

# LABOUR INSPECTION STRATEGIES FOR COMBATING UNDECLARED WORK IN EUROPE: THE NETHERLANDS



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**LABOUR INSPECTION  
STRATEGIES FOR COMBATING  
UNDECLARED WORK IN  
EUROPE: THE NETHERLANDS**

- final report -

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## PREFACE

Labour inspectorates are important allies for dealing with the problem of undeclared work, even though they sometimes lack the necessary resources, tools, procedures and coordination with other relevant authorities to prevent, identify and remedy cases of undeclared work.

This study describes the main features of the Dutch labour inspection system vis-à-vis undeclared work, highlighting a selection of labour inspection practices that have proven to be effective. We hope the study will help policymakers to better understand the factors for improving their own labour inspection systems by offering this review of Dutch practices and strategies for combating undeclared work.

The present report was written by Piet Renooy. In the process of writing the report, valuable contributions to designing and conducting the research and in gathering the information were made by the representatives of Inspection SZW (the Dutch ministry of Social Affairs and Employment):

Joost Cuijpers

Chris Hogenkamp

Bram Lucas

We are also grateful for the input several other officials gave in response to our questions.

Amsterdam, May 2013



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## 1 INTRODUCTION

Europe's struggle with the economic crisis and historically high unemployment levels has put the issue of tackling undeclared work high on the political agenda. Undeclared work (UDW) threatens the EU's ability to meet employment targets for more and better jobs and stronger growth. Undeclared work can be seen as a form of social dumping that introduces unfair competition between firms on the basis of low wages and the non-payment of social security benefits. Above all, it can lead to working situations that violate the rights and dignity of workers. Furthermore, UDW has a significant impact on public finances. The ILO therefore, like the EC, emphasizes the need to encourage transitions from informal to formal work as a prerequisite for achieving decent work.

Labour inspectorates can be important allies for dealing with the problem of undeclared work, even though they sometimes lack the necessary resources, tools, procedures and coordination with other relevant authorities, such as Tax Authority and social security agencies to prevent, identify and remedy cases of undeclared work.

Improving the application and enforcement of workers' rights and protections through more robust and responsive labour inspection action remains a necessary and important part of addressing undeclared work. The approach that inspection services take depends largely on the national context. However, whatever the circumstances, inspectors need to have a good knowledge of existing national regulations so as to better identify and deal with situations of undeclared work. For this, inspectors need to be properly trained. Moreover, the planning and practice of inspection visits could be reassessed to ensure that adequate attention is paid to the incidence of undeclared work, even in situations where a visit's primary objective is not to detect undeclared activities. In addition, countries can take advantage of the educational or promotional function of labour inspectorates to increase awareness among businesses and workers about the rules on undeclared work and how such situations can be avoided or regularized. In this regard, inspectorates have a valuable role in the prevention and transformation of undeclared work and should not simply be viewed as enforcers handing out fines and penalties.

A number of studies and labour inspection assessments carried out by the ILO (LAB/ADMIN) have shown that there is a lack of knowledge within labour inspectorates on how to deal effectively with fraud, informal economy problems and undeclared work. Moreover, during an experts' meeting of labour inspectors from Europe held in Budapest in October 2009, participants recognized the need to improve labour inspection methods and tools in part through the adoption of guidelines that could be applied at a national level.

This report is part of a project that aims to help policymakers to better understand the factors for improving their own labour inspection systems by offering a review of selected national good practices and strategies for combating undeclared work. Like the other studies in the project, this report describes the main features of the (in this case Dutch) labour inspection (Inspectie SZW) system vis-à-vis undeclared work, while highlighting a selection of labour inspection practices that have proven to be effective.

## 1.1 Reading Guide

The paper is structured from a general to a specific level. Chapter 2 provides a definition of what is to be understood when discussing undeclared work. Different types are discussed as well as possible policy responses. In the third chapter we narrow the focus to the Netherlands. The size and nature of undeclared work are discussed, and the legal context is described. In this chapter the institutional landscape, including Inspectorate SZW (labour inspection), concerned with undeclared work is also sketched. Chapter 4 and 5 are dedicated to the Inspectorate SZW. First the organization, policies, instruments and cooperation are described. Then, in chapter 5, a description is given of the Inspectorate SZW's actual operations in 2011 (and previous years). The chapter includes statistics and case studies. In the last chapter conclusions are drawn with regard to the role of Inspectorate SZW in its struggle against undeclared work.

## 2 UNDECLARED WORK, WHAT ARE WE TALKING ABOUT?

### 2.1 Definition

Although different definitions exist and there is no official definition of undeclared work, there is a broad consensus on what should be included and excluded. In this report, this consensus is reflected by defining undeclared work as *'any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account the differences in the regulatory system of Member States'* (European Commission, 2007a).

Over the past few decades, however, there has been growing recognition of the multifariousness of undeclared work. The widespread assumption was that undeclared work mostly involved low-paid undeclared waged employment conducted under exploitative working conditions, by marginalised groups, out of economic necessity, as a last resort. A multitude of empirical research, however, has revealed the diverse forms of undeclared work.

Firstly, it has been recognized that not all undeclared work is conducted on a waged employment basis. Much undeclared work is also conducted on an own-account basis as self-employment. Many engaged in undeclared self-employment display entrepreneurial attributes and traits and there has emerged an acknowledgment that the undeclared realm represents a 'hidden enterprise culture' and that many businesses start-up operating wholly or partially off the books.

Secondly, an array of types of undeclared waged employment has been identified. It has been shown that besides undeclared waged work which is low paid, exploitative and carried out by marginalised groups, there is also some waged employment that is relatively well-paid and conducted under less than exploitative conditions by people already in well-paid formal jobs. There is also waged employment which is not wholly but only partially undeclared, namely 'under-declared' or 'envelope' waged employment.

Thirdly, there has also been a recognition in the past few years that not all undeclared work is conducted under relations akin to employment and for profit-motivated rationales. Instead, it has been identified that much undeclared own-account work involves one-to-one paid favours whereby undeclared payments are made for work conducted by and for kin, friends, neighbours and acquaintances for primarily social and redistributive reasons.

The types of UDW described above refer to national rules and regulations. However, undeclared work can also be described in the context of *international* regulations. These types can include:

- work (either of the waged, self-employment or even ‘false self-employment’ variety) in non respect of the rules applicable to posted workers, who are here defined, akin to Directive 96/71/CE, as workers who, for a limited period, carry out their work in the territory of a Member State other than the state in which they normally work and therefore cheat the system of postings abroad in terms of labour regulations of Community social security<sup>1</sup>;
- failure by persons receiving unemployment benefits in a Member State to declare a temporary position taken up in another Member State;
- circumvention of rules on employment status (especially interns, the self-employed and volunteer workers); and
- the employment of non-Community and, if still applicable, Community foreign nationals without work permits.

The nature of undeclared work varies across nations. Across the EU, some 75% of the respondents of the Eurobarometer Survey<sup>2</sup> report that their undeclared work was conducted on a self-employed basis and only 20% as waged employment. Nevertheless, this ratio varies across nations. In general, a larger proportion of undeclared work is conducted as waged employment in Southern and East-Central Europe whilst in the Nordic nations and Continental Europe a larger share is conducted on a self-employed basis.

## 2.2 ILO Approach

The ILO approach to undeclared work is situated in the context of the broader notion of the informal economy, which it defines as ‘all economic activities by workers and economic units that are – in law or in practice – not covered, or insufficiently covered, by formal arrangements’. This definition includes the notion of undeclared work as understood by the EC, while also covering workers who sometimes fall outside the coverage of labour legislation (e.g. domestic or agricultural workers). The ILO approach of informality stresses the high degree of vulnerability to which informal workers and entrepreneurs are exposed. Informal workers are often denied seven essential securities, viz: *labour market security* (adequate employment opportunities through high levels of employment ensured by macroeconomic policies); *employment security* (protection against arbitrary dismissal); *job security* (a niche designated as an occupation or ‘career’); *work security* (protection against accidents and illness at work, through safety and health regulations, limits on working time and so on); *skill reproduction security* (widespread opportunities to gain and retain skills); *income security* (provision of adequate incomes); and *representation security* (protection of collective voice in the labour market

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<sup>1</sup> Regulations (Directive 96/71/EC of 16 December 1996 and Regulation (EC) 1408/71 of 14 June 1971; and the rulings of the European Court of Justice (Laval etc.).

<sup>2</sup> European Commission, Special Eurobarometer No. 284 (‘Undeclared work in the European Union’), 2007b.

through independent trade unions and employers' organizations and social dialogue institutions).

However, for the ILO, the most meaningful way of looking at the situation of those in the informal economy is in terms of *decent work deficits*. Informal work, lacking the mentioned securities, is not seen as decent work.<sup>3</sup>

### 2.3 Policies towards Undeclared Work

There is now a considerable body of research and policy documents trying to understand, conceptualize, measure and tackle undeclared work in the EU. Since the turn of the millennium, important research has been undertaken for the European Commission on both the extent and nature of undeclared work in the EU and how it might be tackled. In the way of approaching the phenomenon of undeclared work, a mix of policies is visible.

Williams and Renooy (2008 and 2013) have analyzed the different policies EU Member States adopted. The analysis showed that these policies differ markedly by EU-region and therefore, by the specific nature of undeclared work in these regions. Where undeclared work is more commonly conducted as waged employment and is strongly intertwined with the formal part of the economy, as exemplified by the prevalence of envelope wages, the tendency has been to adopt a more deterrence-oriented approach, often with some preventive measures. This is the case in the eastern and southern EU-regions. Where undeclared work is more commonly undertaken as own-account work (northern part), often for closer social relations and embedded in familial and neighbourhood networks, the tendency has been away from deterrence measures and towards more enabling measures both of the preventive, curative and even commitment variety.

The variety in policy approach is also to be seen in the institutional structure towards UDW in the different countries. Dekker et al. (2010) analyzed how the fight against undeclared work is organized in 31 European countries. They find that in only eight countries either a single agency is responsible for the fight against undeclared work (France and Germany) or a central coordinating committee is responsible for ensuring coordinated action by the multifarious departments who have a stake in tackling undeclared work, namely Italy, Lithuania, Luxembourg, Belgium, Slovenia and the Czech Republic. The remaining 23 European countries, including the Netherlands, have a less centrally coordinated approach towards tackling undeclared work.

