14/11/2013 RAP/RCha/NLD/26(2014)

EUROPEAN SOCIAL CHARTER

7th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF THE NETHERLANDS

(Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29)

for the period 01/01/2009 – 31/12/2012)

Report registered by the Secretariat on 14 November 2013

CYCLE 2014

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Twenty-sixth Report

for the period 1 January 2009 - 31 December 2012

Report

For the period 1 January 2009 to 31 December 2012, 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

page

Article 2: All workers have the right to just conditions of work **01**
Paragraph 1 01
Paragraph 2 01
Paragraph 3 02
Paragraph 4 02
Paragraph 5 02
Paragraph 6 03
Paragraph 7 03
Comment on the negative conclusion of the ECSR 04
Answers to questions or requests for information by the ECSR 05

Article 4: The right to a fair remuneration **09**
Paragraph 1 09
Paragraph 2 10
Paragraph 3 10
Paragraph 4 11
Paragraph 5 11
Comment on the negative conclusions of the ECSR 12
Answers to questions or requests for information by the ECSR 14

Article 5: The right to organise **23**
Answers to questions or requests for information by the ECSR 24

Article 6: The right of workers to bargain collectively **25**
Paragraph 1 25
Paragraph 2 25
Paragraph 3 25
Paragraph 4 26
Answers to questions or requests for information by the ECSR 27

Article 21: The right of workers to be informed and consulted within the undertaking **29**
Answers to questions or requests for information by the ECSR 30

Article 22: The right to take part in the determination and improvement of the working conditions and working environment **31**
Answers to questions or requests for information by the ECSR 33

Article 26: The right to dignity at work **34**
Paragraph 1 34
Paragraph 2 34
Answers to questions or requests for information by the ECSR 35

Article 28: Right of worker representatives to protection in the undertaking and facilities to be afforded to them **36**
Answers to questions or requests for information by the ECSR 37

Article 29: The right to information and consultation in collective redundancy procedures **38**
Answers to questions or requests for information by the ECSR 41

Appendices
1: article 4 paragraph 5
2: article 29

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

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

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

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

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

Article 2§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
3) Please provide pertinent figures, statistics or factual information, in particular: average working hours in practice for each major professional category; any measures permitting derogations from legislation regarding working time.

No new developments.

Article 2§2

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

No new developments

Article 2§3

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

On 12 January 2012 the legislation on holiday and leave was amended to bring it in line with the European Working Time Directive (Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time). It appeared from European Court of Justice case law that changes to the existing legislation were necessary. Under the former Dutch legislation, the entitlement of employees with a long-term illness to annual holiday with pay was limited to the holiday rights accrued during the last six months of their sick leave. Following the legislative changes that took effect on 1 January 2012, these employees are now entitled to paid annual leave throughout the period of sickness absence. The minimum statutory number of leave days per year is four times the number of working days per week.

Under the new legislation, statutory leave will lapse six months after the end of the year in which it was accrued, unless the employee was not reasonably able to take it within this period. This provision therefore applies, for example, to employees on long-term sick leave who have been unable to take any holiday because of their illness. In this case, there is a limitation period of five years, which previously applied to all employees.

Article 2§4

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

No new developments

Article 2§5

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
3) *Please provide pertinent figures, statistics or any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.*

No new developments

Article 2§6

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

No new developments

Article 2§7

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
3) Please provide pertinent figures, statistics or any other relevant information, in particular: the hours to which the term 'night work' applies.

No new developments

Negative conclusion of the European Committee of Social Rights

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

A. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 of the Revised Charter on the ground that there is no provision for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations.*

In response to the Committee's question arising from the 19th report, the Netherlands has put forward arguments explaining why no statutory or general compensatory measures for what is described as intrinsically dangerous and/or unhealthy occupations have been implemented. The two main reasons are as follows:

- Compensatory measures at legislative level would require the compilation of a list of occupations that are considered intrinsically dangerous and/or unhealthy. This is not possible. A combination of factors determines whether a given occupation is dangerous or unhealthy. The occupation of road worker is not necessarily unhealthy if health and safety regulations are properly observed and workers have regular rest periods. The occupation of office worker can be very unhealthy if individuals are constantly under stress and can no longer maintain a healthy work-life balance, resulting in burnout.
- Aside from the question of whether legislation is possible, it is not actually needed in the Netherlands. The various occupational groups in this country are largely unionised and all aspects of employment are the subject of consultation between employers' and employees' representatives. Since *both* parties have an interest in ensuring that employees can carry out their work in a healthy way over the long term, tailored solutions are sought at sector and/or company level, where necessary, supplementing the statutory rules.

The argument put forward by the Netherlands not to implement any statutory measures specifically intended for 'intrinsically dangerous or unhealthy occupations' is therefore *not* that the Netherlands takes the view that there are sufficient statutory measures already, but that the social partners themselves also reach agreements that supplement the existing statutory rules. The argument is that the Netherlands has adequate compensatory measures for 'dangerous or unhealthy occupations', partly laid down by law (general provisions) and partly stemming from sectoral agreements (tailored to the sector in question). This has proven to be an effective system in practice. Only where this fails is recourse taken to additional statutory measures.

In short, enough 'compensatory' measures exist already, though not all of them originate from the government. The Netherlands is of the opinion that the government does not need to intervene if the sectoral stakeholders can come to a mutually beneficial arrangement. For this reason, the Netherlands cannot agree with the conclusion that it is not in conformity with article 2§4 of the Charter.

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

Paragraph 1 – Reasonable working time

a. The Committee considers that the absolute limits on daily and weekly working hours are in conformity with the Charter. However, it also observes that the new Act gives the parties much more freedom in determining working hours and that the notion of overtime has been abolished. All this could lead to the risk of employers imposing harsher working conditions on the basis of the new provisions. Therefore, pending receipt of information on the evaluation of the new legislation, namely to what extent collective agreements have filled up the gaps resulting from the new Legal framework, the Committee defers its conclusion.

The simplification of the Working Hours Act (ATW) in 2007 did give employers more scope to determine working hours, but while it is not true to say that the absolute limits have been expanded, they can now be more easily applied. Unlike the pre-2007 situation, in many cases this no longer needs to be decided by collective agreement, or approved by the works council or employee representative body. The thinking behind this is that each individual company can now have its own tailored solutions.

Theoretically, employers might seek the absolute limits of the Act and thus put in place work rosters that are detrimental to employee health. To find out whether this happens in practice, an evaluation was carried out in 2011-2012, which looked at collective agreement provisions on working hours and rest periods and how these are implemented in a considerable number of companies.

Conclusions:

- Up to 10% of collective agreements contain one or more 'new' provisions in this area, i.e. provisions that were not possible under the previous Act.
- 1-2% of companies in the Netherlands have increased working hours as a result of the amended Act.
- The evaluation found that the position of the works council did not substantially change during the period 2007-2012. As far as changes in working patterns are concerned, it still acts as a consultation partner. This role is unaffected by the legislative amendment.

Both employers' and employees' associations, which have been involved in changes in working hours and rest periods, generally take the view that the amended Act offers sufficient scope for tailored solutions.

b. It also notes that certain categories of workers, such as sports professionals, scientists, performing artists, military personnel and the police are not subject to the abovementioned statutory limits. It asks the next report to indicate if there are specific regulations for the latter occupations, and in particular what are the applicable daily and weekly working limits.

Voluntary workers, sports professionals, scientists, performing artists and medical specialists, as well as workers whose wages are more than three times the gross minimum wage (€57,150), are not subject to the limits set in the Working Hours Act. No limits for daily or weekly working hours apply for these individuals. Military personnel and the police are,

however, covered by the Act. The exceptions mentioned are consistent with those allowed in the Working Time Directive (2003/88/EC).

c. Finally, the Committee asks the next report to provide information on the supervision of working time regulations by the Labor Inspection, including the number of breaches identified and penalties imposed in this area.

The Labour Inspectorate performs active inspections in those sectors or fields of employment where a substantial risk of abuse with respect to occupational health and safety can be expected, and where control and sanctions have proven to be most effective. It accordingly carries out risk assessments, on the basis of which an inspection programme is drawn up.

