

March 2012

Contribution of the Dutch social partners to the National Reform Programme within the context of the EU 2020 Strategy

- ***Foreword***

In 2010, the European Union (EU) introduced the EU 2020 Strategy as a follow-up to the Lisbon Strategy. The EU 2020 Strategy focuses on the promotion of sustainable, inclusive and smart growth, i.e. growth that is driven by knowledge and innovation. The aim of this strategy is for the European Union to emerge from the economic crisis stronger and to achieve a high level of employment, social cohesion and productivity.

These priorities have been distilled into five headline targets and ten guidelines on the basis of which the Member States must determine their own national goals. This must lead to accomplishing the agreed EU 2020 Strategy by 2020.

When the guidelines were adopted, the Commission decided that the guidelines should remain stable until 2014 to ensure a focus on implementation. Starting in 2014, the guidelines will be established annually.

The five headline targets for 2020 are:

- increasing the employment participation rate from 69% to 75%;
- increasing R&D expenditure from 1.9% to 3% of GDP;
- the 20/20/20 objectives: CO2 emissions, renewable energy and energy efficiency;
- reducing school drop-out rates to 10% and increasing the percentage of 30-40 year olds completing third level education to 40%;
- reducing the number of people in or at risk of poverty by at least 20 million.

Each year, the EU Member States prepare their own National Reform Programmes (NRPs), in which they set out their strategy for meeting the EU 2020 targets. Every two years, each Member State prepares a National Social Report (NSR). Each year, the Dutch government discusses its draft version of the NRP and NSR with the social partners, but the content of both documents is entirely the government's responsibility.

At the government's request, the Labour Foundation [*Stichting van de Arbeid*] prepares an annual report entitled *Contribution of the Dutch Social Partners* regarding achieving these shared European goals. This report is added as an appendix to the NRP and NSR. The report contains the social partners' main contributions towards meeting these goals as a result of consultation by the Labour Foundation and the Social and Economic Council (SER).

Contributions that the social partners have made separately to achieving these targets are outside the scope of this report.

For each theme – clustering guidelines on the basis of the European Commission’s tenpoint plan for growth analysis – the report indicates the measures the social partners undertook between April 2011 and March 2012. Of course, many of the social partners’ recommendations and advisory reports pertain to several headline targets and guidelines. Where this is the case, the contribution concerned is not included in respect of several guidelines but has been placed with the most suitable guideline.

Finally, it should be stressed that the central and decentralised CLA partners social partners implement the EU 2020 Strategy mainly through their policy on conditions of employment, in which the recommendations and advisory reports of the Labour Foundation and the SER are incorporated.

1 Macro-economic and financial stability

Guideline 1: Ensuring the quality and the sustainability of public finances

Guideline 2: Addressing macro-economic imbalances

Guideline 3: Reducing imbalances in the euro area

The main responsibilities in terms of achieving these three guidelines rest with the government. The principal role of the social partners in this regard is the development of negotiated wages and pensions.

- *Rises in negotiated wages*

The Netherlands Bureau for Economic Policy Analysis (CPB) has calculated a 1.4% movement in negotiated wages for 2011 and expects a 1.75% movement in wages for 2012. The derivative inflation for 2011 was 2.2%, with the prognosis for 2012 being 2%¹.

- *Reforming the pension system*

In the spring of 2010, the Labour Foundation reached the Spring 2010 Pension Agreement [*Pensioen Akkoord Voorjaar 2010*], which contains the main elements and principles for a significant reform of the Dutch pension system. Subsequently, this Agreement was elaborated upon in cooperation with the new administration. After difficult negotiations, agreement was reached on 10 June 2011 in respect of the *Explanatory Memorandum [Uitwerkingsmemorandum]* and the *Policy Agenda 2020 [Beleidsagenda 2020]*.

The Explanatory Memorandum contains, first, the amendments to be integrated into new pension contracts that will automatically adjust pension contracts for increasing life expectancies. The objective of these amendments is to prevent an automatic extension of the number of years that pension benefits are received, which would mean a stealthy increase in pension ambitions. Second, it contains a proposal for integrating an adjustment mechanism into pension contracts that would enable the contracts to absorb negative shocks on the financial markets through stabilised contributions.

Naturally, there is no obligation for the decentralised level to fundamentally revise existing pension contracts, but it is definitely clear that the financial assessment framework for the current type of pension contract will be made more stringent. The outlines of the more stringent framework are already clear; estimates are that it will result in an increase in the average mandatory buffer of 5 percentage points.

On the employees' side, mustering support for agreement on the Explanatory Memorandum was not uneventful. This is because the agreements in the Pension Agreement and Explanatory Memorandum mean that the Netherlands will be transitioning from a pension system largely comprising defined-benefit schemes – which are aimed at achieving nominal pension entitlements and which theoretically offer a great degree of certainty – to a system based on a realistic pension ambition containing a caveat that it is uncertain whether that ambition will be achieved.

¹ CPB, *Central Economic Plan 2012*.

- *The financial situation of the pension funds*

After the Dutch pension sector had already taken a substantial hit from the financial crisis of 2008-2009, the pension funds' funding ratios dropped again significantly in the second half of 2011 as a consequence of the sharply declining economic situation in Europe. In particular, there were three factors responsible for the decrease in the funding ratio. First, life expectancies continued to increase. With few exceptions, of course, increasing life expectancies have prompted most pension funds to increase their contributions or to endure a declining financial position (a falling funding ratio). Second, the decreasing interest rate on government bonds from countries with relatively strong economies, such as Germany and the Netherlands, was a significant cause of the drop in the funding ratio for pension funds that either failed to hedge most of that interest amount or hedged the amount only to a very limited degree. A pension fund's liabilities must be valued based on the current risk-free (as risk-free as possible) interest rate. As a consequence of the crisis in the southern EU Member States and Ireland, institutional investors have fled to government bonds from the relatively "strong" Member States, causing the already low interest rate on those countries' government bonds to fall still farther. Third, pension investments made in 2011 yielded lower returns that was necessary to counteract the trend of falling funding ratios resulting from the two factors described above.