Many countries without a single agency or central coordinating committee, however, do have a department designated with lead responsibility for tackling

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<sup>3</sup> ILO, Decent Work and the Informal Economy. International Labour Conference 2002, Geneva

undeclared work, often either the Tax Authority or the labour inspectorate. In Nordic countries, responsibility tends to lie with the Tax Authority, not least because much of the undeclared work is conducted as self-employment, which is a type of undeclared work that is less of interest to labour inspectorates. In much of East-Central and Southern Europe, meanwhile, where waged work is a more prominent type of undeclared work and it is therefore more about the employer-employee relations, it is the labour inspectorate which has greater responsibility.

### 3 THE NETHERLANDS

#### 3.1 Size and Nature of UDW

To the surprise of many, in the Eurobarometer Survey 2007, in the Netherlands the participation in the undeclared economy was almost the highest in Europe (European Commission, 2007b). Only Denmark with 18% of the population active in the undeclared economy and Latvia with 15%, beat the Netherlands (13%). Although serious questions can be raised about the validity of the answers to the Eurobarometer throughout Europe<sup>4</sup>, 13% looks like a reliable estimate. Already in the 1980's, Statistics Netherlands found comparable percentages for participation in the undeclared economy (van Eck and Kazemier 1989; they found 11,5%).

The most recent, but rather limited, study into participation in the undeclared economy by Statistics Netherlands was published in October 2012 (CBS 2012).<sup>5</sup> The percentage of the Dutch population aged between 15-64 years engaged in undeclared work in the years 2007-2011 varies between 8 and 10%.

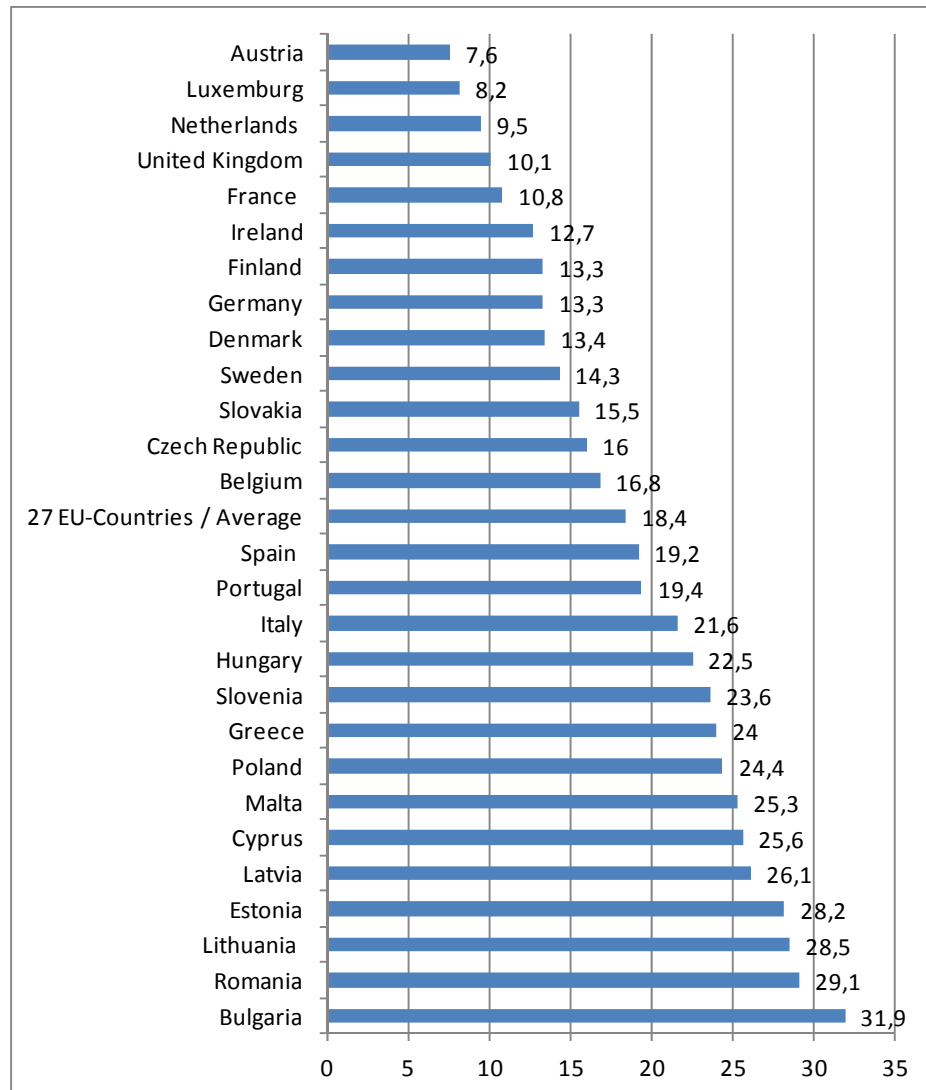
Schneider (2012) with his MIMIC model found 9,5% as the size of the Dutch informal economy, in this case representing 9,5% of GDP. With this size of the informal economy, the Netherlands are at the European rearguard concerning the extent of undeclared work.

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<sup>4</sup> The interviews may not always have reflected the respondents' perception of UDW. It is very unlikely that indeed only 3-5% of the respondents in Italy, Greece or Spain performed undeclared activities. It seems as if other considerations played an important role in answering.

<sup>5</sup> The study mainly focused on UDW performed by the unemployed and it concerned a relative limited sample.

**Figure 1 'Undeclared' economy as % of GDP: by country, 2012**

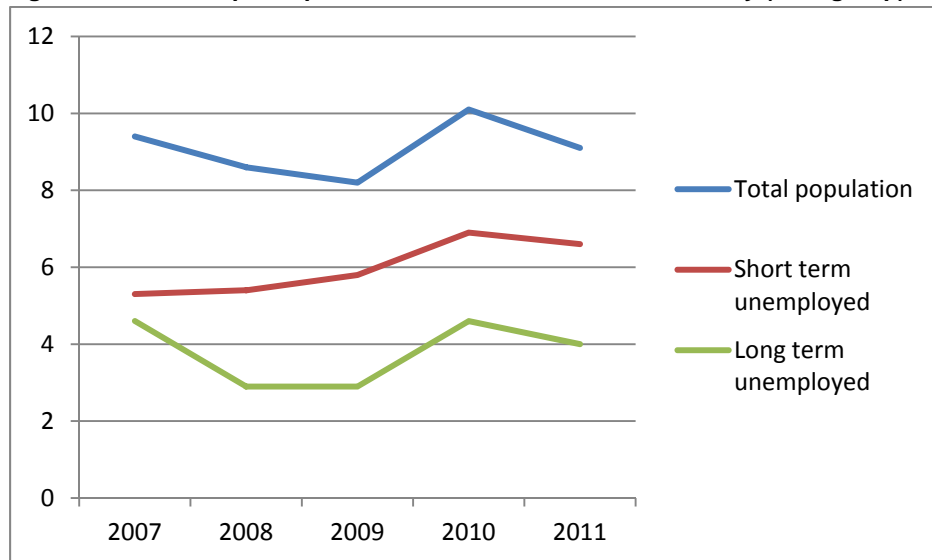


Source: Schneider 2012

Turning to who participates in undeclared work, the recent CBS study shows an underrepresentation of the unemployed. Participation figures for different groups of unemployed did not exceed 6%. Figure 2 shows that participation in undeclared work seems to coincide with labour market participation. Long-term unemployed are less active in the informal market than short-term unemployed, who in turn participate less than the total population.



**Figure 2 Dutch participation rates in the undeclared economy (% of group)**



Source: CBS 2012

This underrepresentation of unemployed is in line with earlier findings by Van Eck and Kazemier (1989) and Renooy (1990).

In the overall population, most of the undeclared work was carried out by younger people (15-34 years of age; almost 70%). The highest numbers of undeclared workers were found among those with agrarian or technical professions, as well as among people with professions in the hospitality industry or personal services sector. Concerning educational background, there was a clear relation between undeclared work and level of education. In particular people with higher secondary education participate in undeclared work. People who completed lower vocational schooling were relatively underrepresented in the undeclared workforce.

When looking at the economic sectors where those who reported to (have) work(ed) undeclared have their formal job, it is clear that workers in agriculture, building, industry and the energy sector are overrepresented in the group of undeclared workers. The same applies to the employees with jobs in the trade, transport and hospitality sectors and in the category 'others', including personal services. Employees from the government, care and professional services sectors do not seem to be very active in the undeclared economy.

**Table 1**      **Distribution of employees by sector and their participation in UDW in 2011**

Sectors	% employees	% undeclared workers	UDW+/-
Agriculture, building, industry and energy	16	21	++
Government and health care	24	14	--
Culture, leisure, sports and education	8	11	
Trade, hotels/restaurants and transport	26	30	++
Finance, professional services and ICT	23	8	--
Other (inc personal services)	3	15	++
	100	100	

Source: CBS 2012 and CBS StatLine

In the Eurobarometer, a great majority of the Dutch reporting to carry out undeclared work (77%) stated they do this on an own-account basis. They were self-employed in the undeclared economy. Only 18% performed waged undeclared work and another 5% did not know the answer to this question. Furthermore, a large share of this own-account undeclared work was done for family, friends and neighbours, so more or less embedded in social networks. Most of it concerns household services, construction and personal services<sup>6</sup>.

Types of undeclared work that have recently come into focus of relevant bodies are bogus self-employment, in particular by workers from Bulgaria and Romania (who still need a working permit) and forms of under-declared work, in particular in seasonal work in agriculture. This also often concerns Bulgarians or Romanians.

### 3.1.1 Fraudulent Temp Agencies

A specific phenomenon that is important in the development of all sorts of irregular work in the Netherlands is the emergence of temporary work agencies.<sup>7</sup>

In the end of the 20th century the market for employment agencies, in particular that of the temporary work agencies was highly liberalized. Regulation was left to the sector itself and the government restricted its activities to its core duties of maintaining relevant labour laws. This liberalization led to a growth of temp agencies. This growth accelerated after the enlargement of the European Union in 2004. The enormous extra supply of labour from Eastern European countries, in particular Poland, was an impetus for the temp agencies. In 2008 around 12,000 temp agencies were registered at the Dutch Chamber of Commerce. Estimates, based on several sources, were that between 5,000 and 6,000 of these agencies acted in a

<sup>6</sup> Unfortunately there are very few studies performed on the Dutch undeclared economy. Therefore figures on types of UDW and/or trends in its development are not available.