It has been found that working time is not a significant OHS risk; consequently, supervision of the working time regulations is not a standard feature of inspections. Compliance with these regulations is monitored when employees have irregular working patterns. In the past four years, the police, the security and road maintenance sectors, mushroom farms and hospitals have been checked for compliance.

In addition to active inspection, the Inspectorate responds to complaints and reported incidents. In the event of contravention of the Working Hours Act, a warning or a demand to comply with the rules suffices in most cases. In the remaining cases, a fine is imposed. In 2011, 64 fines were collected, equivalent to a total of €346,455.

Paragraph 2 – Public holidays with pay

d. The Committee considers that work performed on a public holiday imposes a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee asks whether, in practice, increased remuneration is paid for work on public holidays and if so what the rate is.

The agreements between employer and employee that have been set out in the collective agreement or employment contract determine whether work performed on a public holiday gives entitlement to compensation in the form of additional pay or time off in lieu. In practice, a substantial bonus is often paid for work on public holidays, the actual amount varying from sector to sector. Sometimes the only form of compensation normally offered in a particular sector is time off. In the hotel and catering industry, for instance, workers are only entitled to time off in lieu for each hour worked. Where this is not possible, a bonus of 50% of the hourly wage must be paid. Official public holidays in the Netherlands are New Year's Day, Easter Sunday, Easter Monday, Ascension Day, Whit Sunday, Whit Monday, Christmas Day, Boxing Day, King's Day (30 April) and 5 May (every five years).

Paragraph 3 – Annual holiday with pay

e. The Committee asks again for information as to what proportion of the minimum statutory leave may be postponed to a subsequent year, or whether all of it so may be postponed.

Statutory leave will lapse six months after the end of the year in which it was accrued, unless the employee was not reasonably able to take it within this period (which therefore ends on 1 July the following year), in which case a limitation period of five years applies.

Subject to the expiry date, statutory leave entitlement may be carried over to the subsequent year. If leave entitlement is stipulated in a written agreement, or under or pursuant to a collective agreement, the number of statutory leave days that may be carried over to the following year will be limited. This is the case, for instance, for company-wide holidays or a holiday period agreed across a particular sector, as in the construction industry.

Paragraph 6 – Information on the employment contract

f. Article 2§6 guarantees the right of workers to written information upon commencement of their employment. Information that must be included in employment contracts also includes the length of paid leave, the periods of notice required in the event of termination of the contract or the employment relationship, the remuneration and information on any collective agreements governing the employee's conditions of work. The Committee asks for confirmation that all aspects of the employment contract or relationship are covered by the contract or another written document.

Article 7:655 of the Civil Code stipulates the minimum written information the employer must provide to the employee within one month of the start of the employment relationship, or earlier if the employment contract is terminated.

Paragraph 7 – Night work

g. If a medical check-up reveals health problems, the employee concerned may be reassigned to day work. The Committee asks whether a medical checkup is carried out before an employee is assigned to night work and whether it exists other possibilities for night workers to be transferred to day work.

- Any employee who is going to carry out night work for the first time should be given the opportunity by law to submit to an occupational health medical examination before commencing this work (cf. article 2.43 of the Working Conditions Decree, which forms part of the Working Conditions Act).
- Employees engaged in night work have a statutory right to be given the opportunity to undergo an occupational health medical examination at regular intervals with a view to preventing or limiting the risks posed to their health by their work to the greatest possible extent (cf. section 18 of the Working Conditions Act).
- If this examination reveals that an employee's health problems result from working night shifts, the employer must ensure that the employee in question is reassigned to day shifts within a reasonable period (unless the employer can make a plausible case that this cannot reasonably be required of him) (cf. section 4.9 of the Working Hours Act).
- Pregnant employees cannot be obliged to carry out night work (unless the employer can make a plausible case that this cannot reasonably be required of him) (cf. section 4.5(5) of the Working Hours Act).
- Generally speaking, the employer must conduct as sound a policy as possible concerning working hours and rest periods; in other words, he must take into account the personal circumstances of his employees. This means that the employer must seriously consider any objections – other than health-related ones – to night work. He must regularly review his policy on working hours and rest periods; if, for example, he sees that night work is becoming too strenuous for some workers, he must take appropriate measures, insofar as is

reasonably possible. He must also take account of any new developments in the field of occupational health (cf. section 4.1 of the Working Hours Act).

h. It also asks whether there is regular consultation with workers' representatives on the use of night work, the conditions in which it is performed and measures taken to reconcile workers' needs and the special nature of night work.

No general statements can be made regarding this issue. In sectors where night work occurs, the collective agreement often contains a few restrictive provisions on this subject. The details of night/shift work are worked out at individual company level, in consultation between the employer and the works council. Where work rosters are to be drawn up or changed, the works council is usually involved (right of consent). The works council sometimes has a dedicated committee, which compares the work rosters against legislation and regulations and against the agreements reached between employer and employees. Investigations are conducted either proactively or in response to employees reporting a violation of agreements.

Article 4 – The right to a fair remuneration

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

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

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

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

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

Article 4§1

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

No new developments

3) Please provide pertinent figures on national net average wage[1] (for all sectors of economic activity and after deduction of social security contributions and taxes; this wage may be calculated on an annual, monthly, weekly, daily or hourly basis); national net minimum wage, if applicable, or the net lowest wages actually paid (after deduction of social security contributions and taxes); both net average and minimum net wages should be calculated for the standard case of a single worker; information is also requested on any additional benefits such as tax alleviation measures, or the so-called non-recurrent payments made available specifically to a single worker earning the

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

minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living; the proportion of workers receiving the minimum wage or the lowest wage actually paid.
Where the above figures are not ordinarily available from statistics produced by the States party, Governments are invited to provide estimates based on ad hoc studies or sample surveys or other recognised methods.

Statistics Netherlands does not publish any data on personal net incomes. However, according to the Ministry of Social Affairs and Employment's own calculations, the net median[2] wage is estimated to have been €26,500 in 2009 and €27,380 in 2013.

These estimates are based on a sample survey among full-time workers (> 35 hours/week). The net wage is calculated by deducting taxes, social security contributions and pension contributions from the gross wage. If only single full-time workers are selected, the net median wage would be lower: approx. €23,680 in 2009 and €24,700 in 2013.

The statutory minimum wage is adjusted every six months in line with the average increase in wages in collective bargaining agreements. Since 1 January 2013 the statutory minimum wage has been €1,469.40 gross per month (€339.10 per week and €67.82 per day). Besides the statutory minimum wage every worker is also entitled by law to holiday allowance. The minimum holiday allowance is 8% of the gross annual wage. All workers aged between 23 and 65 are entitled to this statutory minimum wage and statutory minimum holiday allowance. Workers under the age of 23 are entitled to the statutory minimum youth wage. For each age category this is a percentage of the adult minimum wage. The figure varies from 30% for 15-year-olds to 85% for 22-year-olds.

Article 4§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 (estimates, if necessary) or any other relevant information, in particular: methods used to calculate the increased rates of remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.*

No new developments

Article 4§3[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.*

[2] Net median income means the middle value when incomes are arranged from low to high. It is the numerical value which separates the higher half of incomes from the lower half.
[3] States party that have accepted Article 20 of the European Social Charter (revised) do not have to reply to questions on Article 4§3, but must take account of these questions in their answers on Article 20.

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

No new developments

Article 4§4

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

No new developments

Article 4§5

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

Negative conclusions of the European Committee of Social Rights

Paragraph 1 – Decent remuneration

A. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Revised Charter on the ground that the minimum wage paid to workers aged 18-22 is manifestly unfair.*

The level of the minimum youth wage reflects the aims of government policy on the participation of young people in the labour market. The structure of the minimum youth wage (i.e. its level and the extent to which it rises with age) is designed to encourage young people to continue studying and in any event obtain a basic qualification. A higher wage would be an incentive for young people to leave school early without proper qualifications in order to look for a job. Another consideration is that work must be available for young people who enter the labour market. A higher wage could result in loss of employment opportunities for young people as higher wage costs adversely affect demand for them. Demand for young people in the labour market would fall sharply, thereby causing an increase in youth unemployment. At present, youth unemployment in the Netherlands is relatively low compared with other countries and labour market participation among young people is relatively high. The minimum youth wage promotes employment for young people and enables them to gain job experience at an early stage. Moreover, the present structure of the minimum wage provides an incentive for young people to complete their education. Although young people are paid less than workers aged 23 and over, this is justified because young workers tend to be less productive and usually have not completed their education, have less job experience and require more supervision.

