent, the termination can be declared null and void within two months.

As stated above, in some cases employers do not need a UWV permit to terminate an employment contract by giving notice. A number of these situations are described below:

- **Termination during the probationary period**

An employment contract may be terminated during the probationary period only if it contains a probation clause in writing. The employer and employee may agree on a probationary period whether the contract is fixed term or open ended. The period must be the same for both parties and may not exceed the statutory maximum.

Some of the dismissal prohibitions do not apply during the probationary period, e.g. the prohibitions on dismissal during the first two years of sick leave and membership of the works council. However, termination of an employment contract in contravention of equal treatment legislation is prohibited at all times, even during the probationary period, and can be declared null and void, in which case the contract remains valid.

In some circumstances dismissal during the probationary period may contravene good employment standards, for example if an employee is dismissed due to reorganisation, while the employer knew when the contract was signed that the position would be eliminated. An employer that terminates a contract in contravention with good employment standards is liable for compensation.

An employee who terminates the employment contract during the probationary period may be contravening standards for being a good employee by terminating the contract before or shortly after it comes into effect because, for example, he or she has found a higher-paying job elsewhere. In that case the employee is liable to compensate the employer, but according to the case law the courts rarely consider termination during the probationary period to be in conflict with the standards for being a good employee.

- ***Summary termination for cause***

In certain circumstances an employer or an employee may terminate an employment contract with immediate effect. By definition no notice period is taken into account, the general and special termination prohibitions do not apply and consent of the court is unnecessary. Such termination is governed by strict rules:

- There must be an objectively and subjectively urgent reason (cause) to terminate the employment contract.
- The contract must be terminated with immediate effect.
- The terminating party must inform the other party of the cause immediately upon termination.

Summary termination by employer

An employer has cause to terminate the employment contract with immediate effect if an employee displays such behaviour or traits that in the circumstances the employer cannot be required to allow the contract to remain in effect.

The relevant legislation provides a non-exhaustive list of situations in which cause for summary termination could be deemed to exist. For example:

- if the employee misled the employer when entering into the employment contract by providing false references or false information about the termination of his contract with his former employer;
- if the employee's ability or competence falls far short of what is required for the work agreed;
- if the employee commits theft, embezzlement, fraud or any other offence which betrays the employer's trust;
- if the employee discloses company secrets;
- if the employee persistently refuses to perform reasonable assignments or comply with reasonable orders;
- if the employee grossly neglects his duties in any other way.

There is an extensive body of case law on summary termination for cause. In each situation the courts carefully consider whether the issue was serious enough to warrant immediate dismissal or if another disciplinary measure, such as a warning, would have sufficed. To make this determination all the circumstances of the case must be considered. The courts take a range of factors into account:

- the nature and gravity of the behaviour that is deemed to give cause;
- the type of employment contract and the employee's length of service;
- the employee's job performance;
- the employee's personal circumstances, such as his age and the consequences that summary dismissal will have for him.

Summary termination by the employee

An employee has reason to terminate his employment contract with immediate effect if in the given circumstances he cannot reasonably be required to allow the contract to remain in effect.

The relevant legislation provides a non-exhaustive list of situations in which cause for summary termination by the employee could be deemed to exist. For example:

- if the employer mistreats or grossly insults the employee or members of his family or household, or tolerates such action by a member of his own household or a subordinate;
- if the employer fails to pay the employee's salary at the agreed time;
- if the employer otherwise grossly neglects obligations ensuing from the employment contract;
- if the employer, notwithstanding the employee's objections, orders the employee to perform work at another company without this being inherent in the nature of the employment contract;
- if continuing the employment contract would seriously jeopardise the employee's life, health, morality or reputation in ways that were not obvious when the contract was concluded;
- if the employee loses the ability to perform the required work due to illness or another cause that cannot be blamed on the employee.

In these cases, too, the courts carefully consider whether the issue was serious enough to warrant summary termination of the contract, or whether termination by giving notice and complying with the notice period would have sufficed. It can be concluded from the case law that the employer or employee must act expeditiously as soon as an urgent reason comes to light. However, it is not necessary in every case to terminate the employment contract with immediate effect, as this may be considered negligent if there was no opportunity for both sides to be heard.

The law gives scope for carefully investigating the facts, obtaining legal advice and carrying out internal consultations. But if a party fails to act expeditiously or, if once the investigation is complete, waits too long to terminate the contract, the requirement of immediacy will not have been met. When an employment contract is terminated with immediate effect the terminating party must state the cause so that the other party knows what he is accused of. The court will use the statements made at the moment of termination to establish whether the cause was in fact urgent. It is therefore not possible for a party to base summary termination on facts and circumstances in retrospect that it did not state when terminating the contract.