Of the over 300 pension funds that were required to submit a recovery plan to the supervising authority, the Dutch Central Bank (DNB), as a result of the crisis of 2009, eight pension funds were required, as of 1 April 2012, to reduce the pension benefits already being paid out and to adjust the pension entitlements being accrued by their participants by an average of 6.8%. It had already become clear by early 2011 that these funds would not be able to recover their financial position – that is, to achieve a funding ratio of at least 105% – within five years unless the reduction was made.

During the assessment in early 2012, it became clear just how dire the situation was: 103 pension funds jointly holding pension assets of EUR 390 billion for 7.5 million active participants and pension beneficiaries were required to announce reductions before 1 April 2012, with the measures to take effect on 1 April 2013. On average, this reduction will amount to 2.3%. However, 34 funds have announced that they must make reductions of 7% or more. DNB has offered these funds the opportunity to limit the reduction to a maximum of 7%, even if the figures indicate that the reduction should be greater. Pension funds in that position will have to recoup the rest by applying another reduction later. Should the situation in the coming year substantially improve, however, the ultimate reduction may be for a lesser amount or may be foregone altogether.

For those receiving relatively low pension benefits, the effect of the reduction of supplementary pensions will have only a minor impact on purchasing power because the State Pension [AOW] will remain the same.

Finally, note that, because of the low funding ratios, most supplementary pension schemes have not been indexed for several years, or have only been indexed to a limited degree. Low inflation means that the effect on annual purchasing power will not be enormous, but, after several years without indexation, the total loss in purchasing power for many pension beneficiaries will amount to between 5% and 7%.

- *The Labour Foundation's response to the EIOPA consultation regarding the intended review of the IORP Directive*

At the end of 2011, EIOPA, the European supervisory authority in the area of pensions and insurance, issued a draft response to the European Commission's Call for Advice regarding the intended review of the IORP Directive from 2005. The EIOPA provided this draft response to the Member States and the relevant institutions in those Member States for their comments.

The Labour Foundation issued its comments on 29 December 2011. The Foundation did not address the specifically technical aspects that were the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, the Labour Foundation referred to the answers given by the Dutch Government and the Federation of Dutch Pension Funds [*Pensioenfederatie*].

The Foundation's main conclusions are:

1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate and sustainable pensions within the Member States. However, European rules regarding pensions – including regarding the development of European supervisory requirements – will have to take specific account of the specific features of the national pension systems. This is accordance with the European Commission's principle, as set out in the Green Paper, that the Member States are themselves responsible for the organisation of their own systems, and therefore also for their supervisory framework.
2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended.
3. Before proposing amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States.
4. In the Netherlands, the social partners and the government have concluded a Pension Accord on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent benefit adjustment mechanism for dealing with changes in life expectancy and shocks on the financial markets.
The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round. That should also be the case as regards European supervision. It would be a fundamental error if the process that led to the Pension Accord in the Netherlands had to be repeated due to the organisation of the European supervisory system.
5. Pension contracts in the Netherlands, including the new type of contract to be implemented by pension funds, are characterised by conditional entitlements. Ultimately, financial risks can be passed on to the participants. For these pension schemes, the high Solvency II buffer requirements are inappropriate and perhaps even counterproductive, as they would provoke a response that would lead to less certainty and less solidarity (individual defined contribution schemes).

6. The concept of the “holistic balance sheet” introduced by EIOPA is an elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough impact assessment to be carried out before the decision-making takes place at Level 1.

- ***Pension Fund Governance and employee representation***

On 1 July 2010, the Lower House [*Tweede Kamer*] of the Dutch Parliament passed the bill proposed by two Members of Parliament (MPs), Koser Kaya and Blok. Subsequently, the Minister of Social Affairs and Employment [*Sociale Zaken en Werkgelegenheid*] (SZW) worked on a preliminary draft of the Improved Governance of Pension Funds Act [*Wet versterking bestuur pensioenfondsen*]. The Labour Foundation’s response dated 2 September 2011 endorsed the objectives of the preliminary draft:

- improving governance expertise and reinforcing internal supervision;
- adequate representation of all risk-bearing parties;
- streamlining tasks and organisational structure.

In this respect, however, the Foundation noted that while this preliminary draft may constitute an attempt to develop new regulations to improve pension fund governance, the result will unfortunately not serve as an adequate foundation for a bill. Given the serious time pressure involved – the Upper House [*Eerste Kamer*] wanted to receive the bill before the end of 2011 – the Labour Foundation indicated that it considered it vital that a more in-depth analysis of the governance problems should be performed in the very near future.

These problems will have to be analysed based on the assumption that pensions are an important employment benefit for which the decentralised social partners bear primary responsibility. This analysis must make it clear whether the measures outlined in the preliminary draft would actually contribute to solving these problems. The Foundation concluded its letter with a proposal for organising a number of expert meetings in the near future to discuss corporate and pension fund governance.

These expert meetings were held in October 2011. Partly based on the responses from the field addressed by the preliminary draft, the Minister of SZW also succeeded in presenting an amended bill to the Council of State [*Raad van State*] for a formal opinion. It proved impossible, however, to present the bill to the Lower House before the new year, so the Upper House decided to debate the Koser Kaya/Blok bill in January 2012. The Upper House passed the bill at the end of January 2012.

On 24 February 2012, the Minister of SZW submitted the broader Improved Governance for Pension Funds bill, which had been announced earlier, to the Lower House. The Lower House decided to expedite the debates on the bill. An extremely tight deadline has been set with the hope of having the debates on the bill completed before the summer of 2012. The Foundation understands that these efforts are aimed at having the implementation of the new pension contracts envisaged in the Pension Accord – which are expected to enter into effect starting on 1 January 2014 – administered under the new pension fund governance laws from the beginning.

- ***Consultations with the Minister of Economic Affairs, Agriculture and Innovation***

On 13 February 2012, Minister Verhagen consulted a SER delegation, which comprised social partners and Crown-appointed members under the chairmanship of A. Rinnooy Kan, in preparation for the Spring European Council meeting held in Brussels, Belgium, on 1 and 2 March 2012. The most important issues dealt with at this top-level meeting were the Commission's growth document, the progress made on the EU 2020 Strategy and the signing of the Treaty on Stability, Coordination and Governance in the EMU.