Paragraph 4 – Reasonable notice of termination of employment

B. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§4 of the Revised Charter on the grounds that:*
   - *its legislation does not require any notice of termination of employment to be given during the probationary period;*

A probationary period must be agreed in writing between the employer and the employee and does not exist automatically. An agreed probationary period applies to both parties. If an employment contract contains a valid provision regulating a probationary period, either party may terminate the employment contract with immediate effect within that period. During the probationary period, the employer is not required to obtain the prior consent of the UWV to terminate an employment contract and the special prohibitions on dismissal do not apply**.**

The purpose of a probationary period is to give both parties the opportunity to test their working relationship in practice and to enable the employer to gauge whether the new employee is suitable for the position in question. If an employer exercises the right to terminate the employment contract during the probationary period for a different purpose, this may constitute an abuse of the right.

   - *the reduction of the notice period to a minimum of one month under collective agreements is unreasonable in the case of employees with five or more years' length of service.*

The European Social Charter (ESC, art. 4, para. 4) provides that every employee has a right to a reasonable period of notice for termination of employment. This does not stand in the way of summary dismissal for cause..

The Dutch Supreme Court held long ago that the notice period could not be entirely excluded in collective agreements (Supreme Court, 19 December 1913, NJ 1914, 308). Any such agreement should therefore in any event provide for a reasonable notice period. The European Committee of Social Rights (ECSR) has ruled that a minimum notice period of one month must apply.. This is reflected in the present legislation, which prescribes a notice period of at least one month. Clearly, therefore, the legislator regards one month as a reasonable period. A notice period of at least one month in any event gives the employee the opportunity to look for another job.

The statutory notice period for the employer depends on how long the employment contract has lasted on the date when notice is given. If the contract has lasted for less than five years, the notice period is one month. If it has lasted for five years or more but less than ten years, the period is two months. Three months' notice must be given if the contract has lasted from ten to fifteen years, and four months' notice if it has lasted for fifteen years or more. The notice to be given by the employer is reduced by one month if it has obtained the consent of the Employee Insurance Agency before giving notice, although the minimum period of notice always remains one month.

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

Paragraph 1 – Decent remuneration

a. The Committee holds that a 'decent standard of living' which is at heart of this provision of the Charter, goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. It follows that guaranteeing a decent standard of living means ensuring a minimum wage (and supplemented by any additional benefits where applicable) the level of which should be sufficient to meet these needs. Therefore, the Committee asks the next report to demonstrate whether the level of the minimum wage and its possible supplements in Netherlands meets this requirement.

The aim of the Minimum Wage and Minimum Holiday Allowance Act is to ensure that employees receive reasonable remuneration for their work and that the earnings of those who work full-time are sufficient to cover their living expenses. These expenses, as well as the need to participate in social, cultural and educational activities, depend to some extent on the personal circumstances of the individual employee, for example the composition of his or her household and the household's aggregate income. As the individual situation to some extent determines the level of the necessary expenditure there is an additional system of benefits to which employees may be entitled, depending on their individual circumstances. Examples are child benefit, housing benefit and a reduction in the costs of medical insurance. Schemes exist at local level to promote participation in social, cultural and educational activities in so far as this is necessary in an individual situation.

Paragraph 2 –Increased remuneration for overtime work

b. The Committee considers that the abrogation of the notion of overtime may lead to long working days – agreed by the parties – which will not be remunerated as such in the absence of a collective agreement covering this matter. Therefore, pending receipt of information on the evaluation of the new legislation, in particular to what extent collective agreements foresee an increase in basic pay for unsocial or extended working hours, the Committee defers its conclusion.

No general information is available on the provisions on extra remuneration for unsocial or extended working hours in collective agreements.

c. Finally, it asks the next report to provide information on the activities of the Labor Inspection in respect of any breaches related to the failure to pay overtime wages.

The Labour Inspectorate is not responsible for supervising compliance with provisions on the payment of overtime in addition to the normal wages. This is regulated by the provisions of collective agreements between private parties. Enforcement of their provisions is a matter for the social partners who have concluded the collective agreement. This is why no information is available about breaches related to the failure to pay overtime.

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

d. The Committee invites Netherlands to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

The figures of Statistics Netherlands for 2010, which were published in November 2012 in a report entitled 'Equal pay for equal work?', show an uncorrected gender pay gap of 13% in the public sector and 20% in the private sector. If account is taken of certain relevant background characteristics (such as age, length of working time and educational attainment) this leaves a corrected pay gap of 7% in the public sector and 8% in the private sector. The corrected pay gap is the difference that is not explained by all factors that influence rates of hourly pay, such as personal qualities.

Paragraph 5 – Limits to deduction from wages

e. The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation with regard to the limitation of deductions from wages, which it has previously considered to be in conformity with the Charter (Conclusions XVIII-2). It asks that the next report provide a full and up-to-date description of the situation.

The Netherlands complies with the provision of article 4 (5) ESC through the statutory provisions of articles 7:631 and 7:632 of the Civil Code (CC). See Annexe 1 for the Dutch text of this legislation.

The following are the main elements of this legislation:

Under article 7:631, paragraph 1 CC, any contractual provision under which an employer obtains the right to withhold an amount from the employee's wages on pay day is null and void. Only after the employee has given written authority is the employer entitled to make payments in the employee's name. This authority may be revoked at any time. Examples given in the report of the proceedings in parliament are the deduction of a membership fee for the staff association and a deduction for the purchase of a personal computer under a home computer plan (Parliamentary Papers II 1993/1994, 23 438, no. 3 p. 27 (Explanatory Memorandum)). Likewise, contractual provisions under which an employee is obliged to spend his or her pay in a particular way (possibly to the benefit of the employer) are null and void. For example, employees may not be required to use part of the tips which they receive and belong to them to meet the employer's obligation to pay wages (Rotterdam District Court, 18 February 1999, JAR 1999/72). A contractual provision requiring a study costs allowance to be repaid in certain circumstances is not in itself in breach of the law, provided that conditions formulated in the case law are fulfilled (Supreme Court, 10 June 1983, NJ 1983, 796). Such a provision must, for example, define the period during which the employer is deemed to benefit from the knowledge and skills acquired by the employee, and also arrange for the repayment obligation to be gradually reduced in keeping with the length of the employment during the stated period.

By way of exception to article 7:631, paragraph 1 CC, an employee may enter into a binding and irrevocable commitment to participate in the funds or savings schemes referred to in article 7:631, paragraph 3 CC. Examples are funds that comply with the Pensions Act and insurance within the meaning of section 5 (1) of the Pensions Act. The employer may deduct the requisite amounts from the employee's pay under article 7:631, paragraph 4 CC. The phrase 'any other fund' in article 7:631, paragraph 3 (c) does not include funds whose purpose is to make a payment to the employer or employee in connection with the latter's right to continued payment of wages during sickness, pregnancy or childbirth or with incapacity benefit.

If an employee has entered into a follow-up contract as a consequence of a contractual provision that is null and void, he or she may reclaim from the employer the amount paid to the employer or to a third party under that contract. This is provided for in article 7:631, paragraph 6 CC. Where the contract has been entered into with the employer, the employee may also rescind the contract. Under article 7:631, paragraph 7 CC a court may reduce the employee's claim against the employer to no less than the amount at which it fixes the loss suffered by the employee.

Causes of action under article 7:631 CC become barred by prescription six months after the day on which they arise.