If the employer fails to inform the employee immediately of the decision to terminate without notice, or if the reasons given cannot be qualified as urgent, the termination can be declared null and void. It will then be deemed a termination in accordance with the rules rather than summary termination for cause. To effect a termination in accordance with the rules, the employer must have a UWV permit or risk the dismissal being declared null and void. Or, instead of having the dismissal declared null and void, the employee may choose to claim damages on the grounds of failure to observe the prescribed notice period. The employee also has the option of attempting to claim damages on the grounds of manifestly unreasonable dismissal.

If an employee terminates an employment contract summarily without meeting all the conditions, the employer can claim damages on the grounds of failure to observe the prescribed notice period. The employer can also (in addition) claim damages on the grounds of manifestly unreasonable termination.

Since an employee is not required to obtain a permit from the UWV to terminate the employment contract by giving notice, an employer cannot have an invalid summary termination declared null and void. If an employee or employer terminates an employment contract by giving notice, there is no need for judicial intervention. However, if the employer or employee believes the reason given does not justify terminating the contract, that party can bring suit. At issue may be whether the appropriate notice period was taken into account or the reason for the termination. The court will then assess whether the termination was ‘manifestly unreasonable’. Through the years, in addition to establishing whether terminations are manifestly unreasonable, courts have been giving more and more weight to the question of whether the employer took the employee’s interests sufficiently into account. If one of the other three methods of termination applies (i.e. by operation of law, termination by mutual consent (the settlement agreement) or dissolution by the court) the termination cannot be deemed manifestly unreasonable.

The legislation provides a few examples of situations in which termination is manifestly unreasonable. In judicial practice, the two most important are as follows:

- giving a false, pretended or no reason at all for terminating the contract;
- when, considering the provisions made for the employee and his chances of finding other suitable employment, the severity of the consequences of termination for the employee outweighs the employer’s interest in dismissal. This is referred to as the ‘impact criterion’.

In assessing whether the impact of termination is too serious for the employee given the employer’s interest in termination, the court must take all the circumstances of the case into account and examine them in context.

According to the case law, the following circumstances can play a role in assessing the impact

criterion:

1. General: employment and termination

- ground for dismissal: within the control of the employer or employee;
- the employer's need to terminate the employment contract;
- length of service;
- the employee's age when the contract ends;
- the employee's performance;
- the expectations the employer has created in the employee;
- the employer's financial position;
- in the case of an industrial conflict: attempts by the parties to reach a solution and avoid termination;
- if the employee is incapacitated for work, specific circumstances are important:
  - the relationship between the employee's incapacity and his work;
  - the employer's culpability with respect to the employee's incapacity;
  - the nature, duration and extent of incapacity (chances of full or partial recovery);
  - the employer's handling of the employee's incapacity, in particular in respect of the reintegration process;
  - the employee's efforts to achieve reintegration;
  - the financial compensation offered during the period of incapacity for work (e.g. supplementation of salary, length of service after incapacity commenced).

2. Different (suitable) work

- the employer's and employee's efforts to find other (suitable) work for the employee in the company (e.g. facilitate by training);
- the flexibility of the employer/employee;
- the employee's chances of finding different (suitable) work (in which his education, work history, age, incapacity for work and health limitations may play a role);
- the employee's efforts to find different (suitable) work elsewhere (e.g. through outplacement);
- relieved of duty for the duration of the notice period.

3. Financial consequences of dismissal

- the employee's financial position as a result of dismissal, whereby any income from social insurances or loss of pension may be important factors.

4. Provisions and financial compensation

- compensation already offered/paid;
- individual severance package agreed in advance;
- redundancy programme (unilaterally drafted by the employer or agreed with trade unions or works council).

If the court decides that the dismissal was manifestly unreasonable, the employee is entitled to damages. Instead of claiming damages, the employee can ask the court to restore the employment contract. This rarely happens, because employers have the right to offer payment in lieu of reinstatement.

The Supreme Court has decided that in cases of manifestly unreasonable dismissal damages should be calculated by applying the ordinary rules for estimating compensation rather than a specific general formula. In these cases, compensation is of an exceptional nature in that it serves to give the employee a degree of satisfaction that is commensurate with the nature and gravity of the employer's failure to fulfil its obligation to act in accordance with good employment practice and with the resulting pecuniary or non-pecuniary damage incurred by the employee.

