



## **Governing Body**

322nd Session, Geneva, 30 October–13 November 2014

**GB.322/INS/13/7**

---

Institutional Section

**INS**

---

**Date:** 6 November 2014  
**Original:** English

THIRTEENTH ITEM ON THE AGENDA

### **Report of the Director-General**

**Seventh Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the Netherlands of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155), made under article 24 of the ILO Constitution by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation of Professionals (VCP) (formerly the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP))**

*Contents*

	<i>Page</i>
List of abbreviations.....	v
I. Introduction.....	1
II. Examination of the representation .....	2
A. The complainants' allegations.....	2
B. The Government's observations.....	5
1. Overview of the Dutch occupational safety and health system.....	5
2. Reply to the specific allegations of the trade unions.....	6
C. The Government's reply to the request for additional information.....	7
1. Further explanations of the Government's OSH policy and its sector-based approach to supervision.....	7
2. Manner in which the Government ensures the effective functioning of the labour inspection system in light of the reduced number of labour inspectors and labour inspections.....	9
3. The operation of the system of <i>Arbodiensten</i> (OSH services) .....	10
4. Information on the initial and continuous training of labour inspectors .....	11
5. The functioning of the system for the reporting of industrial accidents and cases of occupational diseases and their notification to the labour inspectorate.....	11
D. Observations of the complainant organizations in reply to the additional information provided by the Government .....	12
III. The Committee's conclusions .....	13
A. Preliminary remarks .....	13
1. Conventions Nos 81 and 129 .....	13
2. Convention No. 155 .....	14
B. Requirements under Conventions Nos 81 and 129 .....	15
1. Placement of the labour inspection system under the supervision and control of a central authority (Article 4 of the Convention) and arrangements for effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities (Article 5(a)) .....	15
2. Status and conditions of service of labour inspectors (Article 6 of Convention No. 81).....	17
3. Qualifications and adequate training of labour inspectors (Article 7(3) of Convention No. 81) and the association of duly qualified technical experts and specialists in the work of inspection (Article 9 of Convention No. 81) .....	18
4. Number of labour inspectors and of labour inspections (Articles 10 and 16 of the Convention).....	21
5. Material means of the labour inspectorate and additional functions entrusted to labour inspectors (Articles 3(2) and 11 of Convention No. 81).....	27

6.	Notification to the labour inspectorate of industrial accidents and cases of occupational diseases (Article 14 of Convention No. 81) .....	28
7.	Principle of the confidentiality of complaints (Article 15(c) of the Convention) ...	29
C.	Requirements under Convention No. 155 .....	31
1.	Coherence of the national OSH policy .....	31
2.	Adequate and appropriate system of inspection .....	32
IV.	The Committee's recommendations.....	32

---

## List of abbreviations

APSD	Analysis, Programming and Detection Directorate
<i>Arbodiensten</i>	occupational safety and health (OSH) services
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CNV	National Federation of Christian Trade Unions
EU-OSHA	European Agency for Safety and Health at Work
FNV	Netherlands Trade Union Confederation
I&ID	Information Management and Inspection Support Directorate
IWI	Work and Income Inspectorate
LMRFD	Labour Market Related Fraud Department
MHP	Trade Union Confederation of Middle and Higher Level Employees' Unions (now VCP)
MHCD	Major Hazard Control Department
NCvB	Netherlands Centre for Occupational Diseases
OSH	occupational safety and health
SER	Social and Economic Council
SIOD	Social Security Information and Investigation Service
SLIC	Senior Labour Inspection Committee
SMEs	small and medium-sized enterprises
VCP	Trade Union Federation of Professionals (formerly the MHP)
WCD	Working Conditions Department

## I. Introduction

1. In a communication dated 22 June 2012, the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation of Professionals (VCP) (formerly the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP)) addressed a representation to the International Labour Office, in accordance with article 24 of the ILO Constitution, alleging non-observance by the Netherlands of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155).
2. Convention No. 81 was ratified by the Netherlands on 15 September 1951, Convention No. 129 was ratified by the Netherlands on 29 June 1973, and Convention No. 155 was ratified by the Netherlands on 22 May 1991. All these Conventions are in force in the country.
3. The following provisions of the Constitution of the International Labour Organization relate to representations:

### *Article 24*

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite the government to make such statement on the subjects as it may think fit.

### *Article 25*

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. The representation procedure is governed by the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004).
5. In accordance with articles 1 and 2, paragraph 1, of the above Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of the Netherlands and brought it before the Officers of the Governing Body.
6. At its 316th Session (November 2012), the Governing Body decided that the representation was receivable. At its 317th Session (March 2013), it appointed a committee to examine the matter. The Committee members were Mr Jens Jensen (Government member, Denmark), Mr Jørgen Rønne (Employer member, Denmark) and Ms Barbara Byers (Worker member, Canada).
7. The Government of the Netherlands submitted its observations concerning the representation in a communication dated 12 September 2013.

8. At its first meeting on 19 March 2014, in accordance with article 4 of the Standing Orders concerning the procedure for the examination of representations, the Committee decided to request the Government to provide further information, and to subsequently ask the FNV, CNV and VCP to provide any statement that they might wish to make in relation to this information.
9. The Government transmitted the requested additional information in a communication dated 12 June 2014. The FNV, CNV and VCP submitted their observations concerning this additional information in communications dated 25 and 26 August 2014.
10. The Committee met again on 4 and 6 November 2014 to examine the case. It adopted its report on 6 November 2014.

## **II. Examination of the representation**

### **A. The complainants' allegations**

11. In its communication dated 22 June 2012, the complainant organizations allege non-observance by the Government of the Netherlands of Articles 4, 6, 7(3), 9, 10, 11, 14 and 16 of Convention No. 81; Articles 7, 8, 9(3), 11, 14, 15, and 19 of Convention No. 129, and Articles 4 and 9 of Convention No. 155.
12. With regard to the alleged non-observance of Article 4 of Convention No. 81 and Article 7 of Convention No. 129, the trade union confederations assert that following successive reorganizations the labour inspectorate no longer exists. Since 2009, the "labour inspectorate" had been the collective name covering three departments, namely the Working Conditions Department (WCD), the Major Hazard Control Department (MHCD) and the Labour Market Related Fraud Department (LMRFD). Each of these three departments had its own mandate, supervisory tasks and organizational decrees, while they relied on the financial and legal support of the Ministry of Social Affairs and Employment. On 1 January 2012, the labour inspectorate disappeared even as a collective name. The three departments referred to above, together with the four departments of the Social Security Information and Investigation Service (SIOD) and the Work and Income Inspectorate (IWI), as well as the Analysis, Programming and Signalling (APSD), and the Information Management and Inspection Support (I&ID) directorates, now fall directly under the Inspectorate for Social Affairs and Employment at the Ministry of Social Affairs and Employment. The trade union confederations express the view that a labour inspectorate no longer exists, and specify, that when using the term labour inspectorate, reference is made to the Inspectorate for Social Affairs and Employment.
13. Furthermore, the broad distribution of labour inspection functions (such as the control of the Working Conditions and Working Hours Act and the Major Accidents Risk Decree) both within the Ministry of Social Affairs and Employment and among other inspection services (including at the Ministries of Infrastructure and Environment; Economic Affairs; Agriculture and Innovation; and Health, Welfare and Sport) result in such diverse approaches to labour inspection that the uniformity of methods of inspection and procedures are affected. With reference to a major fire in 2012 in a company dealing with hazardous substances, the trade unions assert that joint inspections and enforcement by these inspection services suffer from serious shortcomings.
14. Concerning the alleged non-observance of Article 6 of Convention No. 81 and Article 8 of Convention No. 129, the trade unions indicate that the successive reorganizations of the

labour inspectorate in the context of a shift in emphasis from technical expertise towards management skills, with mobility as the pivotal theme, have had the impact of preventing the technical specialization of labour inspectors. The shift from substantive expertise to management skills concerns civil servants at both the policy and the implementation level. Civil servants have to be mobile and change positions relatively often. A specific department no longer appoints individual civil servants. They are appointed within the broader administration as a whole, and are deployed where the management thinks they will be the most productive for the organization. This is also true for labour inspectors. A shift of this nature goes hand-in-hand with the increased need to bring in external expertise, and there is a real threat of not being able to anticipate new developments and technologies.

15. Concerning the alleged non-observance of Article 7(3) of Convention No. 81 and Article 9(3) of Convention No. 129, the trade unions claim that technological developments and many changes in the legislation require additional and more intensive training for labour inspectors. The claimant organizations assert that the limited capacity of labour inspectors and the high pressure of work are resulting in insufficient time to maintain the necessary levels of knowledge to keep up with technological and labour market developments, including forms of psychosocial stress and the danger of chemical substances and nanoparticles in the workplace. Although most of the working population is employed in the services sector, the labour inspectorate mainly checks the traditional security issues associated with manual labour, with little innovation or proactive capacity when it comes to identifying and inspecting new risks at the workplace level. The trade unions assert that the quality of inspection is declining. Moreover, due to the high workload, no natural moments remain for knowledge transfer among colleagues. Inspectors are expected to look for information themselves, but lack the time and knowledge to do so.
16. With regard to the alleged non-observance of Article 9 of Convention No. 81 and Article 11 of Convention No. 129, the complainant organizations indicate that the functional expertise provided by experts and technicians with recognized competence in the areas of medicine, mechanical and civil engineering, electricity and chemistry, which is used to guarantee compliance with OSH regulations, is no longer present within the labour inspectorate. Instead, (semi-)external experts, i.e. project leaders from different departments of the Inspectorate for Social Affairs and Employment are used, and that they prepare projects and provide tools, but do not take part in actual inspections. Furthermore, no or little information is exchanged with outside experts. Private experts hired by individual employers are often not independent, which can lead to incorrect conclusions, for example when they investigate accidents. According to the conclusions of the Senior Labour Inspectors Committee (SLIC)<sup>1</sup> in a 2008 report on the evaluation of the Dutch labour inspection system, the separation of OSH services from the labour inspectorate means that information which might be derived from these services (for example on emerging risks or trends in particular health and safety issues) is not available to the labour inspectorate.
17. With reference to the alleged non-observance of Articles 10 and 16 of Convention No. 81 and Article 14 of Convention No. 129, the trade unions indicate that the relatively low

<sup>1</sup> According to its 2013 Annual Report available on the Internet, the Committee of Senior Labour Inspectors consists of one representative – typically the Directors or Chief Executive Officers – from each of the labour inspection services of European Union Member States and assists the European Commission on problems relating to the enforcement of Community law on health and safety, and encourages its effective enforcement, notably by means of closer cooperation between national labour inspection services.

number of labour inspectors in relation to the number of employees makes it practically impossible to ensure effective inspection. They add that there is one labour inspector per 28,356 employees and that based on the indications provided by the technical labour inspection services of the ILO,<sup>2</sup> this number is far below the standard for industrial market economies of one labour inspector per 10,000 workers. The trade unions add that because the frequency of inspection is so low for companies, only 1 per cent of all of them indicate “fear of the labour inspectorate” as the reason for complying with legislation on working conditions. In addition, the number of labour inspectors is expected to be reduced even further. The continual shrinkage of capacity is resulting in its inability to discharge its functions fully. The smaller labour inspection staff is leading to the liberalization or abolition of regulations, because the capacity to enforce them no longer exists (as in the case of the so-called ARIE regulations).