Article 7:632, paragraph 1 CC provides that outstanding claims of the employer against the employee may be set off against the pay still due to the employee in a limited number of cases only, namely:

1. where damages are owed by the employee in connection with the employment;
2. where a fine is owed by the employee under article 7:650 CC;
3. where money has been loaned by the employer to the employee under the terms of an agreement which expressly provides that the loan should be treated as an advance on wages;
4. where the employee has received more pay than he or she is entitled to;
5. where rent is owed by the employee under the terms of a written agreement in which the employer has let residential or other premises or land to the employee or has hired out equipment, machinery or tools to the employee who has used them in his own business.

Even where set-off is possible under these provisions, it may still be disallowed if it would not be reasonable or fair. This was the case, for example, where an employer set off wages paid in excess of entitlement in circumstances where the employer's error was not apparent to the employee (Delft Sub-District Court 1997, Prg. 1997, no. 4770, p. 405).

Besides the five possibilities mentioned in article 7:631, paragraph 1 CC, the scope for setting off amounts against an employee's pay may be limited in three other ways. These limitations are set out in article 7:632, paragraphs 2 and 3 CC. First, no set-off is permissible against such part of the pay as is exempt from attachment of earnings (the attachment-exempt amount). Second, the maximum amount that may be set off against pay in the form of fines imposed on the employee is one tenth of the wages as fixed in monetary terms. And, third, the amount which the employer already withholds under an attachment-of-earnings order is subtracted from the maximum allowed for set-off. It is evident from the report of the proceedings in parliament that the reason for these limitations is to ensure that on pay day employees have a reasonable part of their wages to dispose of as they see fit (Parliamentary Papers II 1993/1994, 23 438, no. 3, p. 29 (Explanatory Memorandum)).

Article 7:632 CC BW is a peremptory norm. This means that a contractual provision under which the employer obtains a greater power of set-off is voidable. It is apparent from the report of proceedings in parliament that in practice the issue of voidability need not concern the entire contractual provision, but can instead relate merely to its operation in a specific case (Parliamentary Papers II 1993/1994, 23 438, no. 3, p. 29 (Explanatory Memorandum)). Article 7:632 CC is not breached where an employee expressly agrees in retrospect to a set-off that is contrary to this article.

Wider powers of set-off are permitted upon the termination of employment than are allowed under article 7:632 CC. The general provision contained in article 6:135 (a) CC applies in such cases. Set-off is then possible in so far as the amount due to the employee could be validly attached. Article 7:632, paragraph 3 CC must be applied by analogy at the end of the employment.

Background information in respect of article 7:631 Civil Code (CC)

1. Deductions for the purpose of recovery
Under article 7:631, paragraph 1 CC, an employer is not permitted, for example, to make deductions from an employee's pay for the purpose of creating a fund to provide the employer with a means of recovery in cases where the employee terminates the employment and is obliged to pay damages to the employer. However, where the employer has the express written authority of the employee it may deduct amounts from salary, for example for the purchase of a personal computer under a home computer plan or for a membership fee for the staff association (Explanatory Memorandum, 23 438, no. 3 p. 27). According to this Explanatory Memorandum amounts may also be withheld for an equity investment fund in which the employee participates voluntarily. The employee may revoke this authority at any time.

Article 7:631, paragraph 1 CC merely states that provisions in an employment contract granting the employer the power to make deductions from wages can be declared null and void. Naturally, this paragraph does not affect the employer's statutory obligation to deduct salaries tax and social insurance contributions at source.

2. Payment in kind and the truck system
Whereas the provisions of article 7:617 CC are intended to prevent the payment of wages in kind, article 7:631, paragraph 2 CC prohibits related arrangements described as the truck system. Under such a system, employees are obliged to spend their wages in a particular way, possibly even for the benefit of the employer. In a case before the Supreme Court (29 June 1956, NJ 1956, 451, with note by LEHR), a provision of an employment contract under which the employee undertook to hand over part of his income from tips to his employer, who would then share it out among the other employees, was held to be null and void.

In a case before the Supreme Court (8 October 1993, JAR 1993/245 and NJ 1994, 188), a contractual provision requiring an employee to hand over all tips to the employer suffered the same fate. However, a tip-sharing scheme between an employer and his employees and among the employees themselves, under which a cash pool to be managed by or on behalf of the employees is set up and into which all tips are paid and the contents of which are divided among the employees in the business at fixed times and in accordance with a fixed criterion, does not seem to be in breach of the truck system prohibition referred to in article 7:631, paragraph 2. A tip-sharing scheme of this kind is not intended to limit the freedom of the employees to spend their wages as they see fit, but merely to ensure a fair division of income from tips. However, where an employee is obliged by contract to use part of the tips received by him and belonging to him to meet the employer's obligation to pay wages, the provision is in breach of article 7:631, paragraph 1 CC (Rotterdam District Court, 18 February 1999, JAR 1999/72).

3. Agreement about study or training
An employer and employee may arrange under the terms of an employment contract for the employee to take time off for a course while the employer continues to pay the employee's wages during this period and, possibly, also bears the costs of the course. The question is whether an obligation to repay the costs of the course and the pay which the employee continued to receive during the course is consistent with article 7:631, paragraph 2 CC.

The case law shows that a study or training agreement of this kind is not intrinsically unlawful, but that various conditions must be met if it is to be legally valid. In its judgment of 10 June 1983, NJ 1983, 796, the Supreme Court held that an arrangement whereby an employee undertakes to repay the costs of study or training if he leaves the service of the employer during or shortly after completing the course is not incompatible with the system underlying the legislation. The judgment provided (in finding of law 3.1) that there must be a financial arrangement which:
'a) defines the period during which the employer is deemed to benefit from the knowledge and skills acquired by the employee from the course of study or training;
b) provides that the employee must repay to the employer the pay received during the period of study or training if the employee terminates the employment during or shortly after completing the course;
c) gradually reduces the repayment obligation the longer the employment lasts during the period referred to at a).

The Supreme Court also mentioned three factors of importance in assessing the validity of a contractual provision on the costs of study or training, namely that (i) there may not be any inconsistency with the Minimum Wage and Minimum Holiday Allowance Act, (ii) that the employee must have been clearly informed in advance of the consequences of the study or training agreement, and (iii) that the employee should not be obliged to make repayment in circumstances where this would be unreasonable or unfair because the decision to terminate the employment has been taken by the employer.

In a case heard by the limited jurisdiction sector of Amsterdam District Court (20 November 1997, Prg. 1998, 4895, p. 106), the court held that in the interests of fairness an employee who had terminated his employment during the probationary period should be obliged to make repayment of the study costs only after the end of the probationary period and not at the moment of termination of the employment. In a case before the limited jurisdiction sector of Hoorn District Court (18 March 2002, JAR 2002/83) the court held that an obligation to repay study costs was reasonable. The factors taken into account by the court were that the courses taken by the employee were of sufficient quality that the employee himself had benefited from the courses and that there was no disparity between the costs of the courses and what they offered.

In a case before the limited jurisdiction sector of Amsterdam District Court (5 June 2002, JAR 2002/158) a repayment obligation was viewed as having a disproportionately large impact on the employee's income and the claim for repayment was therefore dismissed. One of the reasons why the court came to this conclusion is that the training costs had been entered in the accounts by the employer as costs for tax purposes. In the event of recovery against the employee, however, they would have been payable from his net earnings.

A case heard by 's-Hertogenbosch Court of Appeal (11 May 2004, JAR 2004/165) was not about the repayment of study costs but about a somewhat comparable situation involving

repayment of the costs of a reintegration procedure. A judgment of the limited jurisdiction sector of Utrecht District Court (18 March 2009, LJN: BH6647) concerned the question of whether study costs can always be recovered if a provision to this effect has been included in the relevant collective agreement (or employment contract). The court held that the costs of compulsory induction courses intended to acquaint the employee with the organisation and procedures of the employer (or those required for the position in question) could not be recovered. The case in point concerned a bank employee who terminated his employment within the two-month probationary period at the start of the contract. The employer had set off a proportionate part of the study costs against the final instalment of pay under the relevant provisions of the collective agreement. The employee sought to recover the amount that had been deducted from his pay, arguing that the course was a condition for entry into employment and was in conflict with the probationary period. The court held that the collective agreement showed that the employer was entitled only to recover the cost of career-oriented courses authorised by the line manager. The course in question was not covered by this, since it was a compulsory induction course intended to acquaint the employee with the organisation. There was therefore no basis for the employer to recover the costs of the course.