During the consultation, the group spent time discussing the additional treaty on improving EMU governance. Minister Verhagen explained the importance the extra measure will have for restoring trust. Comprehensive measures are necessary for safeguarding the economic growth perspective. In 2011, it became clear just how interwoven the European economies are with one another. The Minister stated that the plans for reform were ambitious but that they were also the best way to ensure employment. There is very little leeway in Member States' budget for investments. Dutch policy focuses on such issues as promoting a number of top industries, reducing regulatory burdens and providing incentives for innovations. Verhagen stressed that the Member States and the social partners still retain the scope for policymaking in their own territories.

The trade union movement urged the Minister to devote attention to all the pillars of European policy. It is not just about making accounting rules more stringent, but social and sustainability issues must also be addressed.

The trade union movement also showed that all of the crisis measures have resulted in a very thin support base amongst the population in Europe. This makes it vital that basic social rights should be expressly safeguarded.

The employers' representative emphasised the urgency of the situation and the need for decisive action. The only way to increase growth and rebuild economic trust is to make a push towards a United States of Europe. It was also noted that the government should better recognise and appreciate foreign workers' contribution to the Dutch economy.

All of the parties endorsed the notion that the EU is a community with values based on democracy, that the social dimension must be dealt with even in times of crisis and that the social dialogue at the national and EU levels is crucial to maintaining support for the European project.

- ***The Europe Letter [Europabrief]***

On 5 October 2011, the chairpersons of the SER and the central organisations called on the government to make an unequivocal choice for Europe in this crisis. They write that European cooperation has significantly benefited the Netherlands in the past, and that that will remain important in the future: sustainable growth and employment opportunities can only be ensured through that cooperation.

Europe is more than just an economic partnership. It is a community with shared values and standards that offers its residents peace, welfare and legal certainty. The social dimension of Europe can and must be reinforced along with the economic dimension. Increasing European

competitive power must be paired with permanent and balanced fundamental social rights and employee rights.

- ***SER symposium: dealing with differences in the Eurozone***

The central issue during the SER symposium on 4 May 2011 was the extent to which social partner autonomy is jeopardised by the Commission's proposals regarding improving the economic governance of the EMU. The crises in Greece and Ireland have starkly highlighted the differences within the Eurozone. More stringent European supervision of individual Member States' budgets and strengthening the shared European economy must be put in place to prevent Eurozone countries from going off the rails again.

During the symposium, scientists and social partners provided insights into the issues from a variety of perspectives. According to Loes van Embden of the Confederation of Netherlands Industry and Employers [*VNO-NCW*], European involvement is nothing to worry about: "*Europe holds a mirror up for us to look into. It is up to the Member States to take measures themselves. If Member States don't do their homework, pressure increases, and we need that for our competitive position.*" However, Henk van der Kolk of the Dutch Trade Union Federation [*FNV Bondgenoten*] referred to the intense focus on salary costs in the plans as "*a clear admission of weakness*" and notes a failure to innovate through investment in productivity and innovation. He announced that the trade unions would defend their autonomy with regard to salary cost development and employee benefits policy in discussions about this "misfire". Van Embden also indicated a wish to retain that autonomy.

2 Growth capacity, sustainability and innovation

Guideline 4: Optimising support for R&D and innovation, strengthening the knowledge triangle and unleashing the potential of the digital economy

Guideline 5: Improving resource efficiency and reducing greenhouse gas emissions

Guideline 6: Improving the business and consumer environment and modernising and developing the industrial base for optimal operation of the internal market

- *The future of the statutory trade organisation (PBO)*

Commodity and industrial boards are public bodies that can be established by social partners in a sector if their organisations are sufficiently representative. The social partners appoint the members of the board, with the independent chair being appointed by the Crown. Commodity and industrial boards are important because they can use mandatory levies and regulations to take measures – measures that will benefit both the industry and the public interest as a whole – that will apply to all companies within the relevant industry. In practice, these involve a wide range of activities relating to such areas as the economy, environment, quality, research, security, employment relationships and working conditions. In addition, upon request, a number of commodity boards perform government tasks that primarily relate to EU regulations (co-administration).

The PBO system has been under a great deal of pressure for quite some time. In the spring of 2011, this led the Lower House to request the government to investigate the tasks performed by the commodity and industrial boards and to determine whether or not the boards are indispensable². The Minister of SZW responded positively to this request and promised to make the government's stance available to the Lower House in a timely fashion.

On 14 June 2011, the Labour Foundation presented its views of the PBO in a document entitled: *The future of the commodity and industrial boards: the importance of a modern statutory trade organisation to the Dutch economy*. [*De toekomst van de product- en bedrijfsschappen: het belang van een moderne Publiekrechtelijke Bedrijfsorganisatie voor de Nederlandse economie*]. The Foundation believes that the commodity and industrial boards should not be dismantled. One of the reasons for this is that transferring the relevant tasks and activities to the government would be an expensive proposition that would ultimately result in the loss of a great deal of existing knowledge regarding the relevant sectors and activities. In addition, the impossibility of drafting more regulations, for example, would lead to reduced efficiency. The Foundation does believe the time is ripe for a substantial reform of the PBO system, which originated in the 1950s. The Foundation makes a number of comprehensive proposals for change. The tasks must of course be limited and adapted to the always-changing socioeconomic and international contexts. The system must also be harmonised with new interpretations regarding democratic legitimacy, it must be goal-oriented and it must meet cost-management requirements.

At the end of 2011, however, the Lower House decided that the PBO would have to be eliminated. The Minister of SZW is now considering a response to this decision.

² Sustained motion by Aprotroot/Koopmans/Van den Besselaar, no. 62 (Parliamentary Document Number 32500-XV). This reads: "... noting that the commodity and industrial boards' right to exist is at issue; requests the government to investigate which tasks other than the co-administrative tasks are indispensable; requests the government also to investigate whether, and if so how, these tasks could be handled other than through the marketing and industry boards; requests the government to perform this investigation and present the results to the House within six months..."

- ***SER Advisory Report: strengthening the private sector in developing countries***³

The SER has recommended to support initiatives that are focused on strengthening the local private sector as a driver for sustainable growth. Specifically, the preconditions for sustainable enterprise in developing countries must be improved. These preconditions include good governance and macroeconomic stability, good physical and technological infrastructure, legal certainty and an effective tax system, promulgating and enforcing labour laws, the presence of qualified staff, access to social security, independent trade unions and employers' organisations and a well-organised civil society.