4. Dissolution by the courts

Apart from the three methods of termination set out above, an employer and employee can ask the court to dissolve an employment contract at any time. This option may not be ruled out in the employment contract or in a collective labour agreement. The courts dissolve employment contracts only if there are 'compelling reasons' to do so. The following reasons are considered compelling:

- circumstances that would have produced an urgent reason for summary termination (see above);
- a change in circumstances such that for reasons of fairness the employment contract needs to be terminated immediately or in the near future.

The phrase 'change in circumstances' encompasses all reasons for termination that do not qualify as urgent cause, for example a damaged working relationship, unsatisfactory job performance or economic/organisational reasons. The change in circumstances must be an essential one that could not have been predicted when the parties concluded the employment contract. The most common ground for dissolution is a damaged working relationship. The petitioner must demonstrate convincingly that the employment relationship has broken down to the point that it is no longer productive to continue. If dissolution appears to be justified, the judge will examine (with a view to determining compensation) who is most to blame for the breakdown in the relationship. If an employer requests dissolution due to unsatisfactory performance, he must be able to provide evidence of the employee's poor performance. The court will lend considerable weight to the employer's duty of care, i.e. an employer is responsible for ensuring that an employee is given induction training and guidance, has the opportunity to prove himself and is notified of any shortcomings in a timely fashion so that he can improve.

Given that the courts dissolve employment contracts rather than terminating them, they are not formally bound to the statutory prohibitions on termination. Courts are however obliged under the law to ascertain whether the application for dissolution is connected in any way to one of the prohibitions. It is the responsibility of the parties to indicate whether a prohibition is relevant to the case. If for example the application is related to the contract of a sick employee, the court will be very cautious and as a rule will deny the application unless there are other circumstances which constitute a compelling reason for dissolution.

If a court dissolves the employment contract due to a compelling reason, it is not authorised to award severance pay. However, if the contract is dissolved due to a change in circumstances the court can award severance pay it considers equitable given the circumstances of the case. The Dutch Supreme Court has ruled that the courts must take all the facts and circumstances into account when determining the amount to be awarded. Factors that are important to consider include:

- the reason for dissolution;
- the question of whether dissolution lies within the employer's or the employee's control;
- the culpability of the employer and/or the employee;
- the disadvantageous effects that dissolution will have on the employee;
- the employee's length of service;
- the employee's age;
- the employer's financial position;
- good employment practices and standards for being a good employee.

The courts have a large degree of freedom in deciding whether to award damages and how much to award in dissolution cases. In order to determine what is reasonable and equitable, the limited jurisdiction sector of the court apply certain recommendations which together constitute a standard formula. The formula went into effect on 1 January 1997, and a revised version replaced it on 1 January 2009. The variables in the formula are the number of (weighted) years of service, the gross monthly salary and a correction factor. The court can use the correction factor to reflect in the amount whether the dissolution lies within the employer's or the employee's control and whether culpability plays a role, the degree of culpability and who is to blame. The case law pertaining to this correction factor is highly casuistic. For example, an employee is likely to be awarded damages, and probably a substantial amount, if he became incapacitated as a result of the work or if his employer made no serious attempts to help him reintegrate so that he could continue in his old job or take up another suitable position. By contrast, regardless of the employer's efforts, the courts will award little or no compensation if the employee has a job with a new employer and can start immediately after dissolution of the contract. The courts are not bound by notice periods when dissolving employment contracts. The period between the date of the court's judgment and the dissolution date is usually short.

Employees in this situation who apply for unemployment benefit are subject to a notional notice period, so they do not start receiving benefit payments until the period ends. The notional notice period applies only to employees who are entitled to severance pay.

Except in a number of exceptional situations, there is no possibility to appeal a court judgment in a dissolution case. This is to avoid a long period of uncertainty for the employer and employee concerning the employment contract between them. In the event of fraud, submission of false documents or deliberate withholding of information, the court can revoke its judgment on the dissolution application.

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

No new developments.