4. Funds and savings schemes
Under article 7:631, paragraph 1 CC, an employee may authorise his employer to make payments in his name. These may include payments to a savings institution with which the employee has an account. The employee is entitled to revoke such an authority at any time. However, under paragraph 3 of article 7:631 CC the employee may give an irrevocable undertaking to participate in the funds or saving schemes listed in that provision. The employer may withhold the amounts required for this purpose from the pay at source (paragraph 4).

This concerns, first of all, funds that comply with the requirements of the Pensions Act. These are industry-wide pension funds and company pension funds within the meaning of section 1 of the Pensions Act. An employee may also be obliged to contribute to the premium paid for an insurance within the meaning of section 5, subsection 1 of the Pensions Act. This may take the form of an obligation to contribute to the premium for life or non-life insurance taken out either in connection with a pension agreement as referred to in the Pensions Act or in connection with a legal relationship equated by law with a pension agreement.

Finally, an employee may also validly undertake to participate in funds or saving schemes in so far as these comply with the requirements laid down for such funds and schemes in the Funds and Savings Schemes Decree adopted pursuant to article 7:631, paragraph 3 (c) and (d) CC. Since 1 January 2007 such funds have been covered by the rules of article 7:631, paragraph 3 (c) (Explanatory Memorandum to the Pensions Act, Parliamentary Papers II 2005/06 30 413, p. 18).

A case before the Supreme Court (16 September 2005, JAR 2005/251 (LJN AT5523)) concerned the question of whether an early retirement scheme constituted a pension or prepension scheme within the meaning of the Pension and Savings Funds Act.
A tip-sharing scheme which had been established under a collective agreement, provided for the distribution of the tips among the employees and was managed and controlled by a fund established with the legal form of a foundation was held by Amsterdam Court of Appeal (9 October 2003, JAR 2004/180) to comply with the requirements of article 7:631, paragraph 3 (c) CC.

5. Funds not covered by article 7:631, paragraph 3 (c) CC
The last sentence of paragraph 3 of article 7:631 CC was added by Act of 24 December 1997 (Bulletin of Acts and Decrees 1997, 794). The purpose of this rather hard-to-read addition is to prevent employers from evading their obligation to continue paying salary during sickness by requiring their employees to participate in a fund (Parliamentary Papers II 1995/96, 24 776, no. 3, p. 68).

6. Follow-up agreements
Article 7:631, paragraph 6 CC regulates cases in which an employee has concluded a follow-up agreement pursuant to a contractual provision on compulsory purchases which subsequently proves to be null and void under paragraph 2. Examples would be a contractual obligation to purchase from a particular shop or to conclude an insurance agreement with a fund that does not comply with the Pensions Act. In such circumstances paragraph 6 provides that the employee may recover from his employer what he has paid to the employer or to a third party under the terms of the contract of sale or the insurance agreement. If the employee has concluded a follow-up agreement with the employer he may rescind the agreement. The consequences of this are governed by the general provisions on annulment in article 3:49 et seq. CC.

A follow-up agreement with a third party may not be rescinded. According to the Explanatory Memorandum (23 438, no. 3, p. 28) the reason why such an agreement continues to exist is that the third party was not, in principle, involved in the conclusion of the contractual provision that is contrary to article 7:631, paragraph 2 CC.

7. Power of reduction
Article 7:631 paragraph 7 CC gives the court the power to reduce claims filed by an employee against his employer under paragraph 6 to such amount as it deems fair. However, this may ‘not be less than the amount at which [the court] fixes the loss suffered by the employee’.

8. Short period of prescription
According to the Explanatory Memorandum (23 438, nr. 3, p. 28), the short period of prescription specified in article 7:631, paragraph 8 CC applies to all causes of action based on this article. However, where causes of action are based on the old article 1637s (now article 7:631, paragraphs 1 and 2 CC) the possibility of claiming annulment does not become barred by prescription. As regards causes of action relating to follow-up agreements, as governed by article 7:631, paragraph 6 CC, the period of prescription starts to run from the moment pay has been withheld by the employer or a payment has been made, as the case may be.

Background information on article 7:632 CC

1. Limited right of set-off
In comparison with the general rules on set-off in article 6:127 CC, article 7:632 CC provides that where an employer has claims against an employee that are due and payable it has only a limited right to set off the amounts concerned against the pay it owes to the employee during the period of the employment. Set-off is permitted only in the cases exhaustively listed in article 7:632, paragraph 1 CC.

This list requires explanation only in respect of the following points. The damages referred to at (a) are only damages connected with the employment. The wording of the article is ‘damages owed by the employee to the employer’. The situation described at (b) is in fact not

an instance of set-off. This provision actually covers the possibility of deducting a fine imposed by the employer from the pay owed to the employee. The provisions of (c) refer to cases where money has been loaned by the employer to the employee under the terms of a written agreement which expressly provides that the loan should be treated as an advance on wages and that the amount borrowed will be repaid from the accrued entitlement to pay. This part does not relate to a situation in which an employer pays part of the salary in advance and the rest on the agreed pay day, as such a case does not involve set-off.

Even where set-off would, in principle, be possible, for example on the basis of the provisions of article 7:632, paragraph 1 (d) CC, it may still be disallowed if it would be unreasonable or unfair. This was the case, for example, where an employer set off wages paid in excess of entitlement in circumstances where the employer's error was not apparent to the employee (Delft Sub-District Court 1997, Prg. 1997, no. 4770, p. 405).

2. Further limitation of the right of set-off
The right of set-off is limited not only to the cases listed in article 7:632, paragraph 1 CC, but also by the provisions of article 632, paragraphs 2 and 3 CC. First, amounts may not be set off against that part of the employee's earnings which are exempt from attachment. This rule, which is set out first in article 6:135 (a) CC, is repeated for the sake of clarity in article 7:632 CC. The second limitation is that the maximum amount of fines that may be set off is one tenth of the employee's pay as fixed in monetary terms. For a full-time employee this maximum corresponds to the maximum that an employer may impose in fines in a week under the provisions of article 7:650, paragraph 5 CC. The third and last limitation is set out in article 7:632, paragraph 3 CC, which reads as follows: 'Since the reason for both the limitation concerning attachment of earnings and the limitation concerning compensation is to ensure that on pay day employees have a reasonable part of their wages to dispose of as they see fit, paragraph 3 expressly provides that any amount deducted by the employer from an employee's pay under an attachment-of-earnings order must be subtracted from the amount available for set-off (Parliamentary Papers II 1993/94, 23 438, no. 3, p. 29).

3. Legal character of article 7:632 CC
It is apparent from article 7:632, paragraph 4 CC that the provisions of this article are peremptory norms. If set-off takes place contrary to this article, employees may recover their full pay, possibly together with the increase provided for in article 7:625 CC and the statutory interest. The peremptory nature of the provisions means that employees cannot validly consent in advance to a derogation from the rules of set-off provided for in this article. According to the Explanatory Memorandum (23 438, no. 3, p. M9), the clause starting with the words 'provided always that' has been included because in practice an application need not be for the entire contractual provision to be declared null and void but merely for it to be set aside in a specific case. W. Snijders (*Titel 3.2 BW en de nulliteiten in het arbeidsrecht* (Title 3.2 CC and nullity in employment law) SR 2002, 5, p. 141) points out that this concerns a special rule as applications for annulment generally result in the annulment of the entire contractual provision. Naturally, article 7:632 CC is not breached where an employee expressly agrees in retrospect to a set-off that is contrary to this article (cf. Rotterdam District Court, 8 March 1928, W. 11 853).