- 18.** The complainant organizations state that in 2012, the number of priority sectors fell from the present 18 to 14, resulting in 2,000 fewer inspections annually. They refer to the conclusions of the 2008 report of the SLIC on the evaluation of the Dutch labour inspection system, which stated that the clear subject/sector focus might lead to a dilution of a holistic approach and inspectors could lose their understanding of and practice in dealing with non-priority issues. They allege that if labour inspectors do visit a company outside the context of a project or an accident report, the company immediately knows inspectors are reacting to a complaint from within the company, that is to say from an employee. Employees and members of trade unions say that the labour inspectorate does not always come when requested. A large number of companies will never receive a visit from the labour inspectorate.
- 19.** With regard to the alleged non-observance of Article 11 of Convention No. 81 and Article 15 of Convention No. 129, the complainant organizations assert that the disappearance of district and regional offices puts pressure on contacts between inspectors and those inspected, but also means that inspectors lack the necessary administrative support. They have to spend more time on administration, such as correspondence and drafting reports, instead of inspections.
- 20.** In relation to the non-observance of Article 14 of Convention No. 81 and Article 19 of Convention No. 129, the trade unions observe that, whereas the labour inspectorate had its own separate medical service before, now there is only one single medical officer left. Occupational diseases are no longer reported to the labour inspectorate, but to the Netherlands Centre for Occupational Diseases (NCvB). The complainants state that the NCvB reports significant and growing under-reporting. They emphasize that the objective of notification is not to produce statistics or analysis at the macro levels, but to enable interventions at the company level. According to the complainant, notification is now the responsibility of the OSH service or the occupational doctor. The trade union confederations call for employers to be required to notify occupational diseases to the inspection services.
- 21.** Concerning the alleged non-observance of Articles 4 and 9 of Convention No. 155, the trade union confederations express the view, when considering all of the above, that the Government also does not comply with these Articles. According to the complainants, both the Government and the labour inspectorate are retreating further and further and are increasingly leaving the promotion of the safety and health of workers and their enforcement to the individual companies and sectors and to other agencies, such as

---

<sup>2</sup> ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 95th Session, Geneva, 2006, para. 195, footnote 19 (hereinafter the “2006 General Survey on labour inspection”).



certifying organizations and insurance companies. They refer to the fact that there is no research showing that this leads to improvements, while there is much research that is critical of the effect of these forms of self-regulation. The trade unions finally assert that there is no adequate and coherent national policy and no adequate system of enforcement, especially for dealing with occupational diseases.

## **B. The Government's observations**

22. In its communication dated 12 September 2013, the Government indicates that it has not violated the requirements under Conventions Nos 81, 129 and 155 in any way.

### **1. Overview of the Dutch occupational safety and health system**

23. The Government, before addressing the specific allegations, provides an overview of the Dutch OSH system.
24. It indicates that the Working Conditions Act and the OSH policy draw a distinction between the public and private domains. The idea behind the Dutch system is that a combination of top-down and bottom-up measures are the best way to ensure safe and healthy workplaces. To this end, the Government has established a framework of rights, duties and goal-based regulations in national legislation (the public domain). The social partners (the private domain), which are at the heart of a functioning OSH system, decide how to interpret and implement the requirements in such a way that the goals are met. On this basis, companies and organizations have room to develop an OSH policy that is appropriate to their unique OSH situation.
25. The Government indicates that it has both a facilitating role and is responsible for enforcement. Concerning its facilitating role, the Government promotes the management of occupational risks by employers and workers, and provides compliance assistance through the distribution of information and knowledge, in the framework of a number of projects and programmes, such as those on the prevention of work-related accidents and on compliance with restrictions concerning the use of chemicals. Concerning enforcement, the Government asserts that the task of the labour inspectorate is to ensure that employers and employees comply with the employment rules and regulations. The work of the inspectorate is based on a sophisticated ongoing risk analysis to determine sectors with relatively high OSH risks, which are given priority.
26. *Sector-based approach to supervision.* The Government explains that the elements of the sector-based approach to supervision encompass an increased role for the social partners and companies to tackle OSH issues. In so-called *OSH catalogues* the social partners agree on ways and methods to achieve healthy and safe working conditions in specific branches in order to comply with the goal-based regulations. Furthermore, under national law, employers are required to identify and assess workplace hazards. In cooperation with the social partners, the Government has developed a highly advanced digital basic tool for risk assessment, which has enabled the development of over 100 specific digital risk assessment tools for many sectors, and which was used by the European Agency for Safety and Health at Work (EU-OSHA) to develop a tool for the European Union (EU) Member States. The Government indicates that the more actively the social partners are engaged in promoting compliance with the legislation, the fewer inspections need to be conducted, which often proves to be an incentive to comply with the regulations.

27. The Government also indicates that supervision by the inspectorate is a key element and substantial sanctions for non-compliance are an indispensable part of the Dutch OSH system. A new law gives the Government the scope to substantially increase penalties and sanctions in the event of non-compliance. In its compliance monitoring activities, the inspectorate focuses in particular on recidivists and on companies that deliberately do not comply with the regulations. The inspectorate is highly competent and performs well. A team of experts and project managers support the labour inspectors in their daily work, and the effectiveness of supervision is strengthened through cooperation with other inspection services. While less government monitoring is needed where parties hold each other accountable for agreements and conduct effective horizontal monitoring, companies that abuse the trust offered by the Government incur substantial sanctions.
28. The Government asserts that the evaluation of the revised Working Conditions Act and the new OSH policy of 2007 shows favourable results and developments; the number of fatal and serious accidents has been decreasing since 2008 and the rate of occupational injuries involving absence from work (3.3 per cent of employees) has been stable since 2005.

## **2. *Reply to the specific allegations of the trade unions***

29. With regard to the alleged non-observance of Article 4 of Convention No. 81 and Article 7 of Convention No. 129, the Government indicates that in the Netherlands, the Minister of Social Affairs and Employment is the central authority. It asserts that the placement of all departments that deal with inspection under the direct supervision of the Inspector-General for Social Affairs and Employment facilitates the establishment and application of a single OSH policy and will improve uniformity of procedures and methods throughout these departments, as required by Article 4 of the Convention. Even though the Inspector-General is directly accountable to the Minister, the inspectorate can operate autonomously, for instance with regard to the establishment of strategic annual plans.
30. With regard to the alleged non-observance of Article 6 of Convention No. 81 and Article 8 of Convention No. 129, the Government emphasizes that labour inspectors are civil servants, independent of changes of government and of improper external influences, in accordance with the requirements of the Convention.
31. Concerning the alleged non-observance of Article 7(3) and Article 9 of Convention No. 81 and Article 9(3) and Article 11 of Convention No. 129, the Government indicates that all labour inspectors receive extensive training both before taking up service and in the course of their duties, which is why they have expertise in the main areas and are able to exercise their functions properly. Where more technical expertise is needed (in the areas of medicine, engineering, electricity and chemistry, etc.), external experts are engaged or the expertise from independent research institutes is used, which is not contrary to the requirements of the Convention. Furthermore, there are other inspectorates dealing with OSH aspects of specific technical areas (for example medicine).
32. With regard to the alleged non-observance of Articles 10 and 16 of Convention No. 81 and Article 14 of Convention No. 129, the Government asserts that there are no fixed standards with regard to the number of labour inspectors and labour inspections and emphasizes, with reference to paragraph 174 of the 2006 General Survey on labour inspection, that they need to be sufficient in numbers to secure the effective discharge of the duties of the labour inspectorate, which can give rise to a different calculation in every member State. The Government further explains that this system consists of an effective OSH system based on mandatory legal measures, an important role for the social partners, self-regulation where possible and focused monitoring as well as strict enforcement where necessary. This

enables less intensive inspections in many sectors and more intense inspections in sectors where risks are relatively high, with an obvious impact on the size of the inspectorate. Research shows that the Dutch system functions effectively. The Netherlands performs better than average among European countries in the field of OSH.

33. In relation to the alleged non-observance of Article 11 of Convention No. 81 and Article 15 of Convention No. 129, the Government argues that one of the objectives of Article 11 of the Convention is the accessibility of labour inspectorates. As the inspectorate now guarantees accessibility through the internet, email, telephone and post, the disappearance of some district and regional offices and the centralization of the system are not contrary to the Convention.
34. With regard to the alleged non-observance of Article 14 of Convention No. 81 and Article 19 of Convention No. 129, the Government indicates that the Netherlands does not have a separate statutory insurance for occupational accidents or disease. There is always compensation for loss of income due to disease or accident, irrespective of the cause of the disease or accident. Therefore it is sufficient if the OSH services of all companies notify the Netherlands Centre for Occupational Diseases (NCvB) of occupational injuries and illnesses. Data privacy rules prohibit medical information from being sent to the inspectorate.
35. Concerning the alleged non-observance of Articles 4 and 9 of Convention No. 155, the Government indicates that the effective OSH system, with its obligatory legal measures, the important role played by the social partners and self-regulation, its focused monitoring system and strict enforcement, is based on a coherent national policy, which is presented to Parliament every year and secured by an effective inspection system.