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

Table 28: Terminations (involving the UWV or the courts)

UWV procedure	**2007**	**2008**	**2009**	**2010**
Settled termination applications	25,089	22,730	48,011	33,661

Source: UWV, 2011

Manifestly unreasonable termination	**2007**	**2008**	**2009**	**2010**
Number of cases	475	306	322	488

Source: Council for the Judiciary, 2011

Dissolution proceedings	**2007**	**2008**	**2009**	**2010**
Settled dissolution applications	28,150	21,182	26,121	19,850

Source: Council for the Judiciary, 2011

Questions of the European Committee of Social Rights

arising from the Netherlands' previous report (20th)

a. The Committee notes from the report that the protection in the event of termination of employment afforded by the Civil Code applies to all employees with an employment contract of indefinite duration but not to employees on a fixed-term contract or those on probationary period. The Committee asks for further information on the rules applicable to these categories of employees as regards protection in the event of termination of employment and in particular on the length of probationary periods.

Protection in the event of termination of fixed-term employment contracts

Fixed-term employment contracts end by operation of law on the date agreed by the parties or when a project ends (article 667, paragraph 1, Civil Code). This type of contract may be terminated without a permit from the UWV during the probationary period only (article 676, Civil Code). Employers and employees are entitled to terminate fixed-term employment contracts unilaterally after the probationary period only if the contract stipulates a provision to that effect (article 667, paragraph 3, Civil Code). The rules governing terminations apply to early terminations. This means that a permit must be obtained from the Employee Insurance Agency (UWV) and the prohibitions on termination in special circumstances (set out in the previous report under Question A) apply. In addition, employers and employees are obliged to take notice periods into account. A one-month notice period applies to employment contracts that have been in effect less than five years. The maximum notice period for employers is four months and for employees one month regardless of length of service. If a fixed-term contract does not contain a termination clause it can be terminated early by the court in dissolution proceedings. It is also possible to terminate a fixed-term employment contract early by mutual agreement of the parties.

Probationary period for fixed-term contracts

Article 652, paragraphs 4 and 5 of the Civil Code set out the rules for determining the probationary period for fixed-term employment contracts. If the parties opt for a probationary period, the length of the period is the same for both parties (article 652, paragraph 1, Civil Code) and their agreement must be laid down in writing (article 652, paragraph 2, Civil Code). The maximum probationary period for a fixed-term employment contract is either one or two months. The maximum is one month in the case of:

- a fixed-term employment contract concluded for less than two years;
- a fixed-term employment contract which does not specify a termination date.

The maximum probationary period for employment contracts of two years or longer is two months.

b. The report further specifies that the Labour Relations Decree 1945 covers all persons who personally perform work in the service of another except for public servants, teachers, ministers of religion and domestic staff. The Committee asks for information on the rules applicable to these categories of employees as regards protection in the event of termination of their employment contracts.

When a civil servant is dismissed this is done by means of a decision against which the civil servant can file a motivated objection with the authority he is employed by. That body can declare the objection well-founded, unfounded or inadmissible. If the objection is declared unfounded, the civil servant who has been dismissed may submit an application for review to the administrative law sector of the district court. Finally, if these proceedings fail to produce

the desired result, the civil servant can lodge an appeal with the Central Appeals Court for Public Service and Social Security Matters (*Centrale Raad van Beroep*).

Ministers of religion:

- The Labour Relations Decree 1945 (*Buitengewoon Besluit Arbeidsverhoudingen 1945*, BBA) is not applicable to ministers of religion. Dissolution of an employment contract by the court is subject to the rules of the Civil Code set out in the previous report (Question A, Civil law, Dissolution procedeedings).
- The Designation Decree concerning cases in which a work relationship has the status of employment (*Besluit aanwijzing gevallen waarin arbeidsverhouding als dienstbetrekking wordt beschouwd*) states that for the purposes of the Decree a person who performs work primarily of a religious nature is not deemed to be an employee.

Domestic workers **:**

- On 1 January 2007 the Domestic Services Order (*Regeling Dienstverlening aan huis*) was introduced to boost the market for personal services. This Order applies to employees who generally work fewer than four days a week, exclusively or almost exclusively providing services in the household of the natural person who employs them regardless of the number of hours a day they work for that person.
- The BBA does not apply to part-time domestic staff and a UWV permit is not needed to terminate the employment contract.
- Dissolution of an employment contract by the court is subject to the rules of the Civil Code set out in the previous report (Question A, Civil law, Dissolution proceedings).

c. The Committee requests the next report to provide a summary of significant case law showing how the aforementioned valid grounds for termination of employment are interpreted by the competent courts in practice.

The overview under Question 1 provides a summary of the case law.

d. It asks in particular to what extent employment relationships may be terminated on economic grounds and to what extent courts are empowered to review the facts underlying a dismissal that is based on economic grounds invoked by the employer.