4. Current account relationship and bankruptcy
The rules on set-off in this statutory provision continue to apply if there is a current account relationship between the employer and the employee (Supreme Court 26 March 1931, NJ 1931, 655; W. 12 207). And the same applies where an employee is declared bankrupt

(limited jurisdiction sector of Amsterdam District Court, 9 October 1935, NJ 1936, 606). According to F.H.J. Mijnssen (*De rekening-courantverhouding* (The current account relationship), Zwolle: Tjeenk Willink, 1979, p. 50), claims for back pay should be entirely excluded from the current account relationship. 'The prohibition on set-off in article 1638r of the Civil Code means that if a current account relationship exists between employer and employee, the entry in that account of back pay owed by the employer would cause complications. Claims against the employer for back pay can be set off against other items only in the cases referred to in article 1638r of the Civil Code and even then only up to a maximum of one tenth of the arrears of pay (the former article 1638r of the Civil Code is the current article 7:632; the limitation to the part of the pay liable to attachment of earnings is also now applicable). As the very purpose of a current account relationship is to allow for netting between the parties and only the balance of the mutual claims will be owed, the nature of the agreement is incompatible with the entry in the current account of claims for back pay that may be set off only to a very limited extent. They should therefore be left off the account.'

5. Wider scope for set-off at the end of employment
At the end of the employment there is wider scope for set-off than provided for in article 7:632 CC. For example, the limitation of the right of set-off to the types of claim listed in paragraph 1 of that article does not apply. Likewise, the limitation in paragraph 2 concerning the setting off of fines does not apply. Naturally, however, the general limitation included in article 6:135 (a) CC does apply. Set-off against an employee's pay is therefore only possible up to the amount for which earnings can be attached.

The rationale of article 6:135 (a) Civil Code and also of article 475a et seq. of the Code of Civil Procedure is to ensure that on pay day employees have a reasonable part of their wages to meet their subsistence costs. It follows that even where earnings are attached and amounts set off against pay simultaneously, part of the pay corresponding to the attachment-free part should remain for the employee to dispose of as he sees fit. Article 7:632, paragraph 3 CC will therefore have to be applied by analogy at the end of the employment.

Article 5 – The right to organise

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

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

No new developments

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

a. *The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 5 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.*

Employees in the Netherlands are free to organise for the protection of their economic and social interests. ILO Convention No. 87, which the Netherlands has ratified, is of relevance in this context, as it concerns the freedom to establish and join workers' and employers' organisations.

The government provides for a minimum level of protection under employment law, e.g. concerning terms and conditions of employment, labour relations and working conditions, taking into account employers' and employees' own responsibility. The Minister of Social Affairs and Employment is responsible for promoting good labour relations, for instance by guaranteeing the social partners' right of negotiation and maintaining an effective consultative structure between the government and the social partners and between the social partners themselves. On average, about 20% of workers in the Netherlands are trade union members, the exact percentage varying from sector to sector.

The Netherlands stresses the importance of social dialogue, at centralised, decentralised (sectoral) and company level, as a tool for achieving stable, positive socioeconomic development of a country. The Dutch model for consultation between the social partners themselves and between the social partners and the government has proven its worth, not only on an ad hoc basis but also in institutionalised form, as in the Social and Economic Council of the Netherlands (SER) and the Labour Foundation (StvdA). To some extent, this consultative model underlies the Netherlands' excellent competitive position and relatively low unemployment rate. Consultation has led to moderate wage trends and well-coordinated implementation of measures to improve labour market efficiency. The consultative model is particularly valuable if the social partners can reach a mutual consensus on measures to be taken. Collaboration is vital to ensure industrial peace and win broad public support for any measures, another key factor being to maintain healthy public finances. The social partners are constantly called upon to take their share of responsibility for socioeconomic matters, with the key aim of seeking support for sensible policy. Effective centralised coordination (whether with the SER, the Labour Foundation or otherwise) depends on strong organisation of employers and employees at central level, with a broad mandate to negotiate with each other and with the government. Taking industrial action is simply an additional instrument – to be used as a last resort – and not an alternative to consultation. The consultative model is of great importance to Dutch society with regard to socioeconomic issues. This means that all parties have a solemn duty to keep working on this model to ensure that it remains an effective and powerful tool.

Article 6 – The right of workers to bargain collectively

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

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

and recognise

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

Appendix to Article 6§4
It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 6§1

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

No new developments

Article 6§2

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.
2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
3) Please provide pertinent figures, statistics or any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

No new developments

Article 6§3

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions

by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
3) *Please provide pertinent figures, statistics or any other relevant information, in particular on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, inter alia, compulsory arbitration.*

No new developments

Article 6§4

1) *Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.*
2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
3) *Please provide pertinent figures, statistics or any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.*

No new developments

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

Paragraph 1 – Joint consultation

a. The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§1 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.

With the aim of tackling the consequences of the economic crisis, Dutch trade union federations and employers' organisations reached a comprehensive 'social agreement' with the government on 11 April 2013, focusing on structural labour market reforms. This kind of agreement is essential for gaining widespread support for the measures to be implemented. It is especially important in times of crisis and change to demonstrate that effective social dialogue can be a key factor. First, by promoting centralised agreements between the social partners themselves and between the social partners and the government on the measures to be introduced. Second, the sectoral parties must be encouraged to negotiate a social agreement at decentralised level. Taking into account specific interests and circumstances, a central agreement can then be worked out in detail and implemented, for example in collective agreements, in individual sectors and companies. Collective agreements that have been declared binding on an entire industry are vital for achieving industrial peace and preventing a downward spiral in terms and conditions of employment, and also ensure that any agreements made centrally filter through to individual sectors and companies.

Active participation in decision-making is another good way of organising social dialogue in the workplace at company level. In the Netherlands, the works councils ensure that relations between employer and employees are well structured, even as regards matters that individual employees find harder to raise. In the dialogue between employer and works council, the interests of both the company and the employees can be carefully balanced, often resulting in compromises that are acceptable to both parties.

Paragraph 2 – Negotiation procedures

b. The Committee asks that the next report inform it about the implementation of the regulations.

The Netherlands has a long-established tradition of free collective bargaining on terms and conditions of employment. The government deliberately keeps its distance and does not interfere in the mechanics and/or conduct of the negotiation process. This approach rarely leads to problems in practice. Either of the negotiating parties is free to cut short the negotiations at any time. The other party may then decide to take the matter to court. In the case of private-sector negotiations, the court will assess whether the negotiating parties have observed the principle of reasonableness and fairness. In the public sector, the court will review whether there has been 'open and genuine consultation'. Approximately 80% of workers (more than 6.1 million in 2011) are covered by a company or sectoral collective agreement.

Paragraph 3 – Conciliation and arbitration

c. The Committee notes from the report submitted by the Netherlands and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§3 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.

As a rule, collective agreements in the Netherlands contain provisions on dispute resolution. If an employer and one or more employees interpret any part of a collective agreement differently, the matter may be put before a committee comprising employers' and trade union representatives, usually chaired by an independent party.

Since collective agreements in the Netherlands are private-law contracts, employers and employees may refer any disputes concerning compliance with any part of the collective agreement to a civil court. Employees may be represented by their trade union in these matters.

Paragraph 4 – Collective action

d. The Committee asks the next report to provide examples of case law demonstrating that the requirements of Article G of the Revised Charter are taken into account when the courts are considering whether a strike may be premature.

As a result of the existing system of social dialogue and collective bargaining, the Netherlands enjoys widespread industrial peace. In international terms, this results in a relatively low number of strike days and few working hours lost due to strikes.