### **C. The Government's reply to the request for additional information**

36. The Government, in its response of 12 June 2014, provides the additional information requested by the Committee as regards: (i) the Government's OSH policy and its sector-based approach to supervision; (ii) its manner of ensuring the effective functioning in the light of the reduced number of labour inspectors and labour inspections; (iii) the operation in practice of the system of *Arbodiensten* (external OSH services); (iv) information on the initial and continuous training of labour inspectors; and (v) the functioning of the system for the reporting of industrial accidents and cases of occupational diseases and their notification to the labour inspectorate. The Government states that it is important to understand the inspection system and to see the statistical data provided in the context of the labour inspectorate's policy and approach. It adds that fewer inspections do not lead to a decrease in the quality of enforcement or in compliance with laws and regulations, but are a consequence of the efficient deployment of inspection capacity. In addition to common inspections, the inspectorate uses various other intervention options aimed at achieving compliance.

#### **1. Further explanations of the Government's OSH policy and its sector-based approach to supervision**

37. *Risk-based approach.* In the context of the Dutch working conditions policy with shared responsibility of the Government and the social partners, the inspectorate invests in the effective deployment of inspection capacity for notorious offenders and vulnerable groups, part of which is based on risk assessment. Risk analyses are based on many different

sources, including external resources (research institutes, etc.) and resources from the inspectorate or other inspection services (reports, interviews, data on accidents and compliance). Multi-annual programmes are established on this basis and implemented by risk theme or sector. For its 2015–18 multi-annual programme, inspection will focus, among others, on themes such as psychosocial workload, hazardous substances, and exceeding working hours.

38. While carrying out inspections is and remains the inspectorate's most important intervention option, other types of intervention are also being examined to establish the most suitable for the achievement of the goals. These could include so-called "compliance communication" (for example media campaigns, exerting pressure through networks and the publication of inspection data).
39. As a last step in risk assessment, the specific companies to be inspected are assessed on the basis of risk indicators (such as limitations on employees' responsibility for healthy and safe working conditions, a high level of sickness, and strong competition between enterprises, potentially inciting non-compliance).
40. The Government indicates that the inspectorate is also using impact assessments, which enable it to make increasingly accurate programme choices, by determining the level of compliance within a certain target group, before and after action by the inspectorate. In addition, to maintain an overview of the situation regarding working conditions to avoid trends and developments remaining out of the inspectorate's scope due to the targeted approach to work, the inspectorate carries out a biennial assessment of working conditions, based on stocktaking data collected during visits to 2,800 randomly selected businesses. The results of this assessment form the key input for the inspectorate-wide risk analysis and for the inspectorate's programme.
41. *Reactive monitoring.* In addition to risk-based monitoring, the Government affirms that the inspectorate also looks at complaints and messages related to working conditions received from trade unions, employers, employee representatives and employees' councils. Complaints and messages concerning serious violations are of course also investigated.
42. *Psychosocial workload.* The Government indicates that the Ministry of Social Affairs and Employment aims to promote discussions between employers and workers on psychosocial work stress, including through the inclusion of relevant agreements in OSH catalogues. At present, the inspectorate is also taking measures to actively enforce the rules in the health-care, transport and logistics, education and sheltered employment sectors.
43. *OSH catalogues.* According to the Government, OSH catalogues set out the methods and solutions (for example techniques, practical solutions and manuals) that employers and workers have agreed on in order to meet the legal target requirements. At present, OSH catalogues have been produced in around 160 industries/sectors, thereby covering 4.3 million (54 per cent of jobs). The inspectorate verifies that the OSH catalogues drawn up by the social partners meet a number of formal requirements and comply with the target requirements. They form the reference framework for enforcement by the inspectorate.
44. *Supervision of risk assessment and evaluation.* The Government states that, under the Working Conditions Act, employers are required to draw up a risk assessment and evaluation identifying the OSH risks in their company, and a corresponding action plan, indicating the measures needed to eliminate or minimize those risks. For this purpose, they may engage the help of an OSH service, use their own OSH coordinator(s) or enlist (an) OSH officer(s). A certified OSH expert will evaluate the risk assessment and evaluation and corresponding action plan. Employers with fewer than 25 employees are exempt from

their risk assessment and evaluation being evaluated by an OSH expert. The employers may perform this task themselves on the condition that a recognized risk assessment and evaluation instrument from the relevant industry is used for this purpose. The Government indicates that the tailor-made digital tools for risk assessment are simple and enable companies, especially SMEs, to formulate and execute their risk assessments autonomously.

45. The risk assessment and evaluation and action plan are evaluated by labour inspectors during inspections. If the employer is unable to provide a risk assessment and evaluation and action plan, the inspector will issue a written warning or compliance order within a specific time frame. If the employer does not comply within the set time frame, an administrative fine is issued. The fine becomes increasingly higher in the event of recidivism and finally results in an official report, which could lead to criminal prosecution.
46. *Regulations in which sanctions are established.* The Government refers to the sanctions provided in the Working Conditions Act, the Working Conditions Decree, the Working Hours Act, the Minimum Wage and Minimum Holiday Act and the Nuclear Energy Act, including administrative fines, payment reports and, where applicable, criminal liability.

## **2. Manner in which the Government ensures the effective functioning of the labour inspection system in light of the reduced number of labour inspectors and labour inspections**

47. *Organizational structure of the labour inspectorate.* Concerning the organizational structure of the labour inspectorate, the Government refers to the functions of the seven departments under the authority of the Inspectorate for Social Affairs and Employment. In this regard, the Government indicates that the functions of the WCD, the MHCD and the LMRFD encompass the areas of OSH, working hours and wages, that is to say functions within the meaning of Convention No. 81. It further indicates that the SIOD is, in addition to other tasks, also entrusted with tasks relating to the Convention, whereas the IWI does not assume such tasks. The Inspectorate is gradually working towards a situation of cooperation between these operational directorates. The Government adds that the APSD is responsible for strategic planning and the programming of monitoring and investigation activities, risk analyses, impact measurement, and that the I&I department is responsible for support and management tasks. In addition, there are other inspectors in other inspection departments entrusted with controlling working conditions and working hours, that is to say with functions within the meaning of the Convention, such as the Human Environment and Transport Inspectorate, the State Supervision of Mines and the Food and Consumer Product Safety Authority.
48. *Number of labour inspectors.* The Government provides statistics for the period 2005–13, according to which the number of labour inspectors in this period decreased from 478 to 439. The Government clarifies in this regard that only those working within the WCD, the MHCD and the LMRFD have been taken into account, without counting other inspectors exercising supervisory tasks within the meaning of Convention No. 81, as a breakdown into different task areas is not possible.
49. *Number of labour inspections.* The Committee further notes that during the same period (2005–13), the number of labour inspections decreased from 39,610 to 23,321. It also provides statistics for the period 2007–12, according to which the number of employees in this period increased from 6,861,000 to 7,143,000, and the number of employers liable to inspection decreased from 365,700 to 328,600.

- 50. Penalties imposed.** The Government also provides statistics concerning the number of fines imposed, which have decreased (from 4,769 in 2005 to 3,793 in 2013), while the total amount of the fines imposed has increased (from €20.2 to €45.5 million). The Government also provides statistical information on the appeals made by employers against administrative sanctions. The Committee further notes the statistics provided concerning the number of industrial accidents and cases of occupational diseases between 2007 and 2012, with the number of industrial accidents (resulting in injury and more than three days' leave) having decreased from 183,100 to 165,400, and the number of cases of occupational diseases having increased from 5,973 to 6,451.
- 51.** The Government emphasizes that the statistics show that the performance of risk-based inspections and the use of other intervention options have made it possible to reduce the number of inspections in standard-compliant companies and to focus on inspections in workplaces where suspected non-compliance is the greatest. Since more violations are established during these inspections and they often concern more complex matters, the inspections take more time. Despite the decrease in the number of inspections, the number of interventions (13,327 in 2005 and 14,009 in 2013) has remained at a similar level (the Government disaggregates the relevant statistics by preventive measures and sanctions). Inspectors have a wide range of possible interventions that they can use to achieve compliance (including preventive measures, such as issuing a warning, or compliance and suspension order, and sanctions in the form of a penalty or an official report).

### **3. The operation of the system of Arbodiensten (OSH services)**

- 52.** The Government indicates that the Working Conditions Act provides that employers must seek support from one or more expert employees within the company (so-called "prevention employees") for the prevention of risks and the protection of workers. They may also establish an internal OSH service for the company, or may choose to entrust this task to an external, certified OSH service. Where employers choose to organize this care internally, they must seek support from experts, including an occupational physician.
- 53.** According to the Government, an OSH service is a legally certified, private and independent organization that provides services related to working conditions. In order to be able to operate, an OSH service requires a certificate that is formally issued by the Ministry, or a certifying body appointed by the Ministry (such certificates are issued for a certain amount of time and can always be withdrawn), which assesses the expertise, organization and quality of the OSH service. Each OSH service must have at least one expert with academic qualifications in the core disciplines of occupational medicine, occupational hygiene, safety and occupational and organizational psychology. The tasks of an OSH service as set out in the Working Conditions Act are: to assess the risk assessment and evaluation; to provide absenteeism guidance to employees; to carry out pre-employment medical examinations and regular occupational health examinations; and assist, advise and support employers and employees in complying with their obligations in relation to OSH. There is a nationwide availability of OSH services in the Netherlands. The latest figures show that 93 per cent of employees are covered by contractual OSH services. The average cost for engaging an OSH service is about €110–€139 per employee, per year.
- 54.** If the inspectorate finds that OSH expert assistance within a company is not organized or provided in the correct manner, or that cooperation between the prevention officer and other experts involved in the OSH care is inadequate, it may issue the employer with a compliance order.

55. Inspectors and external experts (belonging to an OSH service or otherwise) operate independently of each other. The independence of the external expert is safeguarded by the system of certification.