The business community, social partners and civil organisations must be more actively involved in using funds for development cooperation. This can be achieved by better utilising Dutch expertise and making more funds available. Demand-side management in the developing countries is crucial in this respect. The collaboration with Dutch private parties must visibly contribute to private sector development and full employment opportunities in the developing countries themselves.

The SER believes that the position of the social partners in developing countries must be further strengthened and recommends that programmes that are intended to strengthen employers' and employees' organisations be supported. Naturally, strong social partners and good social dialogue contribute to good governance, the harmonisation of social and economic goals and full employment opportunities in developing countries. Bilateral contracts must also increase their focus on the fundamental labour standards, such as freedom of association and collective negotiation and independent and professional social partners.

- ***Employee participation and International Corporate Social Responsibility***⁴

Works Councils can play a significant role in promoting both national and international corporate social responsibility (CSR). According to the SER, the Dutch Works Councils Act [*Wet op de ondernemingsraden*] and Civil Code [*Burgerlijk Wetboek*] offer sufficient leads for this. The SER therefore does not consider any adjustment to be necessary. The SER does make suggestions to works councils in a new appendix to the *Model Rules of Procedure for Works Councils* [*Voorbeeldreglement Ondernemingsraden*].

- ***Consumer affairs***

Consumer policy is an important basis for the smooth operation of the internal market. With the SER, the Committee for Consumer Affairs (CCA) is responsible for this area of policy. In a consultation with Minister Verhagen on 18 January 2012, the CCA emphasised the importance, both for businesses and consumers, of smoothly operating markets and the recovery of consumer confidence. In this respect, it is important that consumers are able to make well-informed choices and that both consumers and businesses have ready access to dispute resolution. The CCA is currently preparing an advisory report on the European Commission's proposals in the area of alternative dispute resolution (ADR).

³ SER Advisory Report, *Development through sustainable enterprise*. An English-language abstract is available at www.ser.nl.

⁴ SER Advisory Report, *Employee participation and international corporate social responsibility* [*Medezeggenschap en (I)MVO*], 2011.

3 Operation of the labour market, employment and social inclusion

Guideline 7: Increasing labour market participation, reducing structural unemployment and promoting job quality

- *Policy Agenda 2020: Investing in Participation and Employability*

In June 2010, the social partners in the Labour Foundation entered into the Pension Accord. In this document, the social partners set out the adjustments they agreed were necessary for occupational pensions and made proposals for the future sustainability of the AOW. The Pension Accord, however, also includes a third agreement that will have to be fleshed out before the Accord can be considered a success: increasing older employees' participation in employment.

With the *Policy Agenda 2020 [Beleidsagenda 2020]*⁵, employers and labour unions have taken joint responsibility for offering older employees an employment future. They have agreed that, in ten years, there should be no difference between the average labourmarket participation figure of over 55s and that for under 55s. It must again be considered perfectly normal that employers and employees themselves do everything to continue to stay healthy, motivated and employed until they reach AOW age.

In order to succeed in making these changes, the social partners have agreed a large number of focused measures that will result in employees, both young and old, consciously taking charge of their own careers. All the measures must be worked out at the sector and company levels. In the coming years, these issues will be the subject of attention in negotiating collective agreements as well as in meetings between employers and works councils. Sustainable participation must not begin only once an employee reaches his 55th birthday, but must be part of every employee's career path from early in their careers. Making smart choices throughout one's career will help keep employees vital and productive – and employed – longer. The most important factor may be that the Netherlands should radically adjust attitudes about older employees – they are not more expensive, more prone to illness or less productive than their younger colleagues.

The Foundation is also counting on the government in its role as an employer to make a significant contribution to the labour-market position of older employees.

The measures that have been taken will be subject to annual monitoring starting in 2012. The effect those measures have on older employees' labour-market position, employability and mobility will also be assessed. A study will also be made of the extent to which the goals for average labour-market participation are being achieved. If the main goals prove impossible to achieve with the underlying agenda, the social partners in the Labour Foundation will make interim agreements about adjusting or intensifying Policy Agenda 2020.

As one of its first measures, the Foundation has issued advice to the government regarding a new career incentive for co-financing inter-sector training and "From Work to Work" schemes.

⁵ *Policy Agenda 2020* can be downloaded in English at www.stvda.nl.

- ***The New Way of Working***

On 5 October 2011, the Labour Foundation sent the Deputy Minister of SZW its response to the Hugo Sinzheimer Institute's recommendations regarding The New Way of Working [*Het Nieuwe Werken*] (NWW). The Labour Foundation considers NWW – flexible employment that is not bound to a particular location or particular working hours – as a concept that offers opportunities to both employers and employees. This, of course, assumes that this type of work is actually feasible, something that will differ from sector to sector.

Before employers and employees embark on a NWW programme, the Labour Foundation recommends that they make an assessment of whether and under which conditions this programme would be suitable for the employee, the company and the type of work being performed. The Foundation notes that the NWW is still in the phase of proving itself in practice. Currently, as the Deputy Minister also noted in his first response, there is nothing prompting a fundamental change in employment law and regulations.

- ***Second assessment of the Cooperation Framework [Samenwerkingskader]***

On 3 November 2011, the Labour Foundation and the Ministry of SZW assessed the Cooperation Framework 2007 for the second time. The Cooperation Framework contains agreements regarding enforcing regulations regarding employees from central and eastern European countries (CEE countries) and their employers.