<sup>7</sup> This contains a variety of intermediaries, such as temp agencies, payrollers, labour brokers and so on.

fraudulent manner, employing over 100,000 workers.<sup>8</sup> By September 2012, 19,000 temp agencies were registered.<sup>9</sup> Only 11% of them were members of one of the employers' organizations.<sup>10</sup>

The fraudulent practices varied from simple administrative shortcomings to extreme exploitation of workers. Most of the mala fide practices were aimed at reducing labour costs to a minimum or to collect money from these workers. The practices that occurred are listed below.

#### *Illegal employment*

In particular workers from Bulgaria and Romania, who still need a working permit, were put to work illegally. They are uninsured and not paying taxes and/or social security premiums.

It also occurs that unemployed people who receive unemployment benefit are put to work with false ID cards or false citizens' service numbers.

#### *Bogus self-employment*

One way of avoiding the need for a working permit is to pretend self-employment. This way of avoiding Dutch labour and tax laws is a growing phenomenon. In a 'black book' Bogus Self-employment issued by the Dutch federation of (building) Contractors in the fall of 2012, it is stated that 70% of all self-employed in construction are in fact not really self-employed<sup>11</sup>. In April 2012, the total of self-employed in the building industry was estimated at 73,000 (see Bouwkennis.nl<sup>12</sup>).

#### *Non-payment of taxes and fees*

Often the obligations in the sphere of taxes, social security, pensions and the like were not fulfilled.

One specific way of dodging the obligations is to use the so-called extraterritorial costs arrangement. According to this arrangement, part of the payment for a foreign employee can be used for tax-free allowances for the costs of (double) housing, transport or other costs that come with working abroad. These ET-costs are maximized to 30% of the salary. It is obvious that this arrangement is open to misuse.

#### *Underpayment*

In many cases the foreign employees have to work more hours than native employees to reach the minimum wage or do not receive the minimum wage for the hours they work. Besides not complying with the legal minimum wage,

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<sup>8</sup> Waltz, G.P et al., Grenzen stellen, Research voor Beleid 2010.

<sup>9</sup> Letter to parliament by Minister Kamp, 10 September 2012, appendix 1.

<sup>10</sup> Representing 80% of total turnover; so, the great bulk of non organized agencies are small. In: De Zaaier, 5 October 2012: Interview with Peter Loef, director of the SNCU.

<sup>11</sup> This number could not be verified.

<sup>12</sup> The website from a builders' marketing organization.

it also occurs that the temp agency does not comply with specific salary levels in the collective labour agreement for the temp agency branch.

Example meat industry: In the meat sector a full-time workweek consists of 36 hours. This means that the minimum wage per hour for temporary work would be € 326.80 divided by 36, i.e. € 9.07. Many fraudulent intermediaries however apply it to a 40-hour workweek, which means that the hourly earnings drop to € 8.17. (Waltz, G.P. et al 2010)

Other ways of underpayment are not paying the holiday allowance or wages for overwork.

Finally, bogus, or fictitious posting is used as a means to be able to underpay the foreign workers. This and other types of international constructions are increasingly found by inspecting agencies and, due to their complexity, are hard to discover and unravel<sup>13</sup>.

#### *Deductions from salary*

Often, temp agencies do not only provide work to the workers; they also provide transport and housing for the foreign workers. Fraudulent agencies charge too much for these services, or offer substandard housing facilities. It also occurs that they charge the employees for so-called job training, bogus insurances or unlawful costs of administration. In addition, disproportionate fines are given to the foreign worker for simple 'transgressions' such as not cleaning up their bedroom.

These fraudulent temp agencies are most active in those sectors where relatively many small and medium-sized enterprises are found, where low-skilled labour is used and where profit margins are small. The specific sectors where they are found are<sup>14</sup>:

- Agriculture  
Estimates show that in agriculture more than 10,000 temporary labourers are employed through fraudulent temp agencies. They are active in picking mushrooms, cutting asparagus, harvesting fruit, and other forms of horticulture. There is quite a regional concentration of this type of employment.
- Meat industry  
In the meat industry it not unusual for companies to employ over 70% of all employees on a temporary basis. Many of them are Polish.. Indications are that a large part of them are the victim of fraudulent practices.

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<sup>13</sup> Also: delocalization of local companies (transport), letterbox companies, cascades of enterprises.

<sup>14</sup> See: Waltz, G.P et al., Grenzen stellen. Research voor Beleid 2010.

- **Construction**  
Construction is traditionally one of the sectors with a great proportion of temporary labour, although in absolute terms temporary labour is diminishing. In this sector (bogus) self-employment is growing.
- **Cleaning industry**  
The cleaning industry is also a sector that traditionally offers employment to low-skilled labourers where pressure on wages is high and as a consequence the incidence of irregular employment relations is also high. Temporary workers are mainly used to help out in busy periods or to fill up the places of sick employees.
- **Transport**  
Different international constructions are used in the transport sector. In many of these constructions (inter)national laws to keep wages (and prices) low are misused or abused.

Most of the offences of the different laws were geographically found in five provinces:

**Table 2 Breaches of labour market-relevant laws by province<sup>15</sup>**

Province	Total	Alien Employment Act	Minimum Wage Act
Zuid-Holland	316	230	86
Noord-Holland	77	67	10
Noord-Brabant	64	48	16
Gelderland	55	34	21
Limburg	51	31	10
Flevoland	26	12	14
Overijssel	18	15	3
Utrecht	16	13	3
Groningen	11	8	
Friesland	8	8	
Zeeland	7	5	2
Drenthe	6	4	2
Not localised	69	48	21

Source: Letter to parliament Minister Kamp 2012

In September 2012, the Dutch Minister of Social Affairs and Employment underlined the need to tackle these fraudulent temp agencies.<sup>16</sup> He states that, despite many efforts, they are still present in many areas. Their persistence has to do with:

- the volatility of the entrepreneurship, for example:
  - addresses and telephone numbers are constantly changed;
  - bankrupt firms are continued in another place under another name;

<sup>15</sup> which automatically implies some form of un- or underdeclared work (see definitions in 2.1).

<sup>16</sup> Letter to parliament 10 September 2012.

- The use of front men, persons who in theory are the owner, but in practice are only used by the real owners;
- the complexity of fraudulent constructions, and the internationalization of them;
- the financial profit for all parties involved;
- the fact that a part of the sector is completely 'black'; is not registered anywhere.

## 3.2 Legal Sources

Undeclared work is described as 'any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account the differences in the regulatory system of Member States' (European Commission, 2007: 2). In this regard, it is social security law and labour law that create the legal sources for the labour inspection's competence on undeclared work. Together with the tax law these laws create the framework for defining undeclared work. In the following, we describe the most important laws in this respect.

### *Social security*

Anyone living in the Netherlands is subject to social insurance by law. Also those who work here and pay income tax are insured. Employed persons have employee insurance by law (unemployment benefit, disability benefit). Besides social insurances, there are social provisions supplementing insufficient (family) income up to the social minimum for certain living circumstances. Such provisions are the Supplementary Benefits Act (TW), the Disablement Assistance for Handicapped Young Persons Act (Wajong), the Income Provisions for Older or Partially Disabled Unemployed Persons Act (IOAW), the Income Provisions for Older or Partially Disabled Formerly Self-Employed Persons Act (IOAZ), the Investment in Sustainable Work for Young People Act (WIJ), the Supplementary Old Age Pension (AIO) and the Artists Work and Income Scheme Act (WWIK).

For those who are long-term unemployed there is the Employment and Social Assistance Act (WWB). It is implemented by the municipalities.

Not paying premiums for these insurances or social security schemes, creates undeclared work. On the other hand, when receiving one or another type of social benefit, earning an income is often (partly) prohibited. Working undeclared whilst receiving social benefit thus can be seen as (double) fraud.

### *Labour laws and regulations*

With regard to undeclared work, there are a couple of relevant labour laws. The Aliens Employment Act (WAV) provides for the employment of foreign nationals within the Dutch labour market. Foreign nationals who do not already have access to the Dutch labour market on some other grounds (such as asylum or family reunification) can be granted a work permit. The WAV is

aimed at the employer, who may only employ a foreign national if he - the employer - is in possession of a work permit to be issued to the employee concerned.

The Minimum Wage and Minimum Holiday Allowance Act (WML) provides for the obligation to pay a minimum wage and a minimum holiday allowance to every legally employed person.

The Allocation of Labour through Intermediaries Act (WAADI) sets out rules for all those agencies that second labour. It was renewed in July 2012, introducing the obligation to register with the Chamber of Commerce. The most important provision of the WAADI is Article 8: 'Unless a (universally applicable) collective agreement provides other rules, temporary workers are entitled to the same wage and other allowances as comparable workers in the industry where the worker is temporarily carrying out his work'. The WAADI in particular should prevent fraudulent temp agencies to operate in the Dutch labour market, as described in 3.1.1. Not only, the temp agency but also the hiring companies can be fined for not having checked the correct registration of temp agencies at the Chamber of Commerce.

*Act on collective labour agreements and collective labour agreements declaration of universally binding and non-binding status act (AVV Act).* The AVV Act states that the Minister of Social Affairs and Employment can, on request, declare collective agreement provisions agreed on in a sector between employers and employees, as generally binding provided that he considers the rules as important for the majority of persons employed in this industrial sector. Important in this regard is the collective labour agreement for temporary agency workers that was recently negotiated and agreed on for the period 2012-2017.

Collective labour agreements are elaborate and tend to cover a wide range of aspects including several funds for schooling and other social causes in that sector of industry. If made generally binding all employers in that sector have to pay, including those not organized by the contracting parties. Supervision of compliance with labour agreements is a responsibility of the social partners and this continues to be the case after having been extended to all employers in the sector by a government decision. The Inspectorate SZW and social partners have a legal basis to exchange information on findings and interventions regarding non-compliance with minimum wages or rules regarding temporary workers.

*Employment Conditions Cross-border Employment Act (WAGA).*

Based on this act all collective agreements which have been declared universally binding with regard to the terms and conditions of employment covering the matters mentioned in Article 3 of Directive 96/71/EC, apply to posted workers.