#### **4. Information on the initial and continuous training of labour inspectors**

56. The Government provides information on the initial training programme for new labour inspectors, which takes one-and-a-half to two years and is generally followed by a group of 12 labour inspectors. To make sure that inspectors have up-to-date knowledge of relevant inspection issues, there are refresher training programmes every five years. Knowledge about technological and labour market developments is kept up to date through OSH information days and meetings with colleagues, working conditions refresher courses and meetings with specialized inspectors who have a profound knowledge of different subjects, for example OSH, risk assessments and evaluations, dangerous substances and major hazard control. In addition to inspectors, the inspectorate employs specialists with an in-depth knowledge of different areas related to working conditions and terms of employment, such as physical strain, certification, biological agents, work equipment and working hours. These specialists support the inspectors in the event of specific questions.

#### **5. The functioning of the system for the reporting of industrial accidents and cases of occupational diseases and their notification to the labour inspectorate**

57. The Government provides explanations concerning the functioning of the system for the reporting of industrial accidents and cases of occupational diseases. It indicates that, as opposed to industrial accidents, there is no obligation to report cases of occupational diseases to the inspectorate. However, the Working Conditions Act provides that an expert (an independent occupational physician or an OSH service) must report cases involving occupational diseases to the Netherlands Centre for Occupational diseases (NCvB). Every two years, the NCvB publishes a report containing statistical information on the incidence of occupational diseases and their dissemination within sectors and occupations, on the basis of the reported information.
58. The inspectorate has the opportunity to acquire more in-depth information on risk factors related to occupational diseases in specific sectors from the NCvB, for example by asking specific questions or through meetings between the inspectorate and the NCvB. The inspectorate uses this information as one of its resources for the performance of risk analyses, in order to prioritize and prepare inspections.
59. The Government also mentions that it has asked the Social and Economic Council (an advisory body on socio-economic matters, consisting of representatives of employers, employees and the Government) for advice on certain perceived bottlenecks, such as the diagnosis and alleged under-reporting of occupational diseases. In addition, the inspectorate has started an inquiry among occupational physicians to gather specific information on the reporting of occupational diseases. Once the advice of the Social and Economic Council and the results of the inquiry have been received, the Minister of Social Affairs and Employment will consider the policy implications.

**D. Observations of the complainant organizations in reply to the additional information provided by the Government**

- 60.** In its communications dated 25 and 26 August 2014, in reply to the additional information provided by the Government, the trade unions observe that the Government mainly confines itself to a description of the working methods of the inspectorate and its efforts to make the best use of the limited resources available, but do not directly address the concerns raised by the trade unions. They indicate that they do not intend to address each of these methods (which however does not imply that they agree with all of the methods used), and that they focus on what is to them the core issue: the limited and still decreasing capacity of the inspectorate, leading to insufficient enforcement and decreasing compliance. With reference to recent data and conclusions by the Social and Economic Council, the inspectorate and research institutions, the complainant organizations emphasize that: the number of accidents remains high; more and more workers are suffering stress- and workload-related problems; and the reporting and prevention of occupational diseases is in a shameful state. They once again state that the inspectorate not only focuses on high-risk companies, leaving the others under-inspected, but limits itself to previously announced visits based on the argument that they are more time-efficient.
- 61.** The trade unions deplore the fact that the system, in which actors other than the Government can contribute to the development, implementation and even enforcement of policies (“self-inspection”, “referral of cases of non-compliance to the court”), has several problems. These problems concern: (i) the imbalance of power between the actors; (ii) the focus on short-term policy and investments; and (iii) supervision issues. In regard to the latter, the trade unions allege that: the wording of target requirements often is not sufficiently clear and precise; and the absence of a clear and strict framework of standards hinders effective enforcement. The combination of these three problems, together with a lack of inspection pressure, leads to non-compliance and inactivity to the detriment of workers.
- 62.** *Risk-based approach, supervision of risk assessments and evaluations, OSH services.* The complainant organizations mention that in a report of the inspectorate published in September 2013, the inspectorate concludes that since 2006 the focus on prevention within companies is declining. Less than half of the Dutch enterprises carry out a risk assessment and fewer than half have a prevention employee, both of which are obligations prescribed by law. In 2013, 69 per cent of the Dutch enterprises had a contract with an OSH service, which is a legal obligation, compared with 98 per cent in 2003. In particular, small enterprises (with fewer than 20 workers) do not use OSH services. Workers from these enterprises have no access to an occupational physician and there is no government supervision.
- 63.** *Psychosocial workload.* The trade unions indicate that according to recent research, 28 per cent of workers in the Netherlands are experiencing a high (23 per cent) or much too high (5 per cent) workload. Stress-related absenteeism in the first half of 2014 was eight times higher than in 2009.
- 64.** *Regulations in which sanctions are established.* The trade unions deplore that many of the provisions of the Working Conditions Act and the Working Hours Act have to be enforced by the workers or their representatives, that is to say they have to be enforced under civil law. This means that there are no sanctions.
- 65.** *Industrial accidents.* The trade unions indicate that the number of industrial accidents remains high. According to recent statistics published by the Dutch Office for Statistics in



2012, 478,000 people (7 per cent of all employed persons) were involved in workplace accidents resulting in physical injuries or mental damage.

66. *Occupational diseases.* The complainant organizations refer to a recent study, commissioned by the inspectorate, which shows that no more than 30 per cent of all occupational physicians in the Netherlands report occupational diseases, with 49 per cent of them even declaring that they never take any preventive action when reporting an occupational disease to the NCvB.

### III. The Committee's conclusions

67. The Committee has based its conclusions on its review of the complainant organizations' allegations, the observations and additional information transmitted by the Government and the observations of the trade union organizations in reply thereto. Account has also been taken of the information communicated by the Government in the framework of its reports on the application of ratified Conventions under article 22 of the ILO Constitution (article 22 reports), and the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

#### A. Preliminary remarks

68. The Committee notes that the complainant organizations claim that the Dutch labour inspection system is not in compliance with the requirements under Articles 4, 6, 7(3), 9, 10, 11, 14 and 16 of Convention No. 81; Articles 7, 8, 9(3), 11, 14, 15, and 19 of Convention No. 129; and Articles 4 and 9 of Convention No. 155.

#### 1. Conventions Nos 81 and 129

69. The Committee wishes to emphasize that Conventions Nos 81 and 129 require labour inspection systems to be effective with regard to the functions provided for in Article 3(1)(a) and (b) of Convention No. 81 and Article 6(1)(a) and (b) of Convention No. 129. These Articles require compliance with the legal provisions relating to conditions of work and the protection of workers, in so far as such provisions are enforceable by labour inspectors.
70. The Committee notes from the information provided by the Government and the trade unions that under the 2007 Working Conditions Act and the Dutch OSH policy, a high level of responsibility for compliance with the legal obligations has been entrusted to the social partners in the different sectors – in particular, the establishment of so-called *OSH catalogues* – and to employers – in particular, the conduct of risk-assessments, for which employers are required to seek the assistance of OSH experts and services. Labour inspections are focused on high-risk sectors and high-risk workplaces (which are determined on the basis of the assessment of the respective data and certain other indicators).
71. While the Committee is not in a position to analyse in detail the working methods used in the Dutch labour inspection system, its role is to determine whether the system is in conformity with the provisions of the labour inspection Conventions, which are intended to ensure the effective functioning of national labour inspection systems.
72. With regard to the content of the allegations made by the complainant organizations, and with a view to evaluate the effectiveness of the functioning of the Dutch labour inspection

system, the Committee will assess the compliance with the following requirements of Conventions Nos 81 and 129: the inspection system shall be placed under the supervision and control of a central authority (Article 4 of Convention No. 81 and Article 7 of Convention No. 129) and appropriate arrangements shall be promoted by the competent authority to ensure effective cooperation with other government services and public or private entities engaged in similar activities (Article 5(a) of Convention No. 81 and Article 12 of Convention No. 129), the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences (Article 6 of Convention No. 81 and Article 8 of Convention No. 129), labour inspector shall be adequately trained for the performance of their duties (Article 7 of Convention No. 81 and Article 9 of Convention No. 129), each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection (Article 9 of Convention No. 81 and Article 11 of Convention No. 129), the number of labour inspectors and the number of labour inspections must be sufficient to secure the effective discharge of their duties (Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129), the financial and material means of the inspection services must be adequate, and any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties (Articles 3(2) and 11 of Convention No. 81 and Articles 6(3) and 15 of Convention No. 129), there shall be a functioning system for the notification of industrial accidents and cases of occupational diseases to the inspectorate (Article 14 of Convention No. 81 and Article 19 of Convention No. 129), labour inspectors shall be empowered to carry out inspections without previous notice (Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129) and mechanisms shall be in place to ensure the absolute confidentiality of complaints made to the labour inspectorate (Article 15(c) of Convention No. 81 and Article 20(c) of Convention No. 129).

- 73.** For the purpose of simplification concerning the issues raised with regard to labour inspection, the Committee will focus its comments on the Articles of Convention No. 81, on the understanding that the corresponding Articles of Convention No. 129 are also covered by the same considerations.

## **2. *Convention No. 155***

- 74.** Concerning the alleged violation of Articles 4 and 9 of Convention No. 155, the Committee is called upon to determine whether there is an adequate and coherent national policy and an adequate and appropriate system of inspection. In this regard, the Committee will also take into consideration Article 7 of this Convention.

**B. Requirements under Conventions  
Nos 81 and 129**

**1. *Placement of the labour inspection system under the supervision and control of a central authority (Article 4 of the Convention) and arrangements for effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities (Article 5(a))***

**75.** The Committee recalls that Article 4(1) of Convention No. 81<sup>3</sup> provides that:

So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.

**76.** It further recalls that Article 5(a) of Convention No. 81<sup>4</sup> provides that:

The competent authority shall make appropriate arrangements to promote effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities.

(1) Placement of the labour inspection under the supervision and control of a central authority and cooperation with other government services exercising labour inspection functions

**77.** The Committee notes the view of the trade unions that, following successive reorganizations, the labour inspectorate no longer exists. It understands from the indications made by the trade unions that each department at the Ministry of Social Affairs and Employment dealing with labour inspection has its own mandate, supervisory tasks and organizational decrees. Furthermore, the complainant organizations assert that the broad distribution of labour inspection functions both within the Ministry of Social Affairs and Employment and among inspection services in other ministries result in such diverse approaches to labour inspection that the uniformity of methods of inspection and procedures are affected. They add, with reference to the incidence of a major fire in a company in 2012 that joint inspections and enforcement in collaboration with these inspection services have serious shortcomings.