The answer to this question is included in Question 1.

e. The Committee further asks whether Dutch law provides for termination of the employment relationship on the grounds of age.

The Civil Code contains no provisions stipulating that an open-ended employment contract must end automatically when the employee reaches a certain age, including the age at which he is entitled to receive a state pension. In fact, there is no statutory requirement to terminate an employment contract when the employee reaches pensionable age. As a general rule, prior notice must be given in order to terminate an open-ended employment contract (article 7:667, paragraph 6, Civil Code). In addition, discrimination on the basis of age when terminating an employment relationship falls under the Equal Treatment in Employment (Age Discrimination) Act (*Wet gelijke behandeling op grond van leeftijd bij de arbeid*) (section 3(c)), and is permitted only if there is objective justification (section 7, subsection 1(c)). This means that discrimination on the basis of age must serve a legitimate aim and it must be an appropriate and necessary means to achieve that aim.

f. In this context it wishes to know how retirement ages (mandatory retirement ages set by statute, contract or through collective bargaining) and pensionable age (age when an individual becomes entitled to a state pension) are fixed in the Netherlands and what is the consequence on the employment relationship once an employee has reached retirement and/or pensionable age.

g. The Committee further asks whether Dutch law prescribes or provides for termination of the employment relationship on the grounds that an employee has reached the retirement age and whether there are specific procedures to be followed or conditions to be fulfilled once an employee reaches the retirement age or whether employees who reach this age are automatically dismissed.

h. The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

Answers to Questions f, g and h:

The age at which an individual is entitled to receive state pension benefit under the General Old Age Pension Act (*Algemene Ouderdomswet*, AOW), i.e. the pensionable age, is 65. Many collective labour agreements and individual employment contracts contain provisions stipulating that the contract ends automatically when the employee reaches pensionable age. This is permitted under the Equal Treatment in Employment (Age Discrimination) Act, which states that dismissal which 'relates to the termination of an employment relationship because the person concerned has reached pensionable age under the General Old Age Pensions Act, or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties' is not prohibited (section 7, paragraph 1(b)).

The objective justification of this case of age discrimination is set out in the explanatory memorandum to the Equal Treatment in Employment (Age Discrimination) Act (Parliamentary Papers, House of Representatives 2001/2002, 28 170, no. 3). Companies and organisations have a genuine need to apply an objective criterion. Pensionable age is just such an objective criterion without respect to persons. Consequently, this form of discrimination serves a legitimate aim. Furthermore, there is broad support in society for applying the pensionable age as a limit and it coincides with the age limit set in the social security legislation. Discrimination on the basis of age is appropriate because it is the means by which the envisaged aim can be achieved. It is proportionate because upon reaching pensionable age the individual is no longer required to work in order to acquire income as he is entitled to the state pension. Finally, there is no good alternative to age discrimination. It is therefore a necessary means.

If a collective labour agreement or individual employment contract lacks a pensionable age clause, the employment contract will remain valid (until notice of termination is given). If a collective labour agreement or individual employment contract sets an age limit that is lower than the pensionable age, there must be an objective justification for discriminating on the basis of age. In other words, discrimination must serve a legitimate aim, and must be an appropriate and necessary means to achieve that aim (section 7, subsection 1(c), Equal Treatment in Employment (Age Discrimination) Act).

i. As regards civil servants, the report states that the General Civil Service Regulations list all the grounds on which a civil servant may be dismissed such as reorganisation, incapacity due to illness, incompetence/incapacity other than due to illness, dereliction of duty and 'dismissal on other grounds'. The report specifies that legal protection for this category of employees is guaranteed internally in the objection phase, and externally in the review and appeal stages and the Committee asks the next report to provide further information in this respect.

When a civil servant is dismissed this is done by means of a decision against which the civil servant can file a motivated objection with the authority he is employed by. That body can declare the objection well-founded, unfounded or inadmissible. If the objection is declared unfounded, the civil servant who has been dismissed may submit an application for review to the administrative law sector of the district court. Finally, if these proceedings fail to produce the desired result, the civil servant can lodge an appeal with the Central Appeals Court for Public Service and Social Security Matters (*Centrale Raad van Beroep*).

j. The Committee notes from the report that employment may not be terminated during, inter alia, illness of the employee. It observed that termination in the event of long-term incapacity for work lasting longer than two years or repeated sickness absence may justify dismissal and asks whether this means that dismissal on the ground of illness below the two years threshold is prohibited or what are the applicable rules regarding temporary absence from work due to illness or injury.