### *New law against fraud with labour and social security laws*

On 1 January 2013, a new law came in operation with fierce penalties in cases of breach of labour or social security laws.<sup>17</sup> Conducting undeclared work whilst having an unemployment benefit will lead to very high fines, possible reduction and/or repayment of the benefit. Employers employing illegal aliens are risking fines up to 36,000 euros per illegal alien and/or closing down the business. These fines will be imposed on all businesses in the production chain (chain liability). The same fines will be imposed for breaching the law on minimum wages, the WAV and the WAADI. A temp agency that is caught breaking the rules the first time risks a fine of 12,000 euros for every employed person. With the next offense the fine is doubled. This new law will shift more cases from criminal law to administrative law. The advantage of this shift is that it makes a so called 'tit-for-tat policy' easier and administrative law offers more possibilities to combine different instruments such as fines, warnings and closing down businesses.

### *The Regulation on domestic work*

Special tax and social security rules apply to personal services around the house such as for instance:

- house cleaning;
- small repairs of the house;
- washing and ironing;
- running errands;
- preparing meals;
- child minding.

For these activities, under the condition that they are carried out by private persons for private persons (households) and they do not exceed three working days a week, the person receiving the services (the employer) is not obliged to pay any taxes or premiums for social security. The person performing the services is expected to declare his or her earnings to the Tax Authority. This arrangement applies in particular to domestic workers. Through these rules, they are actually treated as self-employed. Some argue they are denied the same rights as regular workers in the Netherlands.<sup>18</sup>

### *Taxes*

Avoiding paying taxes is often seen as the main characteristic of undeclared work. The most important in this regard are income tax and VAT. Dutch income tax is regulated through the Income Tax Law. The imposed taxes also contain fees for social security as well (these are 'fiscalised'). The tax rates are progressive and there are three brackets which each have their own rates. In the highest income bracket the rate is 52%.

Anyone supplying goods or services is liable for VAT over his or her turnover. VAT is 21% on most 'luxury goods' and 6% on many labour-intensive services and on daily foodstuffs and medicines.

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<sup>17</sup> Act on *Enforcement of Labour and Social Security Law* (WAHS).

<sup>18</sup> For discussion see: Van Walsum 2013.



#### *Competence to inspect*

According to the General Administrative Law Act (Awb), the Inspectorate SZW has the right to enter all places to inspect the working conditions and working relations. Normally it is not allowed to enter private household premises without permission from the tenant. But art. 24.3 from the Working Conditions Act (Arbowet) gives labour inspectors the competence to enter household premises without permission from the tenant. However, there is also a special law regulating entry into household premises, the General Act on Entry into Dwellings (Awbi). This law prescribes that inspectors can only enter household premises without permission from the tenant, if they obtained permission from the district attorney. The wish to do surveillance within the framework of the 'Arbowet' is enough reason to obtain such a permit. If it is urgent, a deputy district attorney can also give the permit.

### 3.3 Inspectorate SZW

The main institution combating undeclared work in the Netherlands is:

**The Ministry of Social Affairs and Employment** (Ministerie van Sociale Zaken en Werkgelegenheid)

As from 1 January 2012, three important departments of the Ministry, viz the Social Intelligence and Investigation Service (SIOD), The Labour Inspectorate (Arbeidsinspectie) and the Inspection Work and Income (IWI) joined forces in a new **Inspectorate SZW**.<sup>19</sup>

The former Labour Inspectorate (Arbeidsinspectie) supervised working conditions such as working hours, minimum wage and minimum holiday allowance and occupational health and safety. Within the new inspectorate, the *Department Labour Market Fraud* is of special interest in this regard. It is responsible for supervision of the Alien Employment Act (WAV), the Minimum Wage and Minimum Holiday Allowance Act (WML) and the Allocation of Labour through Intermediaries Act (WAADI). The WAV prohibits employers and individuals to employ foreigners who do not have free access to the Dutch labour market, without a valid work permit. Free access to the Dutch labour market is restricted to persons with Dutch nationality, the nationality of one of the countries of the European Economic Area (EEA) and Switzerland (except Bulgaria and Romania). The WML grants every legally employed person in the Netherlands a minimum income and holiday allowance. The work area of labour market fraud covers the private and the public sector, as well as private citizens who hire, for example, domestic workers. The Inspectorate SZW concentrates primarily on companies with a high risk of illegal employment and/or underpayment. These are generally companies with peak labour periods, low-skilled, unskilled, labour intensive and heavy physical work. In 2011, the focus was placed on the cleaning and temporary employment sector, the building industry, catering, agricultural and horticulture and retail. In 2011, the inspectorate conducted pilots in the healthcare and transport sectors.

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<sup>19</sup> Text derived from SZW-website.

Other parts of the former labour inspection can be found in the new Inspectorate SZW departments of:

*Working Conditions*, which supervises the observation of the Working Conditions Act (Arbowet) and the Working Hours Act (ATW, to promote safe and healthy working conditions and work and rest periods for employees).

*Major Hazard Control* supervising the observance of the Hazards of Major Accidents (Risks) Decree 1999 (BRZO) and the Additional Risk Assessment and Evaluation (ARIE, to limit the risks for employees and the environment of companies that work with large quantities of hazardous substances).

The SIOD is now replaced (or renamed) by the *Inspectorate SZW as Investigations Department* This is a special investigation unit that focuses on employment-related unlawful conduct such as systematic illegal employment, fraud with labour-related subsidies, posting fraud, the non-payment of premiums and other organized forms of benefit fraud. The detection of these fraud cases is performed under the authority of the Public Prosecutor.

The Inspection Work and Income is now the new *Department Work and Income* within the Inspectorate SZW. This department executes supervision of the implementation of social security policies, social assistance and employment policy by the whole system of local communities, social security and employment organizations (referred to as the system of work and income). It is offering insight into the effectiveness of the system of work and income by studying the implementation of social security acts by the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB) and municipalities.

The Inspectorate SZW also monitors risks and relevant developments in the policy fields of the Ministry of Social Affairs and Employment and reports these to ministers, state secretaries and policymakers.

By combining the three organizations, the supervision of compliance with rules and regulations across the whole field of the Ministry Social Affairs and Employment is organized in a smarter, more effective and more efficient way. This is done on the basis of SZW-wide risk analyses and by applying a smart mix of:

- preventive actions (information about rights and obligations);
- inspections;
- investigations;
- repressive interventions (such as fines and the enforcement of criminal law).

The reorganization into Inspectorate SZW and the accompanying reduction in staff induced fierce discussion within the ministry between the management and the employees council (OR). Eventually, this led to a complaint of the Dutch labour union FNV at the ILO, in which it was argued that the Netherlands do not comply with ILO Convention no.81 on the organization of labour inspections. In the course of this description of the Dutch labour inspection vis-à-vis undeclared work, we will not elaborate on this discussion.

### 3.3.1 Priorities Inspectorate SZW

Undeclared work as such was never a dominant issue in Dutch politics, neither in Dutch policies. Instead, the focus has always been on the broader concept of 'decent' work. Fair, healthy and safe working conditions and socio-economic security for everyone are the priorities of Inspectorate SZW. It determines its operational priorities on the basis of:

- risk analyses that cover the entire policy field of the Ministry of Social Affairs and Employment;
- political priorities;
- tips, reports and complaints by employers, employees, citizens, etcetera.

After the 2004 and 2007 enlargement of the European Union, the Netherlands experienced a strong increase in migration of East-European workers. This made supervision of compliance of WAV, WAADI and WML extra important and demanded extra attention from Inspectorate SZW.

In 2012, Inspectorate SZW allocated a high priority to the following task areas for the coming years<sup>20</sup>:

- illegal employment (WAV);
- labour exploitation (WML) ;
- companies with a structurally poor score in the field of safety in the workplace;
- companies that work with hazardous substances;
- benefit fraud (WWB).

So, three of the five priorities for activities in the near future concern types of undeclared work. As is the case with each risk analysis, this is a set of priorities matching the present circumstances. If changing circumstances give cause to this, the set priorities will be adapted.

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<sup>20</sup> Inspectorate SZW, Annual plan 2012.

### 3.4 Other Dutch Institutions

The key tasks of the **Tax Authority** (Belastingdienst – BD) are: levying and collecting taxes, detecting fiscal, economic and financial fraud, payment of income-related benefits for childcare, housing and care, monitoring the import, export and transit of goods, monitoring compliance with the tax laws and regulations. The Tax Authority fights tax evasion (including UDW) by exercising supervision. The review by the Tax Authority has various manifestations. For example, tax returns are checked on completeness and companies are visited. The Tax Authority cooperates with other enforcement bodies, such as municipalities and Inspectorate SZW in intervention teams. One of the fields of operation in this regard are inspections on bogus self employment.

Employees of the Tax Authority do not have the authority to enter a house without the consent of the occupier. Therefore, it is hard to determine whether UDW is taking place in a private residence. It is, however, possible to pinpoint black income by checking administrations and tax returns.<sup>21</sup>

The strategic objective for all enforcement activities of the Tax Authority is to maintain and strengthen compliance. Compliance regards the fulfilment of the regulations by taxpayers themselves. It involves behaviour of both citizens and businesses.

In order to influence behaviour the Tax Authority uses various resources. Besides providing information, guidance, audits and investigation there are also a number of newer instruments. Examples are:

- horizontal supervision (in the form of covenants or other agreements with large and medium-sized companies). Horizontal supervision means that the Tax Authorities do not actively inspect top-down, but rather base themselves on the existing internal quality and administrative systems of companies. In an agreement, a covenant, the Tax Authority lays down the rights and obligations of companies as part of horizontal supervision. The company's quality control systems safeguard integrity, training, file and office organization and evaluate the degree of control over the company's own operating processes. The quality of this information and the safeguards determine the degree of supervision exercised by the Tax Authority. Agreements of this kind are only made with large and medium-sized companies.
- enforcement communication;
- encourage adaption of legislation and implementation of rules;
- visible supervision by fiscal surveillance.

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<sup>21</sup> *Tweede Kamer, vergaderjaar 2007-2008, Aanhangsel van de handelingen. 0708tkkvr2200 (Minutes of the Dutch parliament).*

In 2010 the Tax Authority and Inspectorate SZW signed a covenant on the exchange of data, cooperation in prevention and enforcement activities and combined risk analyses<sup>22</sup>.