**78.** The Committee notes, on the other hand, the Government's indications that the Minister of Social Affairs and Employment is the central authority and that the placement of the different departments of the Ministry of Social Affairs and Employment dealing with inspection under the direct supervision of the Inspector-General for Social Affairs and Employment facilitates the establishment and application of a single OSH policy and will improve uniformity in the procedures and methods throughout the different departments of the Inspectorate-General, as required by Article 4 of the Convention. It notes that the Government adds that even though the Inspector-General is directly accountable to the Minister, the inspectorate can operate autonomously, for instance with regard to the establishment of strategic annual plans. With regard to the uniformity of methods of

<sup>3</sup> Article 7(1) of Convention No. 129.

<sup>4</sup> Article 12 of Convention No. 129.

inspection within the Ministry of Social Affairs and Employment, the Government states that the inspectorate is gradually working towards a situation in which cooperation between its operational directorates is established. The Committee also notes that the Government indicates that the effectiveness of supervision is strengthened through cooperation with other inspection services, but that it does not directly reply to the concerns raised by the trade unions concerning cooperation, joint inspections and enforcement in collaboration with these inspection services outside the Ministry of Social Affairs and Employment.

- 79.** The Committee recalls the indications made by the CEACR in paragraph 109 of its 1985 General Survey on labour inspection that the attachment of inspection systems to a central authority or body facilitates the establishment and application of a uniform inspection policy for the whole of the national territory.<sup>5</sup>
- 80.** The Committee further notes that, as it can be seen from the preparatory work leading to the adoption of the Convention that there was large consensus among all countries that the international regulations should provide that Members should take appropriate measures to regulate the cooperation of the inspection services with other government services, or with public or private institutions engaging in similar inspection work, with a view to preventing overlapping and ensuring uniformity in the activities of all the bodies concerned.<sup>6</sup>
- 81.** It also notes the relevant indications in Paragraph 8 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), that the central labour inspection authority should give labour inspectors ... guidelines so as to ensure that they perform their duties throughout the country in a uniform manner.
- 82.** The Committee considers that the Dutch labour inspection system is placed under the supervision and control of a central authority, namely the Minister of Social Affairs and Employment. While it considers that the establishment of strategic annual plans by the Inspector-General for Social Affairs and Employment is an important factor with regard to achieving uniformity, it also considers that it is not sufficiently clear from the Government's indications how far the operational departments of the labour inspectorate are subject to directives or guidelines to ensure the uniformity of inspection procedures. The Committee finally considers that the Government's recognition that efforts need to be made to improve cooperation between the operational directorates of the inspectorate, would suggest that uniformity of inspection procedures and cooperation of the operational directorates of the inspectorate (including the inspection services outside the Ministry of Social Affairs and Employment) require improvement.
- 83. The Committee considers that the requirement of Article 4 of the Convention has been complied with, as the labour inspection system is duly placed under the supervision and control of a central labour inspection authority.**

<sup>5</sup> ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labour Conference, 71st Session, Geneva, 1985 (hereinafter the "1985 General Survey on labour inspection").

<sup>6</sup> Report IV, *Organisation of labour inspection in industrial and commercial undertakings*, International Labour Conference, 30th Session, Geneva, 1947, pp. 24–35.

## (2) Cooperation with private OSH services

84. Concerning cooperation with private OSH services, the Committee notes the trade unions' indications that no or little information is exchanged with outside private experts. It further notes the indications by the unions that, according to the conclusions of the Senior Labour Inspectors Committee (SLIC) in a 2008 report on the evaluation of the Dutch labour inspection system, the separation of OSH services from the labour inspectorate means that information which might be obtained from these services (for example, on emerging risks or trends in particular health and safety issues) is not available to the labour inspectorate.
85. It notes the Government's confirmation that inspectors and external experts (belonging to an OSH service or otherwise) operate independently of each other. It also notes the Government's indications that assessments by the inspectorate to determine high-risk sectors are based on many different sources, including external resources (research institutes, etc.) and those of the inspectorate or other inspection services (reports, interviews, data on accidents and compliance). The Committee notes that these assessments do not appear to be based on the information held by private OSH services, which cover 93 per cent of employees, according to the Government's indications.
86. The Committee wishes to refer to the final report of the Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives held in Geneva in December 2013 where the experts emphasized the need for cooperation of labour inspectorates with private institutions engaged in similar activities.<sup>7</sup>
87. The Committee considers that, in view of the task of OSH services to carry out risk assessments and evaluations in enterprises, these services are bound to have at their disposal a wide range of data and information on emerging risks in the area of OSH. It further considers that this information should be made available to the labour inspection services to enable them to address recurrent OSH issues, and determine compliance by employers with their legal obligations concerning risk assessments.
- 88. The Committee recommends, in accordance with Article 5(a) of the Convention, that the Government promotes the effective cooperation between labour inspection and private OSH services, in particular for the exchange of relevant data.**

## 2. ***Status and conditions of service of labour inspectors (Article 6 of Convention No. 81)***

89. The Committee recalls that Article 6 of Convention No. 81<sup>8</sup> provides that:

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

<sup>7</sup> ILO: Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives (Geneva 10–12 December), *Final report* (MEPCI/2013/7). In the summary of discussions (p. 23), the report indicates that it should be noted that ILO standards define labour inspection as a public function. The experts also recognize the existence of private institutions engaged in similar activities and call upon the competent authorities to promote effective cooperation with those institutions.

<sup>8</sup> Article 8 of Convention No. 129.

## (1) Status and conditions of service of labour inspectors

90. The Committee notes the trade union's indications that civil servants, including labour inspectors, have to be mobile, change positions relatively often and are deployed where management thinks they will be most productive. On the other hand, the Committee notes the Government's indications that labour inspectors are civil servants, independent of changes of government and of improper external influences, in accordance with the requirements of the Convention.

91. The Committee notes that there is no disagreement concerning the status of labour inspectors as civil servants as required by the Convention. Concerning the conditions of service of labour inspectors, the Committee notes that the trade unions do not allege that labour inspectors receive insufficient wages or lack career prospects. The Committee considers that if labour inspectors have to change positions within the labour inspection services this would not in itself make labour inspectors vulnerable to changes of government or other improper external influence. However, such change should not occur so frequently as to undermine the capacity of labour inspectors to perform their functions effectively.

92. **The Committee considers that there is no violation of Article 6 of the Convention.**

3. ***Qualifications and adequate training of labour inspectors (Article 7(3) of Convention No. 81) and the association of duly qualified technical experts and specialists in the work of inspection (Article 9 of Convention No. 81)***

93. The Committee recalls that Article 7(3) of Convention No. 81<sup>9</sup> provides that:

Labour inspectors shall be adequately trained for the performance of their duties.

94. It further recalls that Article 9 of Convention No. 81<sup>10</sup> provides that:

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such a manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

95. The Committee notes the claim by the trade unions that technological developments and many changes in the legislation require additional and more intensive training for labour inspectors. They explain that the limited capacity of labour inspectors and high pressure of work result in insufficient time to maintain the necessary levels of knowledge to keep up with technological and labour market developments, including forms of psychosocial stress and the danger of chemical substances and nanoparticles in the workplace. Due to the high workload, no natural moments remain for knowledge transfer between colleagues, and inspectors are expected to look for information themselves, but lack the time and knowledge to do so. The trade unions also indicate that the successive reorganizations of

<sup>9</sup> Article 9 of Convention No. 129.

<sup>10</sup> Article 11 of Convention No. 129.

the labour inspectorate in the context of a shift in the emphasis from technical expertise towards management skills, with mobility as the pivotal theme, has had the impact of preventing the technical specialization of labour inspectors. They indicate that a shift of this nature goes hand in hand with an increasing need to bring in external expertise, and that there is a real danger of not being able to anticipate new developments and technologies.

- 96.** The Committee further notes the indications of the complainant organizations that the functional expertise provided by experts and technicians with recognized competence in the areas of medicine, mechanical and civil engineering, electricity and chemistry, which is used to guarantee compliance with legal OSH regulations, is no longer present within the labour inspectorate. Instead, (semi-)external experts are used, that is to say project leaders from different departments within the Inspectorate for Social Affairs and Employment, who prepare projects and provide tools, but do not participate in actual inspections. Private experts hired by individual employers are often not independent, which can lead to incorrect conclusions, for example when investigating accidents.
- 97.** The Committee notes that the Government, on the other hand, indicates that all labour inspectors receive extensive training both before taking up service and in the course of their duties through refresher training programmes every five years, which is why they have expertise in the main areas and are able to exercise their functions properly. Knowledge about technical and labour market developments is kept up to date through OSH information days and meetings with colleagues, working conditions refresher courses and meetings with specialized inspectors who have a profound knowledge of different subjects, for example OSH, risk assessments and evaluations, dangerous substances and major hazard control. In this regard, the Committee also notes the information contained in the Government's latest article 22 report on the application of Convention No. 81 that labour inspectors are not provided with special education or training on nanotechnology risks, due to the fact that scientific understanding in this area is not yet sufficiently developed.
- 98.** According to the Government, where more technical expertise is needed (in the areas of occupational medicine, engineering, electricity and chemistry, etc.), external experts are engaged or the expertise from independent research institutes is used. Furthermore, there are other inspectorates dealing with OSH aspects in specific technical areas (e.g. medicine). In addition to inspectors, the inspectorate employs specialists with an in-depth knowledge of different areas relating to working conditions and terms of employment, such as physical strain, certification, biological agents, work equipment and working hours. These specialists support the inspectors in the event of specific questions.

(1) **Qualifications and adequate training of labour inspectors**

- 99.** Concerning the training of labour inspectors in the course of their duties, the Committee wishes to refer to the indications made by the CEACR in its 1985 General Survey on labour inspection,<sup>11</sup> according to which, whatever the value of the training given to inspectors on their entry into service, it is advisable that it should be periodically supplemented, not only in order to refresh their knowledge but also to keep them abreast of new technologies.