Several conclusions were drawn:

- A periodic evaluation of the Cooperation Framework remains important; the parties will consult one another periodically to discuss the manner and form of the evaluation. This consultation will also apply to new measures the government takes to eliminate fraudulent practices used in hiring employees from CEE countries.
- When the SZW Inspectorate [*Inspectie SZW*, previously known as *Arbeidsinspectie*] (SZW-I) is involved, good progress is made with enforcing the provisions under the Dutch Minimum Wage Act [*Wml*] and Placement of Personnel by Intermediaries Act [*Wet allocatie arbeidskrachten door intermediairs*, or *Waadi*]. This also applies to the agreement that the SZW-I would, in a timely fashion, inform the employee hired that his or her employer might have violated the Minimum Wage Act so that such employee can file a claim for any wages owing as a result of that violation.
- Almost all of the sectors employing a large number of EU migrant workers from CEE countries have included provisions in their collective agreements obliging or encouraging the parties to those agreements to make exclusive use of temporary employment agencies that have been approved by the Labour Standards Association [*Stichting Normering Arbeid*]. Foreign temporary employment agencies may also obtain this approval.
- Employees' organisations indicate that employees from CEE countries are reluctant to file complaints concerning their employers' illegal conduct, first because they are unfamiliar with the laws in question and second because they are afraid of losing their jobs.
- The information exchange between the social partners and the SZW-I can be improved. The social partners indicate that, particularly where temporary employment agencies are concerned, there is an active exchange of information between the social partners and the SZW-I.

- ***Reconsidering collective agreement provisions regarding prohibitions and restrictions on hiring temporary agency workers***

Directive 2008/104/EC regarding temporary agency work entered into force on 6 December 2011, with one of its effects being that, from that date onwards, collective agreement conditions that prohibit or restrict the employment of temporary agency workers may only be justified on grounds of the general interest. These grounds particularly relate to the protection of workers, the requirements of health and safety at work and the need to ensure that the labour market functions properly and that abuses are prevented.

The Minister of SZW's sent the Labour Foundation a request dated 29 November 2011 asking the latter to provide its interpretation of Article 4 of the aforementioned Directive. The Labour Foundation provided its view in a document entitled *The Labour Foundation's Analysis for a Reconsideration of the Restrictions and Prohibitions Regarding the Employment of Temporary Agency Workers Under Collective Agreements* [*Analyse van de Stichting van de Arbeid ten behoeve van de heroverweging met betrekking tot beperkingen en verbodsbepalingen op de inzet van uitzendkrachten in cao's*].

In addition, the Foundation decided to ask the decentralised parties to the collective agreements to consider the question of whether the provisions of their respective agreements contained an unjustified restriction or prohibition on the employment of temporary agency workers. In the past, of course, various collective agreements contained stipulations regarding the protection of temporary agency workers which have become superfluous as a result of the provisions of the aforementioned Directive or would constitute an unjustifiable restriction of the labour market itself or various forms of flexible employment. Therefore, the entering into force of the Directive means that the collective agreements may contain provisions that are no longer justified in the current circumstances.

On 2 February 2012, the Labour Foundation asked the decentralised parties to collective agreements to examine provisions in those agreements that could be seen as restrictions in accordance with the Foundation's advice. These parties were also asked to report the outcome of this examination to the Foundation.

- ***Bill on flexible employment proposed by GroenLinks [Green Left party] and the Christian Democratic Appeal (CDA)***

Two Lower House MPs – from GroenLinks and CDA – introduced a bill to the Lower House to convert the Working Hours Amendment Act [*Wet aanpassing arbeidsduur*] (WAA) into the Flexible Working Hours Act [*Wet flexibel werken*] (FWHA). They believe this would create more, and better, opportunities for finding a better work-life balance by giving employees the right to ask their employers for changes to how many hours they work, which hours they work and where they work. An employer can deny a request to make a change to where employees work and the hours in which they work for: “*a compelling operational or business interest, if the change would result in serious problems:*

- a. in the area of safety;*
- b. in the area of scheduling; or*
- c. of a financial or organizational nature.”*

On 21 December 2011, the Foundation sent unsolicited advice to the MPs who introduced the bill. The Foundation believes that all of the issues cannot be settled through collective agreements or legislation, and that, especially where flexible working is concerned, arrangements have to be made on a case-by-case basis. It is up to the parties themselves to make employment agreements regarding flexible working. Agreements in this area in collective agreements, including those which apply to an entire sector, are generally framework agreements because the decentralised parties believe that the question of whether a collective agreement provision applies is to be assessed at the level of the organisation itself or even at the level of the shop floor. This is dependent on the type of work, the employee himself and his work⁶. Specific agreements regarding working hours or teleworking are made at the company level between the employer and the works council and between the employer and the individual employee.

Work is being bound less and less to a specific place in the wake of technological developments. This offers new possibilities for combining work and care-giving or one's work life and private life. Both employers and employees see many benefits to be reaped from The New Way of Working. The Labour Foundation questions whether a law must be enacted to effect this desirable cultural change. Employers are calling on the MPs introducing the bill to refrain from submitting it. Labour organisations are pleased with the interest those MPs are attaching to employees' having a say in their working hours and their desire to avail themselves of teleworking for at least part of their hours. The question is whether a law would make a fundamental contribution in this respect. Conversely, they believe that a bill for employees who work in companies that are not subject to a collective agreement could offer those employees support in making these issues eligible for discussion with their employers.

In the meantime, on 16 February 2012, this bill, along with the Council of State's response to it, were submitted to the Lower House for debate. No date has been set for these debates to begin.

- ***Influence of universally binding collective agreement provisions on the promotion of labour-market participation***

On 7 December 2011, the Labour Foundation sent a letter to the Lower House containing its view of the political proposals regarding making collective agreement provisions universally binding. This was prompted by the Lower House's concerns about the fact that the labour-market participation of vulnerable groups continues to lag behind average labour-market participation, as it was phrased in passing the Koser Kaya motion and the Sterk, De Jong and Azmani motion on 7 June 2011. On 28 November 2011, the Minister of SZW responded with his views on making collective agreement provisions universally binding, proposing that the House discuss shaping the policy on universally binding provisions as a type of steering policy.

Primarily, the Labour Foundation believes that the policy on universally binding collective agreement provisions should not result in continuing uncertainty for the parties to those agreements. There are, after all, all types of political interests at play in this respect. Right now, the theme is promoting the labour-market participation of vulnerable groups, but economic or political changes could prompt an entirely different discussion. Over time, implementing a steering policy on this topic would lead to a stack of politically prompted

⁶ SER report entitled *Time and Society* [*Tijden van de Samenleving*], 2010.

collective agreement provisions that might be included to retain the universally binding nature of the collective agreement but which would ultimately come to nothing because they would not be substantively supported by the parties to the collective agreements. This would create an unworkable precedent that would seriously disrupt employment relationships.