**Municipalities** are responsible for the execution of the Employment and Assistance Act (WWB). This responsibility includes providing recipients with a benefit on a minimum level and activation towards work. The municipalities have a financial responsibility for their own annual budget. Therefore, they have an incentive to prevent and tackle undeclared work by welfare recipients. The local departments of Work and Income (executing the WWB) have their own inspectors who perform inspections, investigations as well as impose repressive interventions (such as fines). The inspectors' tasks are to prevent and detect all kinds of fraud with unemployment benefits (not necessarily UDW). In 2011, they recovered 53 million euros of fraud.<sup>23</sup>

**Employee Insurance Agency (UWV)** is the agency responsible for the execution of the unemployment and disability benefits acts. UWV checks up on 50,000 clients by telephone each year and conducts 5,000 workplace checks. Inspectors from UWV-Enforcement make 15,000 home visits each year and undertake just under 10,000 targeted investigations. In addition, UWV carries out about 68,000 dossier investigations. All these checks are focused on compliance with the rules for receiving unemployment benefit. This does not always concern undeclared work, but often has to do with other forms of fraud.

**International Fraud Information Bureau (IBF)** is part of the department Enforcement of UWV and focuses on the international exchange of data and prevention and detection of abuse of benefits outside the Netherlands. Municipalities can also use IBF for retrieval of national or international data, for example from an international trade register or Chamber of Commerce.

The **Social Insurance Bank (SVB)** is responsible for the implementation of national social insurance schemes, such as the General Old Age Pensions Act (AOW), the General Surviving Relatives Act (ANW) and the General Child Benefit Act (AKW).

To implement the Dutch social security schemes correctly, SVB needs to verify compliance with the rules. At the SVB, this involves:

- clarity about rights and obligations: prevention through information;
- verification of aspects such as income and domestic situation;
- *sanctions* when rules are infringed: reclamation of overpayments, imposition of fines and administrative sanctions;
- *fraud* investigation and reporting fraud to the Public Prosecutor (only if fraud exceeds 10,000 euros).

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<sup>22</sup> Covenant Belastingdienst – Arbeidsinspectie – SIOD, 1 October 2010.

<sup>23</sup> <http://www.binnenlandsbestuur.nl/sociaal/nieuws/uitkeringsfraude-loopt-in-de-miljoenen.1890556.lynkx>

The SVB is also the institution that deals with the A-1 declarations on the payment of social security contributions. In cases of (alleged) fraud, the SVB cooperates with the Inspectorate SZW to deal with these false declarations.

**BKWI** - Netherlands Bureau for Information Exchange within the Work and Income Sector. BKWI aims to facilitate cooperation between municipal authorities, the Employee Insurance Agency (UWV) and the Social Insurance Bank (SVB), and other organizations which are responsible for work and income. BKWI provides solutions for efficient and reliable *information exchange* between these organizations. Therefore, BKWI manages the combined register Suwinet<sup>24</sup> with personal data from (among others) the municipalities, registers of the Tax Authority and social security registers. The appropriate use and privacy protection of these data are safeguarded by means of participation protocols, strict authorizations and rules regarding conduct.

**Labour unions** in the Netherlands play an explicit role in achieving that employers do not hire illegal workers or pay foreign workers less than the wages negotiated in the collective labour agreements. The WAGA (see 3.2) provides the legal basis for these actions. So, unions act as a partner of the government in preventing and combating undeclared work and in promoting decent wages and working conditions.<sup>25</sup>

Dutch labour unions are also actively supporting the struggle of domestic workers for decent working conditions (Abvakabo and FNV Bondgenoten).<sup>26</sup>

**Employers' associations** also play an active role in combating undeclared work, especially in those sectors where undeclared workers are competing heavily with regular employees, such as in the temp agency sector (see 6.1.2). Through collective bargaining employers and employees reach **collective agreements** on wages and other working conditions. These collective agreements are a major instrument in countering undeclared work.

The social partners are responsible for the supervision of compliance with labour agreements.

These public institutions and the Inspectorate SZW join forces in so-called **intervention teams**. The initial agreement on cooperation in intervention teams was signed on 8 October 2003 by representatives of the Tax Authority, Inspectorate SZW, UWV and six major Dutch towns.

An intervention team targets its activities on a specific sector or a geographical area where a high risk of violation of laws is assessed (see also chapter 5.1).

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<sup>24</sup> SUWI refers to the Work and Income Implementation Structure Act (SUWI) which describes the roles and responsibilities of the various parties working in the field of work and income.

<sup>25</sup> <http://www.eu-employment-observatory.net/resources/reviews/EN-ReviewSpring07.pdf> (p44).

<sup>26</sup> <http://www.schoongenoeg.nu/2011/12/huishoudelijk-werkers-verdienen-beter/>

## 4 INSPECTORATE SZW; HOW IT WORKS

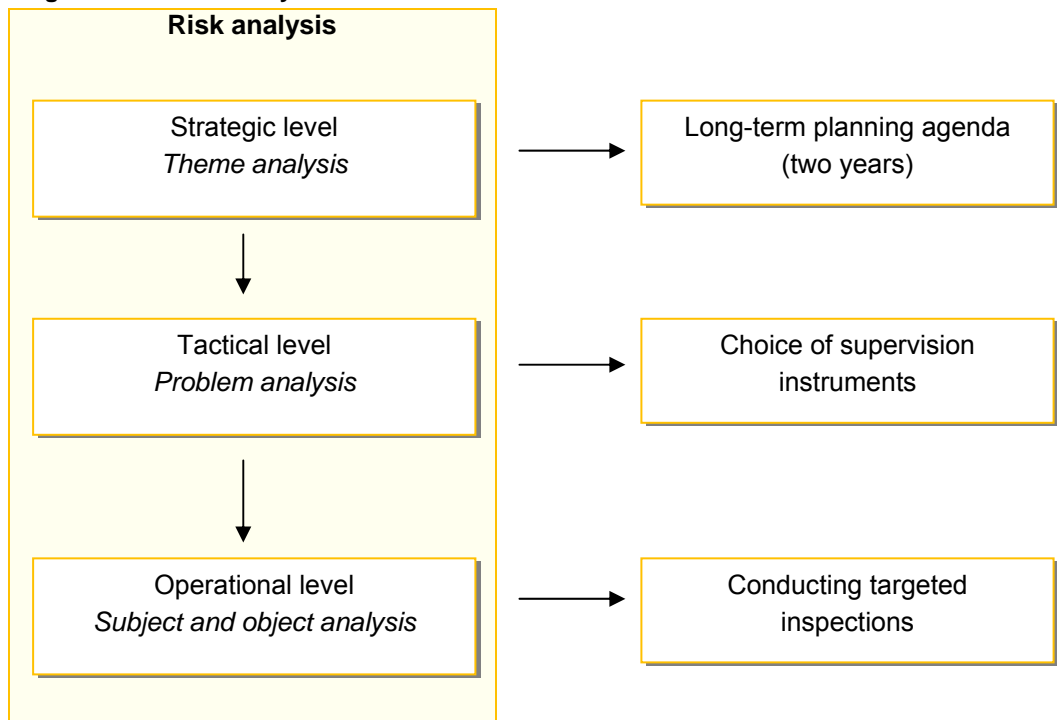
The Inspectorate SZW combines inspections, detection and administrative enforcement under one roof. The inspectorate operates within a framework, set out in a two-year planning. The planning has two major inputs, the SZW-wide risk analyses and an analysis of developments in society, such as economic situation, labour migration patterns or demographic changes.

### 4.1 Risk Analysis

There are limits to the tasks Inspectorate SZW can perform, limits set by budget and human capacity of the organization. Therefore Inspectorate SZW has to make choices, has to prioritize and focus its attention and actions. This prioritization is made after assessing the main threats to the goals of the Ministry of Social Affairs and Employment, such as good and healthy workplaces, decent working conditions, a fair labour market and an effective social security system. This assessment is called the risk analysis.

The risk analysis starts with the identification of *themes* within the broad range of the Inspectorate SZW policy issues (strategic level). For example this could be the temp agency branch.

**Figure 3 Risk analysis**



Consequently, an assessment is made of the specific *problems* in the chosen theme (tactical level). What groups of temp agencies are we talking about; all of them, or only the ones in specific sectors such as agriculture, or temp agencies specialized in foreign employees? This is the basis for the choice of supervision instruments: will large-scale inspections be necessary, or should the attention be focused on two or three firms?