<sup>11</sup> See 1985 General Survey on labour inspection, para. 155.

- 100.** It further wishes to recall from the indications made by the CEACR in its 2006 General Survey on labour inspection<sup>12</sup> that performance of the various duties involved in labour inspection requires a reasonable familiarity with various aspects of the law, economics and social sciences, and of the industries in which inspectors conduct inspections and give advice and information to employers and workers. Developments in technology and methods of work in all sectors of the economy have been accompanied by a constant growth in knowledge of the impact of these factors on occupational health and safety and on productivity. The importance of advanced training for inspectors in the course of their employment has become obvious.
- 101.** The Committee notes that while labour inspectors receive initial training as well as refresher training every five years, and have knowledge in the main areas to enable them to exercise their functions, it appears that they do not receive training in more technical areas, and that the Government relies on technical specialists to support the inspectorate in relation to specific technical issues. In this regard, it notes that some knowledge on dangerous substances appears to be transferred to labour inspectors during meetings with specialized inspectors, but that training on nanoparticles is not provided to them. It further notes that the Government does not address the alleged lack of training of labour inspectors concerning psychosocial stress.
- 102. The Committee considers that the initial and continuous training of labour inspectors appears sufficient to enable them to exercise their main tasks and address common labour inspection issues in the workplace. Where specialized technical tasks are assigned, labour inspectors should receive additional training.**

(2) Collaboration with specialists and technical advisers

- 103.** Concerning collaboration with specialists and technical advisers, the Committee wishes to refer to the comments made by the CEACR in the 1985 General Survey on labour inspection,<sup>13</sup> where the CEACR indicated that “the practice of States, in this matter, reflects two main approaches: a variety of technical specialists may be included in the establishment of the labour inspection services concerned or, where necessary, the general inspector may call on a technical expert outside the inspection staff, who may sometimes have the same duties and powers as the inspector within their terms of reference. The two approaches may also be combined. ... (T)he number of technical experts available, the range of their specialisations and the organisation of their work vary considerably from country to country and have to be assessed in the light of the circumstances of each case. ... The Committee wishes to point out the importance of the optimal management of technical specialisations required for, and available to, labour inspection services as a key factor in determining their effectiveness. It is not only a question of numbers and professional specifications: it is also a question of being able to cope with the realities of industry at a given place and time and even more of whether staff are utilised in the manner which in given circumstances is most likely to result in effective protection and advice. ...”
- 104.** The Committee considers that the organization of the collaboration with technical experts (the employment by the inspectorate of specialists in certain areas, the engagement of external experts with specific expertise and the cooperation with other inspectorates dealing with specific technical areas) is in conformity with the flexibility provided for by Article 9 of the Convention.

<sup>12</sup> See 2006 General Survey on labour inspection, para. 187.

<sup>13</sup> See 1985 General Survey on labour inspection, para. 219 et seq.



**105.** However, the Committee also understands from the indications made by the parties that the specialists employed at the inspectorate do not participate in actual inspections. Concerning joint inspections with other technical inspection services, the Committee wishes to refer to the above considerations under Articles 4 and 5(a) on the need for improved cooperation with these inspection services for the effective enforcement of the relevant provisions.

**106.** **The Committee considers that there is no violation of Article 9 of the Convention, as duly qualified technical experts and specialists are associated in the work of the inspection.**

#### **4. *Number of labour inspectors and of labour inspections (Articles 10 and 16 of the Convention)***

**107.** The Committee recalls that Article 10 of Convention No. 81<sup>14</sup> provides that:

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular –
  - (i) the number, nature, size and situation of the workplaces liable to inspection;
  - (ii) the number and classes of workers employed in such workplaces; and
  - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

**108.** It further recalls that Article 16 of Convention No. 81<sup>15</sup> provides that:

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

- (a) **Number of labour inspectors and frequency and thoroughness of labour inspections**

**109.** The Committee notes the allegations by the trade unions that the relatively low number of labour inspectors in relation to the number of employees makes it essentially impossible to ensure effective inspection. The trade unions, on the basis of the indications provided by the technical labour inspection services of the ILO,<sup>16</sup> indicate that the number of labour inspectors per employee is approximately 28,356 and affirms that this number is far below the standard for industrial market economies of one labour inspector per 10,000 workers. In addition, the number of labour inspectors is expected to be reduced even further.

**110.** The Committee further notes the observations of the trade unions that the frequency of labour inspections is very low for enterprises and that pressure of work negatively affects

<sup>14</sup> Article 14 of Convention No. 129.

<sup>15</sup> Article 21 of Convention No. 129.

<sup>16</sup> See 2006 General Survey on labour inspection, para. 195 (footnote 19).

the quality of inspections. It notes the concern of the unions at the drop-in inspections due to the reduction in the number of priority sectors from 18 to 14 in 2012, resulting in 2,000 fewer inspections annually. Furthermore, it notes the indication by the complainant organizations that a large number of companies will never receive a visit from the labour inspectorate.

- 111.** The Committee notes that the Government, on the other hand, affirms that there are no fixed standards with regard to the number of labour inspectors and labour inspections and emphasizes, with reference to the 2006 General Survey on labour inspection,<sup>17</sup> that labour inspections need to be sufficient in number to secure the effective discharge of the duties of the labour inspectorate, which can lead to a different calculation in every member State. The Committee notes that the Government provides statistics for the period 2005–13, according to which the number of labour inspectors in this period decreased from 478 to 439. It also notes that during the period 2007–12, the number of employees increased from 6,861,000 to 7,143,000 (while the number of employers liable to inspection fell from 365,700 to 328,600).
- 112.** The Committee further notes the Government’s explanations that the labour inspection system functions effectively, and that the particularities of this system allow less intensive inspections to be made in many sectors and more intense inspections in sectors where risks are relatively high, with an obvious impact on the size of the inspectorate. The Committee notes that the Government provides statistics for the period 2005–13, according to which the number of annual labour inspections decreased from 39,610 to 23,321, that is to say almost by half.
- 113.** The Committee wishes to clarify in this regard that the Convention does not contain any requirement for a specific number of labour inspectors. The ratio of one inspector per 10,000 workers for industrial market economies is indicated as guidance and the main consideration to take into account by countries when determining the number of labour inspectors is whether they are sufficient to secure the effective discharge of the duties of the labour inspectorate.
- 114.** In this context, the Committee also wishes to refer to the indications made by the CEACR in its 2006 General Survey on labour inspection<sup>18</sup> that the manner in which Article 16 of Convention No. 81 and Article 21 of Convention No. 129 are applied in practice is the basic test of any labour inspection system. The CEACR adds that the information sent to the ILO, including reports from some industrialized countries, continues to point to difficulties preventing the labour inspectorate from achieving satisfactory coverage of the workplaces liable to inspection.
- 115.** In order to determine whether the number of labour inspectors and labour inspections in the Netherlands is sufficient, the Committee will proceed to consider whether their number is appropriate to achieve the objective set out in Articles 10 and 16 of Convention No. 81.

<sup>17</sup> See 2006 General Survey on labour inspection, para. 174.

<sup>18</sup> See 2006 General Survey on labour inspection, para. 256.

- (b) Objective of Articles 10 and 16: The effective discharge of the duties of the inspectorate and the effective application of the relevant legal provisions (compliance with the legal provisions)

- 116.** The Committee wishes to recall that the objective of Articles 10 and 16, based on a sufficient number of labour inspectors and an adequate frequency and thoroughness of inspections, is to secure the effective discharge of the duties of the inspectorate and the effective application of the relevant legal provisions.
- 117.** In light of the information provided, the Committee will assess whether the objective of compliance with the legal provisions relating to conditions of work and the protection of workers is achieved in all workplaces subject to inspection. In this regard, the Committee will proceed to assess: (1) the coverage of workplaces by labour inspection; (2) whether the introduction of alternative means of ensuring compliance justifies a reduction in the number of labour inspectors and labour inspections; and (3) the indicators concerning the effective functioning of the Dutch labour system as a whole.

**(1) Coverage of workplaces by labour inspection**

- 118.** The trade unions allege that the inspectorate only focuses on high-risk companies, leaving the others under-inspected. They also assert that there is no government supervision in small enterprises (with fewer than 20 workers). The limited and still decreasing capacity of the inspectorate is leading to insufficient enforcement, decreasing compliance and the inability of the labour inspectorate to discharge its functions fully. The trade unions argue that because the frequency of inspection is so low for companies, that only 1 per cent of all enterprises indicate “fear of the labour inspectorate” as the reason for complying with legislation on working conditions. Furthermore, it notes that the complainant organizations refer to indications made by workers and trade unionists that the labour inspectorate does not always carry out inspections when requested.
- 119.** The Committee notes the Government’s reply that fewer inspections do not lead to a fall in the quality of enforcement or in compliance with laws and regulations, but are rather a consequence of the efficient deployment of inspection capacity. The Government adds that research shows that the Dutch system functions effectively and performs better than average among European countries in the field of OSH. According to the Government, the more actively companies and social partners are encouraged to tackle OSH issues and are engaged in promoting compliance with the legislation, the fewer inspections need to be conducted, which often proves to be an incentive to comply with the regulations. In addition to risk-based monitoring, the Government affirms that the inspectorate also looks at complaints and messages related to working conditions received from trade unions, employers, employee representatives and employees’ councils. Complaints and messages concerning serious violations are also investigated. The Committee further notes the Government’s indications that substantial sanctions for non-compliance are an indispensable part of the Dutch OSH system. A new law gives the Government the scope to substantially increase penalties and sanctions in the event of non-compliance.
- 120.** The Committee notes that the Government does not contest that labour inspections mainly cover high-risk companies, and that workplaces that fall outside of this category are covered by a much lower level of inspection. It also notes that the Government does not respond to the allegations that there is no government supervision in small enterprises (with fewer than 20 workers). The Committee further notes that the Government is of the view that the labour inspection system functions effectively as a whole despite these

reductions and that it suggests that the introduction of alternative means of ensuring compliance justifies a reduction in the number of labour inspectors and labour inspections.