The Foundation notes that the social partners have long been making efforts to promote the labour-market participation of vulnerable groups such as older employees, the occupationally disabled and younger disabled people. The Labour Foundation's efforts are recounted in recommendations to those it represents, statements, agreements and advisory reports issued to the government or third parties. It takes quite some time after the publication of these documents to see their results. Naturally, decentralised social partners need time to convert the Foundation's recommendations and advice into appropriate collective agreement provisions. The same applies to embedding the collective agreement provisions in companies' staff policies. In the meantime, the efforts being made with regard to the labour-market participation of vulnerable groups have begun to bear fruit. That participation has increased in the sectors in which the Labour Foundation has explicitly taken responsibility for progress. The same cannot be said for sectors in which local or higher-level governments have been responsible for that progress, such as sick-listed workers without employment contracts (referred to as "safety-netters"[vangnetters]) or those entitled to other public welfare benefits.

- ***Sector-by-sector labour-market data***

On 20 December 2011, the Labour Foundation received the report on sector-by-sector labour-market information it requested from the Council for Work and Income [*Raad voor Werk en Inkomen*] (RWI). In an extensive report, the RWI provides information regarding twenty sectors for which labour-market shortages or surpluses can be expected. This data will enable the social partners, as well as local and higher-level governments, to better formulate their labour-market policy.

- ***Health and Safety Catalogues***

One goal of the social partners is to promote companies' implementation of a responsible health and safety policy, including by encouraging companies and industries to assemble health and safety catalogues. Since the Dutch Working Conditions Act was amended in 2007, employers and employees have been able to prepare health and safety catalogues that describe how the goals of that Act can be achieved in their own sectors.

For four years (2007-2010), using a subsidy granted by the Ministry of SZW, the Labour Foundation has carried out the Health and Safety Catalogue Project with the objective of encouraging industries and sectors to prepare, implement and maintain health and safety catalogues, expanding them where necessary when a priority risk is discovered to have been omitted.

On 17 February 2011, the Foundation concluded this project with a large closing meeting. During the meeting itself, the results of the research into the course and outcome of the project were presented⁷. In the meantime, approximately 150 of the 250 industries in the Netherlands have prepared a health and safety catalogue that has been evaluated by the

⁷ Labour Foundation, *The Effect of Health and Safety Catalogues – Evaluation of the Health and Safety Catalogue Project of the Labour Foundation* [*De werking van arbocatalogi – Evaluatie van het project arbocatalogi van de Stichting van de Arbeid*], ITS Nijmegen, February 2011.

government. A publication entitled *Health and Safety Catalogue 2011: A Working Instrument* [*Arbocatalogus 2011: een werkend instrument*] was also presented during the event. This publication describes the activities undertaken by the social partners on both the centralised and decentralised levels. In 2011, the project's financing was wrapped up and the Foundation began preparing for a follow-up to the project.

- ***Vitality Policy***

On 4 October, the Labour Foundation and the Healthy Weight Covenant [*Convenant Gezond Gewicht*] organised a third symposium entitled The Healthy Shop Floor [*De gezonde werkvloer*]. The goal of the symposium was to encourage companies to implement a vitality policy. The greying of the population, the postponement of retirement age and the expected shortage on the labour market have made it necessary for both employers and employees to invest in a healthy lifestyle.

This year, the theme was *Investing in Vitality: Costs and Benefits*. The subjects addressed included the effects of shift work and day/night rhythms on employee health and the question of whether a fitness test can be made mandatory.

- ***RI&E Centre***

Employers use a Risk Inventory and Evaluation (RI&E) to outline the risks for employees that are entailed by the work they perform. In the plan of approach that constitutes part of an RI&E, the employer describes all of the measures being taken to minimise these risks.

Employers are required by law to prepare an RI&E, and the result must be approved by an employment counsellor. Since 1 April 2011, companies employing no more than 25 employees need no longer obtain this approval as long as the employer uses an RI&E instrument that has been registered with the RI&E Centre [*Steunpunt RI&E*].

At the request of the Ministry of Social Affairs and Employment, the Labour Foundation has been responsible for the RI&E Centre since 1 January 2011. The Centre handles the digitisation of branch-specific RI&E instruments and makes these available to all businesses via its website www.rie.nl. In this way, the Centre intends to increase knowledge about RI&E and to promote both the development and recognition of industry-specific RI&E instruments as well as their use. The use of RI&E by small businesses is one of its priorities.

- ***Labour-market participation by “under 35 percenters”***

The labour market position of the group of employees that are 35% or less occupationally disabled – a group that is referred to as the “under 35 percenters” – is improving. The percentage of under 35 percenters who are working continues to increase; two-third of under 35 percenters works nowadays.

Because the ultimate goal of all under 35 percenters returning to work has not yet been met, the Labour Foundation has had a study performed into the under 35 percenters' perceived health and their work resumption, as well as into the effect of the Insurance Invalidity Laws Assessment Decree [*Schattingsbesluit*] (Assessment Decree). The results of the study prompted the Foundation to advise the government as follows in its letter to the Lower House

dated 11 April 2011 regarding the assessment of the Work and Income (Capacity for Work) Act [*Wet werk en inkomen naar arbeidsvermogen*] (WIA):

- to expand the use of the no-risk policy so that it can be used as a reintegration tool, even before the WIA claim is assessed, for under 35 percenters with substantial or serious work restrictions. This will increase the chance that these individuals can resume working.
- to expand the no-risk policy so that it applies even in cases in which the individual returns to work for the same employer after being sick for 104 weeks.
- to make the Assessment Decree more realistic so that assessments focus on jobs available in the region where the individuals live. The Foundation also requested that attention be devoted to the question of whether the change in the required minimum number of available positions is justified⁸.

In a response dated 31 October 2011 addressed to the Lower House, the Deputy Minister of SZW announced that he was rejecting the Foundation's advice. In response, the Foundation sent the Lower House a letter dated 7 December 2011 requesting that the Deputy Minister be urged to expand the no-risk policy and to make the Assessment Decree more realistic. The Lower House ignored this letter, however.