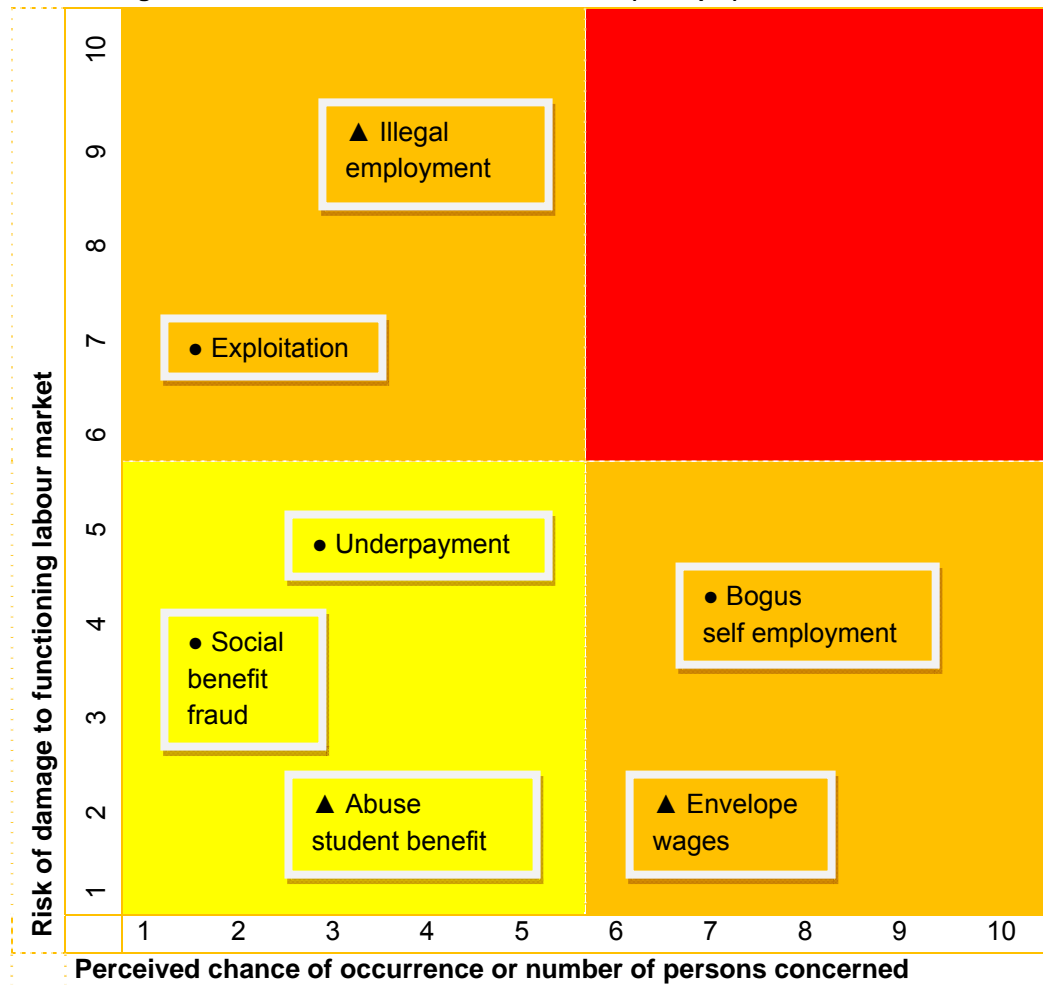
Finally a selection of branches, businesses and/or civilians is made that most likely have a high risk of violating the rules (operational level). In our example this would result in a list of temp agencies that could be inspected because of a perceived high risk that they employ illegal foreigners.

## 4.2 Risk Matrix

To decide which of the identified risks will be given the attention of the Inspectorate SZW, the perceived risks in the broad field of Social Affairs have to be compared. This is done by building a matrix in which a perceived risk is placed in relation to the damage it might cause. Damage should be understood as damage to the functioning of the labour market or the social security system or as the effect of unsafe working conditions on employees. To this assessment the degree of political sensitivity is added. The result is a matrix for each of the departments of Inspectorate SZW.



**Figure 4 Risk matrix labour market fraud (example)**



- = sensitive
- ▲ = not politically sensitive

Finally all the separate matrices for all the departments of Inspectorate SZW are combined. The result then is a priority order of risks. In combination with the analysis of developments in society, it leads to the programme for supervision and detection. Relevant developments in this regard, for example, are economic and demographic developments, technological issues, (international) labour migration and opinions about breaching labour and tax laws.

### 4.3 Instruments

The result of working with the risk analysis and risk matrix is that actions can be focused and targeted; sectors and companies that are not identified as potential violators of labour or other laws are left alone.

In those sectors where risks are assessed, Inspectorate SZW investigates, informs, inspects and corrects; on its own or in cooperation with other institutions.

*Investigations* consist of more general studies into certain phenomena, or can be specifically centred on individuals. Data matching for instance is often used to search for unemployed on benefit who are working without declaring their earnings. Because of the possibilities of linking the databases of the different agencies (tax, social insurance, social security and others<sup>27</sup>) this type of 'white fraud' has become virtually extinct.

*Inspections* are made in the different fields of Inspectorate SZW. The instruments Inspectorate SWZ has to its disposal whenever it comes to violations in case of labour market fraud (including undeclared work) are:

- verbal and/or written warnings;
- prohibition notices;
- civil (administrative) fines; or
- (criminal) prosecution.

In cases concerning occupational safety and health, Inspectorate SZW also has the power to (temporarily) close down the business or to impose a cease and desist order.

Apart from these instruments in the field of detection and repression there are activities in the field of awareness raising or campaigns involving the public. The main idea of this communication with the public is that the more people are aware of rules and regulations, the more they are likely to comply with them. Two long-lasting campaigns are 'prevent problems; know how it works' and the 'Hotline fraudulent temp agencies 0800-5151'

The 'know how it works' campaign is organized by the Ministry of Social Affairs and Employment, the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB) and the organized municipalities. It is targeted at employers, employees, unemployed, job-seekers, pensioners, immigrants, in short, anyone who has to do with Dutch social laws. The starting point of the campaign is that knowledge of the law enhances compliance.

The campaign operates a website<sup>28</sup> with all the relevant laws and broadcasts radio and TV messages on issues such as employing foreign workers, working whilst having unemployment benefit, living together while receiving old age pension.

#### **4.4 International Cooperation**

In the Dutch labour law, the nature of the sanctions that are imposed is mainly administrative. For the cross-border recovery of such administrative fines,

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<sup>27</sup> See BKWI in chapter 3.4 and Suwinet in chapter 4.5 on data gathering.

<sup>28</sup> <http://www.weethoehetzit.nl>

there exists no legal title in Europe. Therefore, it not always easy to execute an efficient enforcement policy across borders.

There are already numerous forms of international cooperation in existence concerning preventing and fighting undeclared work. Several bilateral cooperation agreements with other countries have been established both in the context of Directive 96/71/EC on the posting of workers as well as in the context of Regulations 1408/71 and 883/2004 on the coordination of social security schemes in the Member States. Such agreements were established among others with neighbouring countries Germany and Belgium. Through Memoranda of Understanding (MoUs)<sup>29</sup> ways of cooperation were agreed on with many more European countries, such as Poland, Portugal, Slovakia, Czech Republic, Bulgaria, Hungary and (again) Belgium.

To a large extent the MoUs confirm the possibilities for data exchange as already prescribed in the framework of Directive 96/71/EC. A number of MoUs mainly serve as 'lubricant' and also contain agreements about ways to not only provide requested information but to also allow more spontaneous exchange of information.

Since entering into the agreements, the Inspectorate SZW only made limited use of these MoUs. What did happen were annual meetings between the labour inspectorates from Poland and the Netherlands to discuss the progress of the cooperation.<sup>30</sup> In addition, the Dutch and Polish Ministries of Foreign Affairs annually meet at the so-called Utrecht conference. Labour migration and the cooperation between the labour inspectorates are topics often discussed in this context. Examples of agreements are:

- *Netherlands – United Kingdom*. In 2004, a MoU was signed on combating social security fraud, building on Directive 96/71/EC, on the posting of workers, by engaging in information exchange. It lists the types of data (including personal data) that competent bodies may exchange, respecting the national privacy legislation and taking account of the different structures in the field of enforcement in both countries.
- *Netherlands – Slovakia*. In 2006, a similar MoU to the one described above was signed to share information to combat social security fraud.
- *Germany – Netherlands – France*. These countries cooperate on the exchange and sharing of personal information.
- *Poland – Netherlands (Inspectorate SZW)*. In 2006, the labour inspectorates of the two countries made a joint declaration on cooperation and exchange of information in the realm of social security, which was signed by the Polish and Dutch Ministers. This cooperation will provide valuable lessons regarding the obstacles and problems involved in data sharing and information exchange.
- *Poland – Netherlands (Inspectorate SZW)*. Further agreements on exchange of data and information were made in February 2013.

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<sup>29</sup> These are non-legal agreements containing arrangements concerning information exchange in the domain of SZW administrative sanctions.

<sup>30</sup> Agreed on in a bilateral agreement in 2006.

- *Netherlands (Inspectorate SZW) - Finanzkontrolle Schwarzarbeit in Germany.* In 2008, an agreement was signed to transmit reports about Dutch people that work in Germany to the Information Node SZW.
- *Netherlands - Bulgaria.* Also in 2008, a letter of intent was signed on cooperation concerning enforcement of the rules on social policy, in case of cross-border labour and services, and the enforcement of social security regulations. In 2011 the department Detection started cooperating with the Bulgarian police.
- *Netherlands – Flanders (Belgium)* signed a letter of intent to work together in combating fraudulent temp agencies. A better exchange of data is an important part of this cooperation.

Furthermore, cooperation exists between Inspectorate-SWZ and Europol, for example through exchanging detection information.

UWV and SVB have regular consultations with foreign liaison agencies to execute agreements in treaties and EU regulations. UWV performs data matching with social security agencies in Spain, UK and Sweden. Incidentally, data have been exchanged with Hungary and Ireland.

## 4.5 Data gathering

Inspectorate SZW participates in Suwinet, a data-hub for organizations in the field of work and income.

Through Suwinet-Services, (quasi) government organizations have access to the digital data of citizens and businesses. Suwinet-Services are primarily intended for the organizations in the field of social security (UWV, SVB and municipal social services), but many other government organizations also use these services.

The possibilities Suwinet-Services offer include (among others):

- Suwinet-Insight offers government organizations the possibility to access information on citizens that is kept by other government organizations as well as certain databases such as for instance the one on car ownership.
- Suwinet-My Data offers government organizations the possibility to access information on citizens' data concerning work, social security and re-integration.
- Suwinet-IVT is specifically developed for participants in intervention teams. All the research data of the intervention teams can be stored there, just as the relevant data on process and organization.
- Suwinet-Mail is a protected mail-environment for the Suwinet-partners.

In 2011, every month, almost 600,000 files of citizens were consulted through Suwinet-Insight.

On an international level, Inspectorate SZW participates in and makes use of the liaison structure on posting of workers via IMI (Internal Market Information System) or data exchange regarding cases, the networks of Europol and

Interpol for requests in the framework of investigating criminal charges, the knowledge sharing site (KSS)<sup>31</sup> of SLIC (Senior Labour Inspectors' Committee) for the exchange of professional expertise, and the Rapid Exchange System (RAPEX) for interventions regarding essential safety requirements of products produced or imported in the EEA.

## 4.6 Guidelines for the Labour Inspectors

In the activities described above, the working methods of labour market fraud inspectors can be described as follows:

### 1. Work spot inspections

- Inspectorate SZW on own initiative and alone;
- Inspectorate as a participant in intervention team together with e.g. police, Tax Authority and social security organizations;

*Checking on the spot:*

- Identity papers; signs of proof to verify the correctness of IDs, look-a-like fraud, comparing IDs with the company ID-register in order to check compliance with legislation on illegal employment of aliens;
- Interviews with workers to signal possible underpayment in comparison with the legal minimum wage and holiday rights and payment;
- the use of temp agencies and whether they are registered correctly in the register of commerce and trade.