Employers are prohibited from terminating the employment contract of employees who are incapacitated for work for the first two years of illness or injury as the Civil Code provides for a prohibition on termination during illness (article 7:670, paragraph 1, Civil Code). After two years, employers are permitted to terminate the contract of sick employees if the following conditions are met. The employer must demonstrate convincingly:

- that the employee is unable to work as a result of illness or disability and will not recover within 26 weeks; and
- that he cannot reasonably, within 26 weeks, re-assign the employee (after retraining should that be necessary) to a different position within the company that could be regarded as better suited to the employee's situation.

Employees who are regularly sick and, as a result of illness or disability, are no longer able to perform their job may be dismissed in a period when they are not ill (article 5:2, Termination of Employment Decree), subject to the aforementioned conditions for employees who are dismissed after two years of sick leave.

k. It also wishes to know whether retaliatory dismissal is prohibited under Dutch law.

Retaliatory dismissal is covered in various provisions of the equal treatment legislation in the Netherlands. The provisions listed below prohibit employers from terminating the employment contract by giving notice or otherwise because an employee has invoked the prohibition on discrimination addressed in the provision:

- Article 7:646, paragraph 1 of the Civil Code (equal treatment of men and women)
- Article 7:648, paragraph 1 of the Civil Code (working hours)
- Article 7:649, paragraph 2 of the Civil Code (temporary and permanent employment contract)
- Section 5 of the Equal Treatment Act (religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status)

- Section 11 of the Equal Treatment in Employment (Age Discrimination) Act
- Section 9, subsection 1 of the Equal Treatment of Disabled and Chronically Ill People Act

Members of employee representation bodies are afforded protection against retaliatory dismissal (article 7:670, paragraph 4, Civil Code).

l. The Committee asks the next report to confirm that an employee may in any event appeal to the court against an approval of the CWI to terminate his or her employment contract.

It is not possible to lodge an application for review of or an appeal against decisions concerning dismissal permits issued by the Employee Insurance Agency (UWV). An employee can bring an action if he is of the opinion that his dismissal was 'manifestly unreasonable'. At that point, the employment contract will have already been terminated. The Civil Code provides as follows in this respect. If the employer terminates the contract of employment in a manifestly unreasonable way, whether or not in accordance with the provisions governing termination, the employee can apply to the court for damages (article 7:681, Civil Code) or ask the court to restore the employment contract (article 7:682).

m. The Committee asks the next report to provide further information on compensation an employee may claim in the event a court has held his dismissal to be unfair.
n. It asks in particular whether in these cases compensation is subject to a ceiling.

Answers to m and n:
An employee who believes that his contract has been terminated in a manifestly unreasonable way can claim damages (article 7:681, Civil Code). The court will award an amount it deems appropriate given the circumstances of the case. Consequently, termination payments in cases of manifestly unreasonable dismissal can differ and are not subject to a ceiling.

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

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

Appendix to Article 25

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

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

No new developments

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

No new developments

3) Please supply any relevant statistics or other information where possible on the amount of such claims, whether there is a ceiling on payments, the time taken between presentation of claims and payment of the amounts due and the overall percentage of employees' claims that are honoured by a guarantee institution and/or because those concerned are privileged creditors.

No new developments

Questions from the European Committee of Social Rights
in response to the previous report (the 20th) issued by the Netherlands

a. The Committee notes, however, that according to another source1 the Netherlands has had a guarantee institution for wage claims since 1968. It asks for the next report to confirm this and in that case explain how the guarantee system works, and to state whether, in addition to this, there is legislation granting priority for wage claims.

See the first paragraph below (marked '**A**')

b. It asks whether employee protection also applies when businesses cease trading without being able to honour their commitments, but have not been formally declared insolvent or placed in receivership.

See below at b.4. (marked '**B**')

c. The Committee asks whether workers' claims in respect of amounts owed for paid absences other than holiday pay are covered by the legislation.

See the second point c below (marked '**C**')

d. It also asks for an estimate of the overall percentage of workers' claims which are satisfied and the average time that elapses between the filing of the claim and the payment of any sums owed.

See the final paragraph below (marked '**D**')

e . The report states that all people who are regarded under the Unemployment Benefits Act as private or public sector employees are protected in the event of employer insolvency. Certain types of employment relationship are, however, not covered by the act. The Committee asks which types of employment relationship are concerned.