**(2) *Other mechanisms of ensuring compliance in workplaces not considered to be high-risk***

Brief overview of the Dutch labour inspection system as presented by the Government

**121.** The Committee notes the Government's indications that it is important to understand the Dutch OSH policy and sector-based approach to supervision, which includes an increased responsibility of the social partners and companies to tackle OSH issues. The Government explains that less government monitoring is needed, because the parties hold each other accountable for agreements and conduct effective horizontal monitoring.

**(a) *Responsibilities of the Government and the social partners***

**122.** The Committee notes that the Government indicates that while labour inspections have been limited to sectors with relatively high OSH risks (determined on the basis of a thorough assessments of relevant data), carrying out inspections is and remains the inspectorate's most important intervention option and employers that misuse the trust given by the Government may incur substantial sanctions, which have recently been substantially increased.

**123.** The Government explains that it has established a framework of rights, duties and goal-based regulations in national legislation. In the so-called *OSH catalogues*, the social partners agree on ways and methods to achieve healthy and safe working conditions in specific branches in order to comply with these goal-based regulations. Following approval by the inspectorate, OSH catalogues form the reference framework for enforcement by the inspectorate.

**(b) *Responsibilities of employers***

**– *Requirement to draw up risk assessments***

**124.** The Committee notes the indications made by the Government that employers are required to draw up a risk assessment identifying the OSH risks in their company and a corresponding action plan, for which they may engage the help of private OSH services, use their own OSH coordinator(s) or enlist (an) OSH officer(s), and which are subsequently evaluated by a certified OSH expert. The Committee also notes from the information contained in the Government's latest article 22 report on the application of Convention No. 155 that the risk assessment and action plan must be approved by workers' representatives. Where there are no workers' representatives, employers must consult workers.

**125.** The Committee further notes the indications of the Government that the risk assessments and actions plans drawn up by employers with fewer than 25 employees are exempt from the evaluation requirement in this regard, if they use a recognized instrument for this purpose. According to the Government, risk assessments and the corresponding action plans are subject to evaluation by labour inspectors during inspections, and employers can be sanctioned if they fail to fulfil their requirements in this regard.

– *Requirement to seek expert OSH assistance*

- 126.** The Committee notes that under the Working Conditions Act, employers must seek support from one or more (internal or external) OSH experts for the prevention of risks and the protection of workers. If the inspectorate discovers that OSH expert assistance within a company is not organized or provided in a correct manner, it may issue the employer with a compliance order.

Comments of the trade unions on the Dutch labour inspection system

- 127.** The Committee notes that the trade unions deplore that the system, in which actors other than the Government can contribute to the development, implementation and even enforcement of policies (“self-inspection”, “referral of cases of non-compliance to the courts”), has several problems, including the imbalance of power between the actors. It also asserts that the wording of target requirements is often not sufficiently clear and precise and that the absence of a clear and strict framework of standards hinders effective enforcement.
- 128.** The complainant organizations also refer to a report of the inspectorate published in September 2013, which concludes that since 2006 the focus on prevention within companies is declining. Less than half of Dutch enterprises have a risk assessment system and also less than half have a prevention employee, both of which are obligations under the law. They add that in 2013, 69 per cent of Dutch enterprises had a contract with an OSH service, which is a legal obligation, compared with 98 per cent in 2003. In particular, small enterprises (with fewer than 20 workers) do not use OSH services. Workers in such enterprises have no access to an occupational physician and there is no government supervision.

Considerations by the Committee

- 129.** *Preventive nature of the evaluation of risk assessments by OSH experts and services.* The Committee considers that the obligation of employers to carry out risk assessments and seek the assistance of OSH experts for this purpose are to be welcomed as measures to prevent OSH risks. It also considers that the evaluation of risk assessments by OSH services provides employers with the necessary expertise and knowledge to assist them in complying with their legal obligations in this regard. However, the Committee notes the indications of the trade unions that employers do not always comply with their obligations to take these preventive measures. The Committee further notes that there does not seem to be an effective mechanism for ensuring that employers comply with the recommendations resulting from risk assessments or the expert advice provided by internal or external OSH experts to eliminate or minimize risks, other than the horizontal monitoring by the social partners referred to by the Government.
- 130.** *Monitoring of legal obligations by the social partners.* The Committee considers that the Government does not fully explain how horizontal monitoring by the social partners can justify a reduction in the public labour inspection function. In view of the imbalance of powers between employers and workers, doubts would seem to be justified as to the effective enforcement of the rules laid down in OSH catalogues, the recommendations resulting from risk assessments and the advice provided by internal or external experts. Especially in workplaces where trade union representation is low, such as in SMEs, workers are unlikely to be in a sufficiently strong position to take over responsibility from the labour inspectorate for enforcing the legal obligations. While trade unions may contact the labour inspectorate in the event of the failure of employers to comply with their obligations, the indications of the parties are contradictory as to whether the labour

inspectorate always reacts and carries out an inspection visit when a complaint is made. In this regard, the Committee also considers, with reference to its comments under Article 15(c), that there is a risk that workers may be discouraged from making complaints to the labour inspectorate, in a situation where the employers concerned could deduce that an inspection has been made as a result of a complaint (as labour inspections mainly focus on workplaces considered to be high-risk).

- 131.** *Enforcement by labour inspectors of employers' obligations to draw up risk assessments and seek expert OSH assistance.* In light of the trade unions' indications that a significant number of employers do not have a risk-assessment system and do not comply with their obligations under the Working Conditions Act to seek expert OSH assistance, the Committee observes that no information was provided on enforcement activities concerning these legal obligations, nor on the penalties imposed for non-compliance in this regard.
- 132.** *Enforcement by labour inspectors of the obligations in OSH catalogues.* Concerning the enforcement by the labour inspectorate of the rules laid down in OSH catalogues during inspection visits, the Committee considers that labour inspectors may face difficulties in effectively enforcing these rules in practice, which are tailor-made to the situation in various sectors and enterprises. In the absence of a clear and strict framework of standards, it appears that labour inspectors see themselves as being confronted with different rules and obligations in OSH catalogues, requiring more time and effort to control such specific rules.
- 133.** *Evaluation by labour inspectors of risk assessments and evaluations drawn up by employers (including with the help of OSH experts).* The Committee further considers that practical problems may arise with regard to the evaluation or enforcement of risk assessments and evaluations and the corresponding action plans by labour inspectors, as they are not involved in their preparation and might therefore lack the expert workplace knowledge necessary for their effective enforcement especially as, according to the Government's indications, there is no coordination between the labour inspectorate and private OSH services.

### **(3) Indicators of compliance**

- 134.** In addition to these indications, the Committee will proceed to evaluate whether conclusions can be drawn from certain indicators as to the effective functioning of the labour inspection system as a whole. In this regard, the Committee notes that according to the statistics provided by the Government from 2007 to 2012, the number of industrial accidents (resulting in injury and more than three days absence from work) decreased from 183,100 to 165,400, and the number of cases of occupational diseases increased from 5,973 to 6,451 (according to the statistics provided by the Government in its article 22 report on the application of Convention No. 81, the number of occupational diseases was 9,856 in 2009). The Committee notes from these statistics that cases of occupational diseases appear to be on the rise, particularly when considering the alleged under-reporting of these cases. The Committee notes in this respect the indication by the trade unions that most of the working population is employed in the services sector.
- 135.** The Committee further notes that according to the statistics provided by the Government, the number of fines imposed decreased (from 4,769 in 2005 to 3,793 in 2013), while the total amount of the fines imposed increased (from €20.2 to €45.5 million). The Committee notes that the Government does not provide information on criminal procedures or their outcome. It recalls that during the period 2005–13, the number of labour inspections almost decreased by half (from 39,610 to 23,321). While the Committee considers that

these statistics reflect the risk-based approach of the Government, it also considers that an increase in the amount of sanctions for labour law violations cannot offset a dissuasive effect resulting from a sufficient number of labour inspections and a sufficient coverage of all workplaces (irrespective of whether they are considered as high-risk or not).

136. The Committee considers that the statistics provided by the Government do not demonstrate convincingly that alternative forms of compliance justify the restriction of labour inspection to workplaces considered to be high-risk.
137. **The Committee considers that while the involvement of the social partners and of enterprises in compliance monitoring and assessment, as well as the development of new methods of collaboration and involvement, are to be welcomed and may be effective, they cannot replace the compliance and enforcement functions of the labour inspectorate. The Committee therefore requests the Government, in accordance with Articles 10 and 16 of the Convention, to ensure that the number and frequency of labour inspections is sufficient to ensure the effective discharge of inspection duties and compliance with the respective legal provisions in all workplaces, particularly in enterprises that are not considered to be in high-risk sectors and in small enterprises.**

**5. *Material means of the labour inspectorate and additional functions entrusted to labour inspectors (Articles 3(2) and 11 of Convention No. 81)***

138. The Committee notes that Article 3(2) of the Convention No. 81<sup>19</sup> provides that:

Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

139. The Committee also notes that Article 11(1)(a) of the Convention No. 81<sup>20</sup> provides that:

The competent authority shall make the necessary arrangements to furnish labour inspectors with:

- (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;

...

140. The Committee notes the assertion by the trade unions that the disappearance of district and regional offices puts pressure on the contact between inspectors and those inspected and also means that inspectors lack the necessary administrative support and have to spend more time on administration, such as correspondence and drafting reports, instead of inspections.
141. On the other hand, the Committee notes that the Government argues that one of the objectives of Article 11 of the Convention is the accessibility of labour inspectorates. Since the inspectorate nowadays ensures accessibility through the internet, email, telephone and

<sup>19</sup> Article 6(3) of Convention No. 129.

<sup>20</sup> Article 15(1)(a) of Convention No. 129.

post, the disappearance of some district and regional offices and the centralization of the system is not contrary to the Convention.