### 2. Inspection of administrations (personnel, wages, debit and credit and bank registers)

- as a follow-up of a workplace inspection,
- as part of a national or sector project.

*Labour Market Fraud Inspectors:*

- check whether the method of hiring or lending workers is used;
- check the identity of workers;
- check individual data in the companies' wage registers against civil registers and the combined register (Suwinet) with data from the municipalities, the companies' registers of the Chamber of Commerce and registers of the Tax Authority and social security registers;
- check the car ownership records;
- check the notification record for third-country nationals employed and posted by service providers from another European country;
- follow up signals of possible illegal employment;
- detect possible tax and social security fraud;

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<sup>31</sup> The KSS-site was developed by the Committee of Senior Labour Inspectors (SLIC) to improve methods of exchanging information between European labour inspectorates.

- detect possible underpayment;
- check how gains of illegitimate activities are accounted for (penal cases).

### 3. Interventions

- administrative penalties because of illegal employment;
- administrative penalties for underpayment;
- administrative penalties for incorrect registration of interim agencies for the agency and possibly the hiring company.

### 4. Signalling

- signalling the investigation unit on possible criminal fraud;
- signalling the investigation unit on possible human exploitation (by work);
- signalling bad housing conditions to municipalities;
- signalling abuse of social benefits to responsible authorities;
- informing the social partners and the SNCU on companies receiving fines for underpayment;
- informing the SNA (certification organization) on companies receiving fines.

For these activities, the inspectors can rely on a series of work instructions.

#### **Work instructions for labour inspectors on labour market fraud, among others:**

##### *How to conduct work place inspections?*

- illegal employment;
- ID verification;
- self-employed, interns;
- minimum wages;
- registration of interim agencies.

##### *How to conduct investigation in administrations?*

- use of Suwinet-data (combined register of communities, social security and tax offices, chamber of commerce and trade and other public bodies);
- confiscation of company registers.

##### *How to enforce?*

- writing penalty reports;
- signalling possible criminal fraud;
- signalling possible human exploitation;
- information exchange with other public authorities or civil parties;
- international information exchange;
- how to collaborate with the police on illegal residence.

Inspectors are obliged to follow specific technical training courses on how to inspect in personnel and wage administrations, how to detect fraud in administrations, and courses on relevant law. Furthermore, training is offered on skills such as presentation, language, personal effectiveness and dealing with resistance and aggression or violence.

These courses can be followed on different levels of professionalism. They are offered by the Police Academy.

## 5 INSPECTORATE SZW; OPERATIONS IN 2011

### *Department Labour Market Fraud*

Following the described method, in 2011, the Department Labour Market Fraud focused its attention on firms with a high tendency to illegal employment and/or underpayment, in particular in the cleaning sector, the temp agencies, construction, agriculture (seasonal work) and retail.

A total of 176 inspectors<sup>32</sup> conducted almost 10,000 inspections/researches in the field of labour market fraud. In around 17% of all the inspections the applicable laws (Alien Employment Act, WAV, the Minimum Wage and Minimum Holiday Allowance Act, WML) were violated. In these cases, the actors concerned were fined, prosecuted or received a (last) warning. Most of the cases concerned illegal employees. In total 2,030 illegal foreign employees were found during inspections, of whom one third came from Bulgaria.

In 211 cases inspectors found underpaid or non-documented workers. Almost half of them were of Central or Eastern European nationality.<sup>33</sup> These, no doubt, were all undeclared workers.

**Table 3 Inspection results regarding labour market fraud in 2011**

<b>Inspections on illegal labour and minimum wage</b>	<b>2011</b>
Total number of inspections	9,225 <sup>34</sup>
Offences noticed	17%
Number of illegal employees	2,030
Number of underpaid	211
Number of fine-reports illegal employees	2,399
Number of fine-reports underpayment	96
Number of warnings underpayment	31
Number of official reports to the Public Prosecutor of the offence	23

Source: Annual report Inspectorate SZW 2011 (p.37)

The number of inspections on labour market fraud in 2011 was comparable to the number of inspections in this field in the years 2009 (9,723) and 2010 (9,440). In those years Inspectorate SZW also found offences in around 17% of the cases.

In 2011, the Inspectorate SZW, in cooperation with the Tax Authority and the immigration service, inspected 938 self-employed foreigners. In a total of 382

<sup>32</sup> In 2009 118, in 2010 171.

<sup>33</sup> Ministry of Social Affairs and Employment 2012a.

<sup>34</sup> The Annual Report 2011 of Inspectorate SZW also mentions a number of 9,925 (p. 8).

cases the workers concerned were not truly self-employed; these cases were characterized as 'bogus self-employment'.<sup>35</sup>

#### *Department Work and Income*

The Department Work and Income mainly conducted studies and wrote reports on several aspects of policy in the field of work and income. Supervision and detection was done by municipalities, the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB) and the Department Detection of Inspectorate SZW.

#### *Department Detection*

The Department Detection is the investigation unit within Inspectorate SZW. It is responsible for the criminal enforcement with regard to labour market fraud, labour exploitation, (organized) benefit fraud and fraud with labour-related subsidies. In 2011, out of 417 fraud-signals, 62 investigations<sup>36</sup> were held by in total 204 employed inspectors. The inspections concerned the following issues:

**Table 3** Conducted investigations by Inspectorate SZW Detection unit 2011

Types of fraud	Occurrence
Exploitation / human trafficking	11
OSH-fraud	2
Illegal employment	14
Social benefit fraud	15
Fraud with subsidies	1
Other	19
Total	62

Source: Annual report Inspectorate SZW 2011 (p.54)

## 5.1 Inspectorate SZW and Intervention Teams

In cases of severe fraud or abuse of rules and regulations in the field of social security, taxes or illegal employment, supervision, detection and enforcement is performed by so-called intervention teams.

An intervention team is a cooperation of different agencies that perform enforcement activities in the fields mentioned. The intervention teams can join the forces of:

- municipalities;
- Tax Authority;
- Inspectorate SZW;
- Employee Insurance Agency (UWV);
- Social Insurance Bank (SVB);

<sup>35</sup> ibid

<sup>36</sup> In 2010: 40. In 2009: 48.



- police;
- Public Prosecutor's office;
- other relevant parties.

The above-mentioned parties are represented in the National Steering Group Intervention teams (the LSI). On the national level, the LSI is responsible for the functioning of the intervention teams. The Ministry of Social Affairs and Employment acts as chair and secretariat of the LSI.

The LSI decides on the relevant topics to be dealt with every year, based on the strategic planning of the LSI-partners. Consequently, a planning is made for the actions of intervention teams. These actions are organized in projects that (usually) run for several years.

Depending on the chosen theme or targeted group, one of the agencies takes the lead and other agencies can join. Inspectorate SZW recently had the lead in interventions focused on fraudulent temp agencies and on the branch of mushroom growers (farmers) in a specific region of the Netherlands.

The leading principle of the intervention team approach is that the integral approach is the most effective. In many of the investigated cases various different laws are violated, such as tax, social security and immigration laws. Intervention teams target one specific sector or one specific geographical area (a city, an agricultural area, a border region), where the risk of violation of laws is assessed as high. Operations can also be focused on specific phenomena, such as undeclared capital.

When an intervention team inspects a company, an overall check is carried out to find out whether the company is obeying its legal obligations. This means, for instance, that all employees have to be able to identify themselves through legal IDs, that the employer has to show the administration on payments and on tax and social security obligations, that working hours and OSH-conditions are checked et cetera.

#### Mushroom team

The intervention team on mushroom-growing farmers started in 2007. Inspectorate SZW was leading partner. The team started with a broad analysis of the sector. This led to 98 growing-companies that were visited by teams consisting of inspectors of the Tax Authority, Inspectorate SZW investigation unit, the immigration service, the aliens police and the Public Prosecutor. Beside the companies, 8 Dutch and on 1 Polish temp agency were involved in the investigations. The teams found rather severe forms of exploitation of foreign employees, mainly Polish. The employees were working 10-14 hours a day, officially earning the minimum wage. In practice, however, they were confronted with deductions for housing, food, training, use of a bicycle and so on. There were Bulgarian employees working without the necessary permits, as well as (9) Bulgarians bogus self-employed. The housing conditions were dreadful. The Tax Authority recovered more than a million on taxes and fined several companies for more than a hundred thousand euros. This first wave of inspections ended in 2009. In 2012, however, the team is still active and inspections in this sector are an ongoing business. In June 2012, the intervention team found 40 Bulgarians working illegally on a mushroom farm in the south of Holland.

For 2011, the following spearheads were identified:

- Intervention team projects in 10 urban neighbourhoods. In these projects the intervention team cooperates with the municipality in its policy to enhance living conditions. Next to repressive actions countering fraud, undeclared work and misuse of social security, preventive actions such as awareness campaigns are set up.
- Intervention team projects geared at specific economic branches. In particular the branches of retail, cleaning, temp agencies and hospitality are in the picture. The activities towards these branches can be nationwide or again targeted in specific regions.
- Controls on employment and housing of nationals of Middle- and East European countries. Ever since 1 May 2007, when the borders opened for workers from several East-European countries, there has been a substantial inflow of in particular Polish job-seekers. In more recent years, also many Bulgarians, who are not (yet) allowed to work without a work permit, are entering the country looking for work. These groups are found being employed in certain sectors of agriculture and horticulture where low-skilled and low-paid labour is needed. Apart from controls on work permits, minimum wages and labour conditions, attention is given to the way these migrant workers are offered housing facilities on the premises of the employer. The inspections are part of the tasks of the Intervention Team Tackling Fraudulent Temp Agencies (TFT).
- Labour market fraud. From the angle of the labour inspection and the Tax Authority, special attention is given to fraud and illegality in the temporary work agencies (TFT). Human trafficking in particular is a point of interest. The intervention teams also check on bogus self-employment and persons without known sources of income.

Apart from the intervention teams, the Tax Authority has developed a great interest in the real estate branch and foreign bank accounts. In recent years several severe fraud cases came to the light. Therefore, it is one of the prioritized areas in 2011.