See a.1. below (marked '**E**')

Answers to the questions above:
Since 1968 employees have had an entitlement under the Unemployment Insurance Act vis-à-vis the Employee Insurance Agency (UWV) to the payment of wages owed to them by their current/previous employer (**A**). This entitlement also includes other amounts, such as pension contributions, which the UWV pays to the third parties to whom the amounts are owed by the employer in connection with the employment relationship. Employees enjoy a preferential position in respect of wages owed to them by their employer, in the event of the latter's insolvency for example, as laid down in article 3 :288 (e) of the Civil Code. Section 66 of the Unemployment Insurance Act grants the UWV the same preferential position if it takes over the employee's wage claim.

To qualify for payment, an employee must satisfy a number of conditions:
a. He/she must be an employee as defined by law.
   1. An employee is a natural person who is in an employment relationship under private law or public law in the Netherlands.
   2. An employment relationship exists under private law if the employee is obliged to carry out the agreed work in person and in return the employer is obliged to pay

wages. Also, the employer must be in a position of authority over the employee and be able to give the employee instructions.

3. NB: what matters is the actual situation, not whether or not there is a contract of employment. All employers therefore fall under this definition. (**E**)
4. Section 6 of the Unemployment Insurance Act sets out categories of people who do not qualify as employees:
   i. Political representatives, members of the government and members of the provincial and municipal executives.
   ii. Volunteers (in the police force and fire brigade, and volunteers who receive allowances that are exempted under the Salaries Tax Act).
   iii. People who perform domestic services fewer than four days per week.
   iv. Director-major shareholders.

b. He/she must be in the employ of the employer when:
   1. a bankruptcy order is given;
   2. the employer files for protection from creditors;
   3. a debt restructuring arrangement is declared applicable under the Debt Repayment (Natural Persons) Act;
   4. the employer has permanently ceased paying his/her debts for any other reason. NB: a formal declaration of bankruptcy or protection from debtors is not necessary. The employee must show that the employer is insolvent rather than unwilling to pay. If necessary, the UWV makes further inquiries. (**B**)
c. He/she must be owed wages by the employer.

The UWV may take over:

a. the payment of wages for the 13 weeks immediately preceding the day on which employment was terminated;
b. the payment of wages covering the period of notice;
c. payments in respect of the number of days' leave accrued by an employee over a year, and the payment of holiday pay and amounts owed to third parties for the year immediately preceding the end of the period of notice (**C**).

The UWV must give a decision within six months after receiving an application requesting it to take over the payment of wages (**D**). The UWV may make advance payments pending the decision. The percentage of claims that are honoured is very high (98% in the period 2008-2010).

No data is available on the time which elapses between the submission of an application and the effecting of payments. Information on the dates on which applications were received and the dates on which decisions were given indicates that decisions are given within 13 weeks in 70% to 80% of cases.

Introduction special municipalities in the Caribbean

As of 10 October 2010, the Netherlands Antilles ceased to exist as a country. Since that date, the Kingdom of the Netherlands has consisted of four countries: the Netherlands, Aruba, Curaçao and St Maarten. The islands of Bonaire, St Eustatius and Saba now have the status of 'special municipalities' within the Netherlands. Since this transition, responsibility for social security has been shared between the Dutch government and the islands of Bonaire, St Eustatius and Saba as follows. The central government is in charge of issuing work permits and cash benefits, while the island authorities handle childcare, job placement and reintegration.

These new constitutional relationships have repercussions for the 24th European Social Charter (ESC) report. Since the Netherlands Antilles no longer exist, they will not be providing an ESC report. Aruba, Curaçao and St Maarten are now responsible for their own reports.

The present report concerns Bonaire, St Eustatius and Saba. There is very little information available on the latter two islands. Moreover, much of the information is dated and its quality is not always high.

In the light of the constitutional changes described above, the Ministry of Social Affairs and Employment has made an agreement with the Charter Secretariat to submit an abbreviated report, which provides an overview of the current situation in the Netherlands in the Caribbean with regard to the relevant ESC articles (article 1 of the Charter and article 1 of the Additional Protocol).

European Social Charter
Article 1 – The right to work

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

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

Additional Protocol
Article 1 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

Socioeconomic development
The labour market situation and employment on Bonaire, St Eustatius and Saba have the full attention of the island authorities and the Dutch national government. Many people are unemployed. The socioeconomic development of the Netherlands in the Caribbean is thus a shared aim of the island authorities and the Netherlands. To achieve this, it is important to recognise the connection between such disparate issues as the labour market, childcare, housing (including social housing) and the situation of young people. An integrated approach

to these themes is a prerequisite for progress.