The following two examples illustrate Dutch case law on the right to strike:

- On 19 January 2010 Utrecht District Court ruled in interim injunction proceedings (case number 280945 / KG ZA 10-44) on industrial action in response to government plans to raise the retirement age. The court deemed that the action was within the scope of article 6, para. 4 of the Revised European Social Charter. Although the action was directed against the employer and not the government in relation to its decision to raise the retirement age from 65 to 67, this mere fact does not imply that the action is not covered by the recognised right in article 6, para. 4 of the Revised Charter. According to established case law, a wide scope of application is accorded to article 6, para. 4 of the Revised Charter. The government's decision to raise the retirement age (which prompted the strike) is not in itself a subject for collective bargaining, but does form the starting point for various arrangements that are negotiated collectively.
- On 3 May 2012 Utrecht District Court ruled in interim injunction proceedings (case number 323851 - KG ZA 12-308) that a strike by police officers was permissible because sufficient advance notice was given, there was no abuse of the monitoring and law-enforcement tasks of the police and there was no risk to public order or national security. The court held that acting contrary to the Road Traffic Act is, in principle, unlawful, but this does not automatically mean that collective action is unlawful. This requires not only that a party acts unlawfully, but also that this unlawful conduct violates the rights of others or harms public interests, as specified in para. 1 of article G of the Charter, to such an extent that, in a democratic society, there is an urgent necessity to restrict the right to strike. The police argued that restrictions were needed in this case, since collective action posed a risk to public order and national security. The court did not share this view, however.

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

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

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

Appendix to Articles 21 and 22

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

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
3) Please provide pertinent figures, statistics or any other relevant information, in particular on the percentage of workers out of the total workforce which are not covered by the provisions granting a right to information and consultation either by legislation, collective agreements or other measures.

No new developments

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

a. The Committee considers that all categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (Confédération générale du travail (CGT) and Others, Case C-385/05)).
Consequently, the Committee asks whether this is the scope of Netherlands' legislation, particularly as regards the calculation of these minimum thresholds.

Undertakings that usually have at least 50 employees must set up a works council. Besides people with an employment contract with the undertaking, the term 'persons working in the undertaking' includes workers who do not actually work in the undertaking, but do have an employment contract with the undertaking (i.e. hired-out workers, such as seconded workers and agency staff). Hired-in workers also have participation rights in the undertaking where they are actually employed if they have worked there for more than 24 months and have contributed to the undertaking's activities.

b. The Committee asks the next report to provide updated information on the workers' right to take part in the determination and improvement of the working conditions and working environment in the undertaking.

Anyone who has worked in an undertaking for at least a year is eligible for election to the works council. Workers employed in the undertaking for at least six months have voting rights. It should be noted that the employer and the works council can expand the group of 'persons working in the undertaking' if both parties are of the opinion that granting participation rights (e.g. to individuals who regularly perform work in the undertaking without an employment contract) is conducive to proper implementation of the law.

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

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

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

Appendix to Articles 21 and 22

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

Appendix to Article 22

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

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

Under a decree enacted on 2 February 2011, it is now easier and less expensive for employers with up to 25 employees to fulfil their obligation to conduct a risk identification and assessment (RIA) and have it reviewed. If they use a dedicated tool to conduct their RIA, one

that has been developed and approved by the social partners for their industry, and that is mentioned on the www.rie.nl website, they do not need to have their RIA separately reviewed by an expert (external or otherwise).

Otherwise, there have been no new developments since the previous report.

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

Together with social partners, the Ministry of Social Affairs and Employment has developed an action plan on safety at work running for the period of 2009-2012. This multiyear action plan aims to reduce the number of occupational accidents, especially in small and medium-sized companies, by implementing specific actions designed to foster a culture of safe and healthy working. This action plan has prompted hundreds of companies to organise various activities to bring about behavioural and cultural changes.

A multiyear programme on long-term employability has also been developed with the aim of working with the social partners, particularly at company level, to devise a strategy to prevent worker absence as a result of physical or mental burnout.

Otherwise, there have been no new developments since the previous report.

3) Please provide pertinent figures, statistics or any other relevant information on employees who are not covered by Article 22, the proportion of the workforce who is excluded and the thresholds below which employers are exempt from these obligations.

No new developments since the previous report.

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

a. The Committee asks whether any appeals are available to workers or their representatives in cases where an employer decides not follow the catalogue drawn up by the social partners.

An occupational health and safety (OHS) catalogue (*arbocatalogus*) provides advice for employers on how to ensure good working conditions in their sector, but is not a binding legal instrument. Consequently, there are no specific appeal procedures in cases where an employer does not comply with the catalogue. An employer may choose to provide the same good level of working conditions by alternative means, but if he fails to do so, this can be addressed through the usual channel of consultation within the works council/employee representative body.

b. It also asks for more specific information on the system in place in the public sector which, as it understands it from the report, is different from that of the private sector.

This must be based on a misunderstanding. In both the private and the public sector, OHS catalogues are produced by the social partners and subsequently subjected to a limited review by the Labour Inspectorate. There is therefore no difference in how these catalogues are created, regardless of the type of sector.

c. Finally, it asks whether workers at the level of Enterprises can take part in decisions concerning the protection of health and safety at work.

Employers can use the OHS catalogue produced by the social partners and subjected to a limited review by the Labour Inspectorate to deal with any issues relating to working conditions in their company. Workers and/or their representatives are involved in decisions concerning the implementation of policy on health and safety at work.

d. The Committee noted previously (Conclusions XIV-2) that matters relating to in-company social work and other social and socio-cultural services and facilities were mostly regulated by law. The Committee asks for further information on this point, particularly as regards the arrangements for worker participation in the organisation of such services and facilities within companies

Employers are not legally obliged to offer workers in-company social work or other social and sociocultural services and facilities. Occupational health and safety policy encompasses four key specialist areas: occupational medicine, occupational hygiene, occupational safety and work organisation. It is up to the employer, in collaboration with the works council or employee representative body, to determine how this policy will be organised at company level. It may be decided to offer in-company social work. Some OHS services can also provide this service.

Article 26 – The right to dignity at work

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

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

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

Article 26§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

No new developments (see p. 28 of the Netherlands' 22nd report).

Article 26§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

No new developments (see p. 28 of the Netherlands' 22nd report).

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

Paragraph 1 – Sexual harassment

a. Article 26§1 requires that the right to protection from sexual harassment is effectively guaranteed. The Committee asks that the next report explain how this right is effectively guaranteed in Netherlands. It asks for information on the liability of employers, means of redress, burden of proof in a case of alleged sexual harassment, the damages for the victim and prevention policies undertaken by the Government.

The Equal Treatment (Men and Women) Act and the Equal Treatment Act prohibit discrimination on the grounds of sex, including sexual harassment, and specify the situations in which discrimination is not allowed. Both Acts stipulate that, if a person who believes he is a victim of discrimination adduces facts in support of this claim, the defendant must prove that he did not act unlawfully.

Acting in contravention of equal treatment legislation may also constitute a wrongful act under the Dutch Civil Code.

Section 1.1e of the Working Conditions Act defines psychosocial burden (see p. 28 of the Netherlands' 22nd report), which includes sexual harassment. Under section 3.2 of this Act, employers must pursue a policy designed to prevent psychosocial burden, or limit it if prevention is not possible. The Working Conditions Decree obliges employers to assess the risks of psychosocial burden as part of their risk identification and assessment, and to decide on and implement the necessary measures. Employers are also required to provide their employees with information and training on these risks and the measures available. If an employer's policy is inadequate or non-existent, the employer is in breach of the law and may be fined by the Social Affairs and Employment (SZW) Inspectorate (formerly the Labour Inspectorate).

Paragraph 2 – Moral harassment

b. The report deals with sexual and moral harassment at the workplace interdependently. The Committee understands that the same rules apply in the case of moral harassment as in that of sexual harassment. It asks next report to confirm whether this understanding is correct and refers to its remarks, questions and conclusion in Article 26§1.

The definition of psychosocial burden in section 1.1e of the Working Conditions Act covers all factors that can cause stress at work, including sexual harassment and bullying.

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

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

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

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

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

No new developments

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

a. The Committee refers to its interpretative statement on the facilities to be granted to workers' representatives in the general introduction as well as to its question on travelling expenses and asks the next report to provide all the necessary information.

Employers are obliged to allow the works council to use the facilities that are available to it (computers, photocopiers, meeting rooms, etc.) and that it reasonably needs to carry out its tasks. Works council members are also given paid time off to attend works council meetings. Due to circumstances, a works council may be required to convene outside working hours, or attending meetings may entail a disproportionate amount of travelling time. If this happens on a regular basis, it is reasonable for works council members to be compensated in the form of either monetary remuneration or time off in lieu. It is up to the works council and the director of the enterprise to reach agreement on travelling expenses considered reasonable by both parties. In any case, nearly all collective agreements and company regulations contain agreements on travelling expenses/business trips.