On 11 April 2011, the Labour Foundation also made additional recommendations to employers and employees designed to promote the reintegration of under 35 percenters. Employers were recommended to offer more focused training in order to increase these individuals' employability either at or outside their companies. They were also advised to thoroughly inform themselves regarding the reintegration incentives available from UWV, the employees' insurance administration agency.

The Foundation also recommended employees to give some thought to suitable work at their companies and to discuss their ideas with their employer and/or company doctor. If the occupational disability relates to the employee's own work, the Foundation recommends that the employee look for another type of work. In addition, employees are advised to keep up to date on the opportunities for resuming work that are offered by the law and/or collective agreements and/or their employer.

- ***Modernisation of the Dutch Sickness Benefits Act [Ziektewet]***

The government wants to reduce the absence due to illness and occupational disability of "safety-netters"⁹. On 7 December 2011, the Labour Foundation informed the Lower House about the absence of support for the measures the government had announced regarding the modernisation of the Sickness Benefits Act. This absence of support was attributed to the fact that no demonstration had been made of the necessity for amending the Act and the effectiveness of the envisaged measures, with an analysis of the latter being crucial.

⁸ Labour Foundation, *Additional Conclusions, Recommendations and Advice on Under 35 percenters [Aanvullende conclusies, aanbevelingen en adviezen 35-min]*, April 2011.

⁹ In this proposal, "safety-netters" refers to unemployed persons who report that they are ill, temporary employees who are ill and employees who were on sick leave when their temporary employment contract ended.

- ***SER symposium: The new generation of entrepreneurs and workers***

The way people and organisations are active in the economy is evolving. This has been expressed in the significant changes on the labour market in recent decades, in labour organisations, types of work and employment relationships, as well as in the advent of new parties in addition to the classic employee and employer/company. These changes have occurred in relative silence, but their consequences add up to a revolution on the labour market.

On 1 February 2012, entrepreneurs, new workers and their representatives engaged in a debate within the SER regarding these changes on the labour market and their consequences. This symposium was the brainchild of SER council members M. van Praag, E. Raats-Coster of PZO and L. Gonggrijp of the Netherlands Trade Union Confederation for Self-Employed Persons [*FNV Zelfstandigen*].

- ***Two-day conference of European Social and Economic Councils (SECs)***

The European SECs met on 9 and 10 November 2011 in The Hague for a two-day conference on the next generation's involvement in the social dialogue in Europe. The conference's topics included intergenerational solidarity and the next generation's support for social dialogue. The conference included lectures by A. Rinnooy Kan of the SER, H. Boutellier of the Verwey-Jonker Institute and A. Sonnet of the OECD. Various countries gave presentations on the status of their situations, with future generations and developments on the labour market being topics of much discussion.

- ***Verwey-Jonker Lecture 2011***

Much of the current social order is based on speaking and acting on others' behalf. Representatives, agents and lobbyists assume collective identities. The self-evidence of representation, however, is coming under increasing pressure. This issue is also relevant for the representational organisations in the SER. For this reason, the theme of the fourth Verwey-Jonker/SER Lecture, which was held on 17 November 2011, was: *Who, exactly, do you represent?*

C. Passchier, of the Dutch Trade Union Confederation, on her experiences: *"You have to know what your organisation thinks, also in terms of mandate, trust and being involved in decision-making. The question then becomes how you can connect and stay connected with those you represent and how you can best represent them. After all, representation must reflect others' views. That's complicated, given that the various members have their own distinct interests. That complexity became evident when formulating the Pension Accord. As the representative of an institution like a trade union, your credibility rides on your managing trust and legitimate considerations and arriving at workable rules."*

Guideline 8: Developing a skilled workforce responding to labour market needs and promoting lifelong learning

Guideline 9: Improving the quality and performance of education and training systems at all levels and increasing participation in tertiary or equivalent education

- ***Low literacy skills***

Concluded in September 2007, the agreement on a structural approach to low literacy skills [*Convenant Laaggeletterdheid*] contains arrangements between the social partners and the Ministries of Education, Culture and Science, Social Affairs and Employment and the former Ministry of Youth and Family to combat low literacy levels in industry. Since then, the Labour Foundation has been making every effort to bring this issue to the attention of decentralised CLA partners, including by encouraging them to set out an approach to low literacy levels in their collective agreements. It is crucial that everyone becomes and remains employable on the labour market. Education in the area of language skills forms the basis for improving employees' position on the labour market.

The Labour Foundation does not consider low literacy to be an isolated issue, but rather views it as a part of its goal of encouraging the training of employees and promoting sustainable participation and employability. Those who need language skills to work (or to continue working or to find a new job) or to remain employable need language training.

The Foundation has collected and distributed good examples of and information about collective agreements and industry and company approaches to this issue. In cooperation with Stichting Lezen & Schrijven (reading and writing foundation), the Foundation has approached various industries and training and education funds [*O&O-fondsen*] to promote the development of an approach to low literacy and the inclusion of that approach in policy plans and/or collective agreements. The Foundation encourages the use of the language scan [*taalscan*] – an instrument developed by the Dutch Trade Union Confederation [*FNV*], the Confederation of Netherlands Industry and Employers [*VNO-NCW*] and the Royal Association MKB-Nederland [*MKB*]¹⁰ – to determine whether someone needs language training. The Labour Foundation also encourages the individual use of low-threshold multimedia products, including those from Stichting ETV.nl.

- ***APL***

An APL certificate [*Ervaringscertificaat*] is conferred to prove that one has received *Accreditation of Prior Learning* [*Erkennen van Verworven Competenties*]; it is a labourmarket tool that employees can use to prove their competencies in the skills they have acquired. The APL may or may not lead to further training.

The Labour Foundation and the government followed through on their earlier decision to agree a new covenant. The basic principle of the new covenant is that APL must be a labour market instrument used to strengthen the position of employees on the labour market in terms of their career and the possibilities for workers and jobseekers in terms of recruitment and career path. Expectations are that the new covenant will be signed in May/June 2012.

¹⁰ FNV, VNO-NCW, MKB *Taalscan*, April 2010. This is available for download from fnv.nl/taalscan, www.vno-ncw.nl and www.mkb.nl.