#### Westland Intervention Team

For several years, the Westland Intervention Team (WIT) performed weekly physical, unannounced controls at premises of agricultural and horticultural businesses in the Westland region (between Rotterdam and The Hague). Every year, some 360 to 400 companies were inspected in this way. UWV, the Tax Authority and the labour inspection (Inspectorate SZW) were the three major, regular participants in the WIT, but the police and the SVB also often joined in.

In 2009, at 26% of the inspected companies violations of the WAV and/or WML were observed and noted. In 2010, this percentage went down to 18% and in 2012 only at 14% of the inspected companies breaches of law were found. This decrease in violations lead to the abolishment of the WIT. The Inspectorate SZW now conducts regular controls and inspections in the region.<sup>37</sup>

<sup>37</sup> <http://www.gfactueel.nl/Glas/Nieuws/2012/9/Westland-Interventieteam-WIT-opgeheven-1069377W/>

In June 2011, 32 intervention teams were active, in different fields. The Inspectorate SZW contributed 75 fulltime equivalents (FTE) to the intervention teams in 2011. The Tax Authority made available 100 FTE, 19 FTE originated from the Employee Insurance Agency (UWV), 9 from the Social Insurance Bank (SVB) and depending on region or focus, municipalities and police also contributed their part.

### 5.1.1 Tackling Fraudulent Temp Agencies

One of the major phenomena Inspectorate SZW and the intervention teams are paying attention to, are the fraudulent temp agencies. In chapter 3.1.1. they were described. The intervention team tackling fraudulent temp agencies (TFT) started in the summer of 2012.

Fraudulent temp agencies are targeted from different angles:

- One of the first activities was the construction of a top 100 list of suspected temp agencies. This was done by means of a risk analysis. Until March 2013, 42 administrative investigations were started, concerning at least 66 temp agencies and 116 hiring companies. Three criminal cases were completed, concerning exploitation and forgery of documents. Another six criminal cases are pending.<sup>38</sup>
- In advance of tackling this top 100, in the summer and early fall of 2012 already 15 locations were raided by the TFT.
- Besides the TFT, Inspectorate SZW itself conducted 351 inspections in the year 2012.<sup>39</sup> 54 Temp agencies were fined for violations of the WAV, WML or WAADI. In 2012, fines totalling 2.5 million euros were imposed.
- Also besides the TFT, in 2012 the Tax Authority conducted 953 inspections of temp agencies. This resulted in supplementary tax notices for a total of 26.5 euros and 2.6 million euros in fines. Tax corrections in 2013 (until March), amounted to almost 5 million euros. The Tax Authority closely cooperates with Inspectorate SZW in these controls.
- A hotline has been established for anyone to report fraudulent behaviour by temp agencies (Hotline Fraudulent Temp Agencies: 0800-5151). The hotline has received over 700 calls with tips until March 2013.
- A register will be set up containing names of people who have been fined several times for fraud. Whenever such a person is registering a new agency with the Chamber of Commerce, Inspectorate SWZ and the Tax Authority are warned.
- Problems with regard to data sharing and data exchange will be solved, both on the national and on the international level. The plan was to initiate a Joint Investigation Team (JIT) with the Bulgarian authorities.<sup>40</sup> Instead, this has been changed in a cooperation with the Bulgarian police. To this end cooperation with Europol will also be sought.

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<sup>38</sup> Ministry of Social Affairs and Employment, 2013.

<sup>39</sup> Ibid.

<sup>40</sup> Ministry of Social Affairs and Employment, 2012.

### 5.1.2 Joining Forces with the Social Partners

Very important in the fight against the fraudulent temp agencies is the self-regulation conducted by the temp agencies branch. Employers (the joint formal temp agencies) established their own standardization, the SNA-certificate. SNA stands for Foundation for Standardization of Labour. The SNA issues Quality Marks to temp agencies that comply with the SNA-standards. In 2012, the SNA approached 4,000 registered but not certified agencies urging them to obtain the certificate. By March 2013, 3,281 temp agencies had been certified by the SNA.

The SNA also performs supervision tasks and around 6,000 inspections were conducted by SNA-accredited inspectors in 2012 only. This resulted in the revocation of certificates of 386 firms.

Besides the SNA, there is the *Foundation Compliance with CLA for temporary agency workers*, the SNCU. The SNCU was founded by trade unions and organized employers in the temp branch. It is also known as the 'collective agreement police'. By law, social partners have the authority to check on compliance with the collective agreements and to submit claims for full compensation in case of breach of an agreement. These checks are performed by specialized inspection and verification companies and are initiated after thorough risk analysis or as a response to reports that came in through the 'hotline' meldenhelpt.nl (reporting helps). In the year 2011, a total of 461 investigations were held. They resulted in 6.45 million euros of back payments and another 3 million in fines. In the first 6 months of 2012, 231 investigations were started.<sup>41</sup>

The private organization SNCU closely cooperates with the public authorities from Inspectorate SZW and the Tax Authority. Again in the first half of 2012, the SNCU handed over information on 560 temp agencies that were under suspicion of breaking labour and tax laws. In their turn, Inspectorate SZW passes on information from inspections to the SNA (concerning certification) and/or the SNCU (concerning the rules of the collective agreement).

Specialists of Inspectorate SZW also train inspectors of the SNA and the SNCU how to conduct controls on compliance with WML.

#### *Rotterdam project*

The SNCU is one of the many public and private partners who are joining forces in the so-called Rotterdam project. In Rotterdam, the second-largest city of the Netherlands, with much low-skilled employment in its harbour and an agricultural hinterland, many illegal and fraudulent labour brokers are active. In October 2012, the following organizations set up a joined project: the municipality of Rotterdam, employers, organized in the Federation of Private Employment Agencies (ABU), Trade Unions, the Chamber of Commerce, Inspectorate SZW, the Tax Authority and the SNCU. A total of 543 temp agencies were scanned on compliance with relevant rules. Eventually, the 100 worst cases will be inspected and if necessary prosecuted. One of the main

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<sup>41</sup> [www.sncu.nl](http://www.sncu.nl)

targets of this operation is not to close down all the companies, but to get to the persons behind them. Closing down a legal entity proved to be ineffective; within a day a new entity is created and business is going on as usual. According to estimates of the ABU, if 50 to 60 illegal labour brokers are caught, 70% of the fraudulent temp agencies will be closed down.<sup>42</sup> Comparable operations are planned for the cities of The Hague, Eindhoven and Amsterdam.<sup>43</sup>

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<sup>42</sup> Volkskrant, 6 November 2012, page 24.

<sup>43</sup> Ministry of Social Affairs and Employment, 2013.



## 6 CONCLUDING

In the Netherlands, undeclared work, defined as ‘any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account the differences in the regulatory system of Member States’ seems to be a rather modest phenomenon. Its size is estimated at around 10% of GDP in 2012.

The type of undeclared work that seems most prevalent is ‘odd jobbing’, the type of work where friends and relatives on their own account perform services within a social network. In particular domestic services and construction jobs are found in this part of the economy. The unemployed seem to be underrepresented on the undeclared labour market. Local communities and social security agencies supervise benefit fraud and have the power to apply severe penalties to correct and to maintain public solidarity.

However, recently, in certain sectors of the economy, such as horticulture and construction, there are clear signals that the importance of waged un- and under-declared work should not be underestimated. Undeclared work in these sectors often coincides with bad working conditions and exploitative labour relations. In many cases it concerns foreign workers (often from Central and Eastern European countries) who are misled and exploited by fraudulent temp agencies or similar types of labour brokers. For these types of un- and under-declared work, in many cases misuse is made of (often complicated) national and international rules and regulations concerning the free movement of services and the free movement of workers. Bogus self-employment, bogus posting of foreigners working on fake IDs are emerging trends in this respect. The Inspectorate of Social Affairs and Employment (Inspectorate SZW) combines, among others, the department against labour market fraud and the department concerning work and income issues. The Inspectorate conducts risk analyses on branches, businesses and citizens to select those groups who are most likely to break the labour rules. Through combining the parties with the highest risk of breaking the rules with the perceived damages of the breaches of rules, a prioritization is made for Inspectorate SZW activities. The question whether work is declared or undeclared is only one of the aspects the work of Inspectorate SZW focuses on. Labour exploitation, illegality, safety on the workplace and benefit fraud are the major topics, often also containing un- or under-declared work.

In sectors or regions where severe fraud or abuse of rules and regulations in the field of social security or taxes is likely, action is undertaken by so-called intervention teams. In these kinds of teams, the Inspectorate SZW joins forces with other relevant enforcement departments of the Tax Authority, municipalities, Employee Insurance Agency (UWV) and the police. The intervention teams target on specific areas or economic sectors. The accumulation of violation of different laws and regulations is an important reason for the teaming up of these different enforcement bodies.

One of the spearheads of the last years were fraudulent temp agencies and the sectors that made the most use of them such as in horticulture, mushroom cultivation, construction and cleaning sector. In tackling the fraudulent temp agencies, the intervention teams work together with social partners in an integrated approach of the problem.

This integrated approach of severe abuses in the sphere of working conditions, is a strong characteristic of the Dutch policy towards undeclared work. The individual 'odd jobber' is mostly left alone; large scale breaches of labour law are fiercely combated in collaboration between public institutions and implemented through regional or sectoral intervention teams. As far as allowed by law information is shared between public supervisory bodies.

Another characteristic of the Dutch policy is stimulating self-regulation within economic sectors. Certification along certain quality criteria can be an important instrument in this respect. Whenever social partners in an economic sector create a viable system of self-regulation, Inspectorate SZW will operate in a more reserved manner.

Given the above described emerging new types of un- and under-declared work and the ongoing process of enlargement of the EU, one can expect a persisting presence of complex, more or less irregular labour relations. This will occur in particular in those sectors where supply of formal labour is short and the pressure on wages is high. Further collaboration between Dutch institutions such as the Inspectorate SZW, the Tax Authority, the police, immigration and the social partners will be necessary to counter these developments. Collaboration in the intervention teams is one way of doing this. However, cooperation between Inspectorate SZW and its colleagues in countries such as Romania and Bulgaria (and Croatia in the years to come) will also be of great use. Sharing of information on persons and companies and explaining each other's institutional systems as well as operational cooperation will be necessary to be prepared for new developments.

To combat the most severe cases of exploitation, extra attention can be given to fighting human trafficking. With regard to this, cooperation on the EU level, for instance with Europol, is desirable.



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