- 142.** The Committee considers that the closure of district and regional offices alone does not constitute a violation of the Convention, on condition that the material means of the labour inspectorate remain sufficient, that remote areas are still covered by labour inspections and that accessibility to the labour inspectorate is guaranteed.
- 143.** However, the Committee also notes that the Government does not reply to the allegations of the increase in the additional functions of labour inspectors in terms of administrative tasks, resulting from the disappearance of district and regional offices.
- 144.** In this regard, the Committee wishes to refer to the 2006 General Survey on labour inspection,<sup>21</sup> where the CEACR emphasized that it should be recalled that the primary duties of labour inspectors are complex and require time, resources, training and considerable freedom of action and movement, which is why any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties.
- 145.** **The Committee encourages the Government to take steps to ensure that administrative tasks entrusted to labour inspectors do not affect the effective discharge of their primary duties, in accordance with Article 3(2) of the Convention.**

**6. *Notification to the labour inspectorate of industrial accidents and cases of occupational diseases (Article 14 of Convention No. 81)***

- 146.** The Committee recalls that Article 14 of Convention No. 81<sup>22</sup> provides that:

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

- 147.** The Committee notes that the complainant organizations refer to a recent study, commissioned by the inspectorate, which shows that no more than 30 per cent of all occupational physicians in the Netherlands report occupational diseases, with 49 per cent of them even declaring that they never take any preventive action when reporting an occupational disease to the NCvB.
- 148.** On the other hand, it notes the Government's indications that there is no obligation to report cases of occupational diseases to the inspectorate, but that an expert (an independent occupational physician or OSH service) must report cases involving occupational diseases to the NCvB. Data privacy rules prohibit medical information from being sent to the inspectorate. Every two years, the NCvB publishes a report containing statistical information on the incidence of occupational diseases and their dissemination within sectors and occupations, on the basis of the reported information. The inspectorate has the opportunity to acquire more in-depth information on risk factors related to occupational diseases in specific sectors from the NCvB, for example by asking specific questions or through meetings between the inspectorate and the NCvB. The inspectorate uses the

<sup>21</sup> See 2006 General Survey, para. 69.

<sup>22</sup> Article 19 of Convention No. 129.



information as one of its resources for the performance of risk analyses, in order to prioritize and prepare inspections.

- 149.** The Committee also notes that the Government mentions that it has asked the Social and Economic Council for advice on certain perceived bottlenecks, such as the diagnosis and alleged under-reporting of occupational diseases. In addition, the Inspectorate has started an inquiry among occupational physicians to gather specific information on the reporting of occupational diseases. Once the advice of the Social and Economic Council and the results of the inquiry have been received, the Minister of Social Affairs and Employment will consider the policy implications.
- 150.** The Committee wishes to refer to the 2006 General Survey on labour inspection,<sup>23</sup> in which the CEACR emphasizes that it is vital that formal mechanisms be put in place to provide the labour inspection with the data it needs to identify high-risk activities and the most vulnerable categories of workers and to carry out research into the causes of occupational accidents and diseases in establishments and enterprises liable to inspection. The CEACR stated, in paragraph 119 of the same General Survey that while there is flexibility with regard to implementation of this requirement, in order to achieve optimal prevention, it would obviously be desirable to ensure that the dissemination of relevant data is as effective as possible and ensures that the labour inspectorate has access to accurate information on any factor which has compromised workers' safety and health when engaged in their work.
- 151.** The Committee considers that the Dutch system for the reporting of cases of occupational diseases does not appear to enable the inspectorate to carry out its preventive activities in a satisfactory manner. It considers that the anonymized reports of the NCvB published every two years enable the inspectorate to take preventive action with regard to specific sectors, but do not seem to enable it to react rapidly and carry out preventive activities in the specific workplaces concerned. Furthermore, it appears that the information communicated by the NCvB is not complete, as not all cases of occupational diseases appear to be reported to it.
- 152.** **The Committee requests the Government to examine ways in which the system for the notification of occupational diseases can be improved and appropriate action taken.**

## **7. Principle of the confidentiality of complaints (Article 15(c) of the Convention)**

**153.** The Committee recalls that Article 12(1)(a) of Convention No. 81<sup>24</sup> provides that:

1. Labour inspectors provided with proper credentials shall be empowered:
  - (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;

<sup>23</sup> See 2006 General Survey on labour inspection, para. 118.

<sup>24</sup> Article 16 of Convention No. 129.

154. The Committee recalls that Article 15(c) of Convention No. 81<sup>25</sup> provides that:
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.
155. The Committee notes the indication by the trade unions that the labour inspectorate limits itself to previously announced visits with the argument that these are more time-efficient and that if the labour inspector visits a company outside the context of a project or an accident report, the company immediately knows that inspectors are reacting to a complaint from within a company, that is to say from an employee.
156. The Committee notes that the Government has not replied to this allegation. However, it notes the information contained in the Government's latest article 22 report on the application of Convention No. 81 that labour inspectors are prohibited from disclosing the personal details of the complainant. In this regard, the Government emphasizes that the inspectorate never informs the employer that a complaint has been submitted, but recognizes that it is sometimes not possible to conduct an investigation without the employer suspecting that a complaint has been submitted. The inspectorate will accordingly inform the complainant of this risk. Together with the complainant, the inspectorate will determine the best time and method to treat the complaint. The Government clarifies that this may also imply a decision by the complainant to merely register the complaint and not to investigate the complaint.
157. The Committee recalls that the purpose of the prohibition set out in Article 15(c) is to ensure maximum protection of the author of a complaint against any reprisal by the employer. Compliance with this provision of the Convention is only possible if the method of inspection comprises a significant number of routine inspections (Article 16), when a visit initiated by a complaint can be considered by the employer as an ordinary routine visit, and the inspector would be able to investigate the facts of the complaint in full discretion in the context of a broader inspection, with a view to protecting the author of the complaint. The Committee recalls that a certain number of regular inspections are therefore necessary to ensure confidentiality with regard to the complaints made.
158. In this regard, the Committee would like to refer to the indications made by the CEACR in the 2006 General Survey on labour inspection, according to which conducting *unannounced* visits on a regular basis is especially useful as it enables inspectors to observe the confidentiality required by Article 15(c), of Convention No. 81 ... as regards the purpose of the inspection if it was carried out in response to a complaint (*emphasis added*).<sup>26</sup>
- 159. The Committee considers that unannounced labour inspections should be made to ensure that when inspections are conducted as a result of a complaint, the confidentiality of the complaint can be ensured.**

<sup>25</sup> Article 20(c) of Convention No. 129.

<sup>26</sup> See 2006 General Survey on labour inspection, para. 263.

## C. Requirements under Convention No. 155

**160.** The Committee recalls that Article 4 of Convention No. 155 provides that:

1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

**161.** It further recalls that Article 9 of Convention No. 155 provides that:

1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection.

2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations.

**162.** The Committee notes that the trade unions indicate that there is neither an adequate system of enforcement nor an adequate and coherent national policy, particularly for occupational diseases, with the labour inspectorate increasingly withdrawing and leaving the promotion of OSH and its enforcement increasingly to individual companies and sectors and to other agencies, such as certifying organizations and insurance companies.

**163.** On the other hand, the Committee notes the Government's indications that the OSH system, with its obligatory legal measures, the important role played by the social partners and self-regulation, its focused monitoring system and strict enforcement, is based on a coherent national policy, which is presented to Parliament every year and secured by an effective inspection system.

### 1. *Coherence of the national OSH policy*

**164.** The Committee recalls that under Article 4(1) of Convention No. 155, the most representative organizations of employers and workers shall be involved at all stages of the national policy-making process (the formulation, the implementation and the review). Furthermore, according to Article 7 of Convention No. 155, "the situation regarding occupational safety and health and the working environment shall be reviewed at appropriate intervals, either overall or in respect of particular areas, with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results".

**165.** As indicated in the 2009 General Survey on occupational safety and health, regular dialogue between the Government and the social partners is therefore necessary.<sup>27</sup> The CEACR noted, in paragraph 56 of the same General Survey, that the requirement of coherence of the national policy implies that it should involve all the relevant parties with responsibilities in regard to the various aspects of OSH. Furthermore, the CEACR emphasized, in paragraph 76 of this General Survey, that the periodic review of the results

<sup>27</sup> ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), International Labour Conference, 98th Session, Geneva, 2009, para. 49.

of action taken is a critical step in verifying the level of coherence of the OSH system and identifying new and existing areas of concern that need further improvement.

**166. Noting that cooperation and regular dialogue with the social partners involved in the implementation of OSH is essential at all stages of the policy-making process to ensure the coherence of the national OSH policy, the Committee requests the Government to follow up on the issues raised by the trade unions and employers' organizations in the context of the periodic review of the national OSH policy. In this regard, it requests the Government, in consultation with the social partners, to identify major problems of coherence, methods for dealing with them, and priorities for action, in accordance with Article 7 of Convention No. 155.**

**167.** Concerning the policy for the prevention of cases of occupational diseases, the Committee wishes to refer to its conclusions concerning Article 14 of Convention No. 81 (paragraphs 146–152).

## **2. Adequate and appropriate system of inspection**

**168.** The Committee refers to the indications in Paragraph 5 of the Occupational Safety and Health Recommendation, 1981 (No. 164), according to which the system of inspection provided for in paragraph 1 of Article 9 of the Convention should be guided by the provisions of the Labour Inspection Convention, 1947, and the Labour Inspection (Agriculture) Convention, 1969, without prejudice to the obligations thereunder of Members which have ratified these instruments.

**169.** Concerning the existence of an adequate enforcement system, the Committee wishes to refer to its conclusions concerning the respective provisions of Convention No. 81 (paragraphs 75–159).

## **IV. The Committee's recommendations**

**170. *In the light of the above conclusions, the Committee recommends to the Governing Body that it:***

**(a) *approve the present report;***

**(b) *invite the Government, in light of the conclusions set out in paragraphs 83, 88, 92, 102, 106, 137, 145, 152, 159, and 166 to take such measures without delay as may be necessary to ensure the effective implementation of the provisions of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Occupational Safety and Health Convention, 1981 (No. 155);***

**(c) *entrust the Committee of Experts on the Application of Conventions and Recommendations with following up on the issues raised in the present report in respect of the application of Conventions Nos 81, 129 and 155; and***

- (d) make this report publicly available and close the procedure initiated by the representation made by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Federation of Professionals (VCP) (formerly the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP)) alleging non-observance by the Netherlands of Conventions Nos 81, 129 and 155.*

Geneva, 6 November 2014

*(Signed)* J. Jensen  
Chairperson

J. Rønne

B. Byers