In the run-up to the transition on 10 October 2010, Bonaire, St Eustatius, Saba and the Netherlands signed an Administrative Agreement (18 April 2010) on improving the socioeconomic situation on the islands. The focus then shifted to devising specific plans for putting the provisions of the agreements into practice.

The most progress on that front has been made on Bonaire. In a workshop on that island (August 2010), the island executive, local stakeholders and planning officials from the relevant ministries exchanged ideas on an integrated approach to socioeconomic problems. The island executive of Bonaire followed up this workshop by drafting a formal response and various proposals for future action.

A similar approach has been taken for Saba and St Eustatius, though here, plans are not as far along as on Bonaire. A similar workshop was held in April 2010 on St Eustatius, and it is now up to the island authorities to come up with specific proposals on job placement, job creation and workforce reintegration. If possible, the Netherlands can help support this process; various options are currently being discussed.

Activities
A number of initiatives are being put into place to further socioeconomic development in the Netherlands in the Caribbean.

Integrated approach
The integrated approach is taking shape, but a great deal has to happen before any concrete results are achieved. To accelerate this process, the Ministry of Social Affairs and Employment has hired an expert with a background in municipal affairs to assist the islands for a year. This expert will mediate between the various actors on the islands.

In addition, the ministries in The Hague involved with the integrated approach (Education, Culture & Science; the Interior & Kingdom Relations; Health, Welfare & Sport; Social Affairs & Employment) will join forces to lend momentum to the initiative. They are now considering how this should be done (i.e. how best to pool activities and finances).

Fresh opportunities for young people
Young people who have dropped out of school can sign up for a programme that seeks to help at-risk youths between 18 and 25 obtain a basis qualification. The programme consists of one or more modules that can be arranged in such a way as to advance personal development and the acquisition of vocational and general skills and knowledge. The whole process takes between six months and two years.

Socioeconomic Initiative
The Socioeconomic Initiative (SEI) programmes take a structural approach to the islands' current socioeconomic problems, with the objective of making sustainable improvements to the socioeconomic prospects of the islands' inhabitants. At present, SEI programmes in the realm of social affairs and employment are only being carried out on Bonaire.

In May 2011 a project was launched on Bonaire to assist 100 unemployed individuals via a programme combining work and study that lasts up to a year. In May and June, 50 of the 100 intended participants started the programme. The remaining 50 participants are currently

being recruited.

Job programme on St Eustatius
In terms of tonnage, St Eustatius is the second largest port in the Kingdom of the Netherlands. This means that there are a large number of jobs in various branches of the maritime sector. The lion's share of the jobs in this sector are taken up by foreigners, however: of the 140 jobs only 20% are held by local people. Two local parties have launched a training programme in the maritime sector that aims to bring large numbers of locals into the sector.

Labour market information (Bonaire only)
As of 2010, 10,700 people aged 15 years or over were living on Bonaire, 7,100 of whom were employed. This puts the employment-to-population ratio for that year at 66.6%. Labour-market participation was significantly higher among men than among women: 71.8% as opposed to 61.2%.

Of the working population, 2,200 people were employed in either trade, transport or the hospitality industry. This translates to over three out of ten workers. The second largest sector on Bonaire is the government, with nearly 1,700 employees.

In 2010, 506 Bonairians were unemployed, a proportion of 6.6%. In addition, there were 3,100 individuals who were not active on the labour market. There is little difference between the sexes with regard to unemployment. For men, the figure was 6.5% and for women 6.7%.

The unemployment rate for 15-25 year olds was 12.8%. This translates to 100 individuals. Unemployment among this group is noticeably higher than among the middle aged or seniors; for them, the figure is between 5% and 6%. Proportionally, young people are also more likely not to be active on the labour market, in large part because they are still at school. Over four in ten young people are already participating in the labour market.

Definitions
- Working population: everyone aged 15 or over who has a job or runs their own business; plus all those who had worked in paid employment for at least four hours in the week prior to the survey.
- Job-seeking population: everyone aged 15 or over who did not have a job at the time of the survey, was actively looking for work in the month prior to the survey and could start work within two weeks if a job were to become available.
- Economically non-active population: everyone aged 15 or over who does not work but is also not unemployed.
- Net labour participation: the ratio of the working population to the population as a whole (aged 15 or over)
- Unemployed percentage: the ratio of the job-seeking population to the potential labour force (aged 15 or over)

Source
'Two in three Bonaire residents work', *Webmagazine*, 3 May 2011, Statistics Netherlands