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

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

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

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

The legal framework for collective redundancy that was in effect until 1 March 2012 is described on p. 33 of the 22nd report. The Collective Redundancy (Notification) Act (WMCO) implements the European Directive on collective redundancies, under which any proposed collective redundancies for economic reasons must be notified in good time to the relevant trade unions and the competent authority (in this case the Employee Insurance Agency (UWV)). This legislation was amended on 1 March 2012 and the main changes are listed below.

Redundancy via termination by mutual consent is also covered

- The Collective Redundancy (Notification) Act used to focus solely on redundancies that an employer sought through the UWV (termination with permit) or the limited jurisdiction sector of the district court (dissolution).
- Since 1 March 2012, terminations that an employer wishes to make by mutual consent, i.e. by entering into a settlement agreement, have also fallen within the scope of the Act.
- This prevents employers who intend to make staffing cuts from avoiding their obligations by concluding settlement agreements with some employees in order to reduce the number of reported redundancies to below the threshold number for reporting redundancies as stipulated in the Act. For the purpose of implementation of the Act, it will therefore make no difference how an employer chooses to make redundancies for economic reasons.

Consulting the trade unions

- Previously, it sufficed for an employer to inform the relevant trade unions about proposed collective redundancies.
- Under the amended legislation, an employer must not only notify the trade unions of the proposed redundancies, but also consult them; only then can it be concluded that the employer has fulfilled the obligations under the Act.
- The obligation to consult is also deemed to have been met if a trade union fails to respond to a written invitation to take part in a consultation procedure (provided the invitation was received at least two weeks before the proposed meeting), or expressly waives its right to be consulted in writing.

- Consultation does not mean that agreement must be reached with the trade unions, but that (except in the cases mentioned in the previous point) the consultation procedure must actually have taken place.

Declaring terminations and settlement agreements void

- If it is subsequently found that obligations under the Act have not been discharged, the settlement agreement or the termination of the employment contract can be declared void. The employee may appeal on these grounds within six months of the employment contract being terminated either unilaterally by the employer or by mutual consent on the basis of a settlement agreement.
- To date, when in the course of a termination procedure through the UWV (i.e. termination with permit) it appears that the case in question actually constitutes a collective redundancy that has not been reported, the only consequence has been suspension of all further processing of permit applications. This 'sanction' is ineffective because terminations that have already been carried out cannot be reversed.

Dissolution proceedings

- In the case of a request for dissolution, the court – if the employee's defence gives cause to – must check whether the Act applies and whether the employer has complied with his obligations thereunder.
- If it is subsequently found (after dissolution of the employment contract) that the employer did not fulfil his obligations – and the employee had no knowledge of this fact – revocation of the dissolution may be requested under certain circumstances, i.e. if the employer has practised deception, if the dissolution is based on documents that are subsequently (i.e. after the court case) acknowledged or ascertained to be forged, or if the employee has obtained conclusive documents after the ruling that were withheld by the employer.

One-month waiting period

- An employment contract cannot be terminated by the employer, dissolved by the courts or terminated by mutual consent earlier than one month after notification of the proposed collective redundancies to the relevant trade unions and the UWV.
- This one-month waiting period does not have to be observed if the trade unions concerned declare that they have been consulted and agree to the terminations.

Changes in geographical areas under the Act

The scope of the Act is determined by the answer to the question whether proposed redundancies of 20 or more employees will take place within one specific geographical area within a three-month period. The definition of the geographical areas was based on the UWV's division of the Netherlands into 'districts'. Any change in this division, or in the number of districts, used to have adverse direct consequences for the scope of the Act. As a result, for the purposes of the Act with effect from on 1 March 2012 the provinces were grouped together to form six geographical areas which more or less correspond with the previous division into districts.

The Dutch text of the Collective Redundancy (Notification) Act, as enacted on 1 March 2012, is appended (see Annexe 2).

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

To facilitate the implementation of the above legislative changes, the Ministry of Social Affairs and Employment and the Employee Insurance Agency (UWV) published information on their websites. In addition, both employers' and employees' associations fully explained the changes to their members.

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

Not applicable.
ting to collective redundancies.

Questions from the European Committee of Social Rights

arising from the Netherlands' previous report (22nd)

a. The Committee asks the next report to provide the definition and scope of collective redundancies.

Section 3.1 of the Collective Redundancy (Notification) Act defines 'collective redundancy' as the proposed termination by an employer of the employment contracts of at least 20 employees working in the same geographical area, at any time within a three-month period. Following the amendment of this legislation on 1 March 2012 (see above), termination of the employment contracts of at least 20 employees is now taken to mean not only redundancies that the employer seeks through the Employee Insurance Agency (UWV) (termination with permit) or the subdistrict court (dissolution), but also terminations that the employer wishes to make by mutual consent, i.e. by concluding settlement agreements.

b. The Committee asks that the next report contains information on the prior information provided to workers' representatives and the consultation process.

Informing and consulting the trade unions

The employer notifies the relevant trade unions in writing of his intention to make collective redundancies, with a view to starting consultation in good time. The notification must contain the following information (sections 4.1 and 4.2 of the Collective Redundancy (Notification) Act):

- the factors underlying the intention to make collective redundancies;
- the number of employees whose employment contracts the employer intends to terminate, broken down by occupation or job, age and sex, as well as the number of workers normally employed;
- the projected date of termination;
- the criteria to be applied in selecting employees to be made redundant;
- the method of calculating any redundancy payments;
- the way in which the employer intends to terminate the employment contracts with his employees.

As described on p. 33 of the 22nd report, consultation must always consider ways of avoiding or reducing the number of redundancies and minimising their effect by providing redundancy counselling and support, specifically by helping to relocate or retrain employees whose employment contract the employer intends to terminate. There are no other procedural requirements for consulting the trade unions.

Informing and consulting the works council

If the proposed collective redundancies are linked with a decision on which the works council is entitled to render advice, as referred to in section 25 of the Works Councils Act (WOR), the works council must also be consulted. Under section 25.3 of this Act, the following information must be provided to the works council:

- the reasons for the decision;
- the expected consequences of the decision for the company's employees;
- the proposed measures to mitigate those consequences.

This legislation also provides for the following rules regarding the works council's consultation procedure (sections 25.2, 25.4, 25.5 and 25.6 of the Act):

- the works council's advice must be requested at a time when it can still significantly affect the decision to be taken;
- there must be at least one consultation meeting between the works council and the employer to discuss the proposals;
- once the works council has given its advice, it must be sent written notification of the final decision as soon as possible. If its advice has not been followed, or only partially so, the works council must also be informed of the reasons for this;
- unless the employer's decision accords with the advice of the works council, the employer must postpone implementation of the decision until one month after the date on which the works council was notified of the decision. The works council may use this month to consider whether to lodge an appeal against the decision with the Enterprise Division of the Amsterdam Court of Appeal (section 26 of the Act).

c. The Committee asks what measures has the Government taken to reduce the possibility that employers avoid their obligations in these circumstances.

With the enactment of the amended Collective Redundancy (Notification) Act on 1 March 2012, the Dutch government introduced a number of measures to reduce the possibility of employers avoiding their obligations arising from this Act:

- Now that redundancies by means of settlement agreements (termination by mutual consent) also come under the Act, it makes no difference, for the purpose of implementation of the Act, how an employer chooses to make redundancies for economic reasons. Where an employer is intending to make, for example, 22 employees redundant, this change in the law prevents him from avoiding his obligations by concluding a settlement agreement with three of them.
- With effect from 1 March 2012, an employer must not only notify the trade unions of the proposed collective redundancies, but also consult them; only then can it be concluded that his obligations under the Act have been fulfilled.
- Tougher 'sanctions' for failing to meet the obligations under the Act are now in place: redundancies already made can be reversed. Termination by the employer or by mutual consent can now be declared void, and under certain circumstances a request may be made to the limited jurisdiction sector of the district court to have the dissolution of the employment contract revoked.