The APL Knowledge Centre has joined forces with the Labour Foundation to prepare a guideline¹¹ for decentralised parties to collective agreements; the guideline explains how APL agreements can be included in collective agreements. The guideline stems from a 2010 study of APL agreements in collective agreements and the benefits that have resulted. The guideline was published and distributed to decentralised parties to collective agreements in September 2011.

- ***SER-National Youth Council Conference: Young People on the Road to the Labour Market***

Young people are the workers and employers of the future. At the conference of the SER and the National Youth Council [*Nationale Jeugdraad*] on 7 June 2011, the central issues were what is necessary to develop young people's talents to their full potential so that they are prepared to enter the job market and how to prevent young people without starting qualifications – one quarter of all young people – from falling by the wayside. During the conference, representatives from youth organisations discussed various topics.

Hans Kamps, a Crown-appointed SER member, stated that at least a quarter of young people have no starting qualifications. He did not believe that the expected scarcity on the labour market would eliminate this problem. *'These young people are standing at the end of the queue. This will require a very active policy.'*

- ***SER Advisory Report: Greater differentiation in Higher Education***¹²

A highly educated population is important for the competitive position – and thus for the welfare – of the Netherlands. This means that as much potential talent as possible must be able to obtain higher education and develop fully. There is a high drop-out rate in higher education, however, with talented students not being challenged enough and insufficient flexibility in the system to adequately serve the wide range of demands from students and the labour market. Students dropping out, choosing the wrong course of study, changing their course of study and the longer study periods that result mean that Dutch young people enter the labour market relatively late. This works to the disadvantage of both the young people themselves and for Dutch society and the Dutch economy as a whole.

The basic quality of higher education must be increased, and more efforts must be made to ensure that the right student finds the right course of study. Higher education must also be able to continue to play a role in the process of lifelong learning. Higher education should be subject to more differentiation so that it may better serve students and the labour market. Conversely, fragmentation of the supply of courses must be reduced. The multiplicity of courses – such as those available in higher vocational education – makes the selection process difficult for students and makes it difficult for employers to assess the value of a particular course.

According to the SER, there are many benefits yet to be reaped from the collaboration between the organised business community and higher education, making it an obvious

¹¹ The APL Knowledge Centre and the Labour Foundation *Making Thorough APL Agreements in Collective Agreements* [*Naar goede afspraken over EVC in de cao*], September 2011. This can be downloaded from www.stvda.nl.

¹² SER Advisory Report entitled *Strategic Agenda for Higher Education, Research and Science Policy* [*Strategische Agenda Hoger Onderwijs, Onderzoek en Wetenschap*]. An English-language abstract is available at www.ser.nl.

choice to seek alignment with the projects of the nine top sectors as defined by the Ministry of Economic Affairs, Agriculture and Innovation (EL&I). Extra medium- and long-term investments will be needed if the Netherlands is to become one of the top five knowledge economies. The SER emphasises that the investment required must have a clear positive return for the individual but expressly also for the Netherlands.

- ***Draft advisory report on the training market for employed persons***¹³

The market for post-initial training generally functions well and comprises a large number of mostly private suppliers. The greying population, globalisation and technological innovations demand more future-oriented efforts that devote extra attention to sectors where labour shortages are expected, such as the healthcare, education and technology sectors. Realising the well-supported ambition to become one of the top five knowledge economies will also require extra efforts.

The SER has established that the trainings on offer must be made more transparent and that the quality of the offerings should be subject to checks. Given the expected need for further training and retraining of employees, including flex workers and self-employed persons, as well as job seekers, both public and private suppliers of training programmes will have to make efforts to ensure that the desired trainings are available. To the extent that training can be linked to accredited degrees – degrees in secondary and higher vocational education and university education – regional education centres, polytechnics and universities can play a greater role, for example, by deploying their expertise and infrastructure more efficiently.

It is important that industry organisations and training and education funds continue to emphasise the value of education. They can offer, or continue to offer, a platform for collaborations between businesses in the area of training. Companies can also use industry organisations and training and education funds to better organise their training needs. The government can contribute to this by offering incentives for these activities.

¹³ Draft advisory report entitled *Translating Training into Jobs, Advice on the Post-Initial Training Market* [*Werk maken van scholing, advies over postinitiële scholingsmarkt*]. This advisory report is expected to be finalised on 20 April 2012.

Guideline 10: Promoting social inclusion and combating poverty

- *Disabled young people*

In order to promote disabled young people's participation in the Dutch business community, the Labour Foundation has recommended that the decentralised social partners make collective agreements regarding assisting these young people with finding work¹⁴. To support the business community in these efforts, the Foundation then published an *Explanatory Memorandum on the Recommendation Regarding Promoting Disabled Young People's Participation in the Dutch Business Community* [*Toelichting bij de Aanbeveling Wajong*], which contains practical information for achieving the Recommendation's goals¹⁵.

The SZW's reports on collective agreements show that an increasing number of collective agreements contain provisions regarding disabled young people. The autumn report on collective agreements 2008 indicates that there were such provisions in 0% of the collective agreements, but the same report for 2010 reported that that figure had climbed to 16%. In order to monitor this process, and to adjust it if necessary, the Labour Foundation periodically consults UWV, the implementing agency¹⁶.

¹⁴ Labour Foundation, *Recommendation Regarding Promoting Disabled Young People's Participation in the Dutch Business Community* [*Aanbeveling gericht op de bevordering van de participatie van jonggehandicapten in het Nederlandse bedrijfsleven*], 23 April 2008.

¹⁵ Labour Foundation, *Explanatory Memorandum on the Recommendation Regarding Promoting Disabled Young People's Participation in the Dutch Business Community* [*Toelichting bij de Aanbeveling gericht op de bevordering van de participatie van jonggehandicapten in het Nederlandse bedrijfsleven*], 4 December 2008.

¹⁶ UWV is the Employees' Insurance Administration Agency [*Uitvoeringsinstituut Werknemersverzekeringen*]. UWV ensures the national administration of employee insurances such as unemployment benefit [*WW*], disability benefit [*WIA*], occupational disability benefit [*WAO*], sickness benefit [*Ziektewet*] and provides labour-market and data services as an independent administrative body working under the supervision of the Ministry of SZW.