



# THE NETHERLANDS

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Civil Law	Written	Yes	Federation	Monarchy

## 1. INTRODUCTION

### 1.1. Modern Slavery and Human Trafficking

The Walk Free Foundation’s Global Slavery Index of 2023 ranked the Netherlands fourth in taking the most action to respond to modern slavery of all governments in the world.<sup>1</sup> The Netherlands continues to meet the minimum standards for eliminating slavery and human trafficking. The U.S. State Department’s Trafficking in Persons Report 2023 again gave the Netherlands Tier 1 status.<sup>2</sup>

Combatting modern slavery and human trafficking is a priority of the Dutch Government. All relevant ministries are, for instance, committed to the new National Action Plan, called “Together against Human Trafficking,” which aims to decrease the number of victims by working together with different organizations within and outside the government. Nonetheless, enforcement remains difficult because slavery and trafficking offences are hidden. Also, the loss of data on registered victims as a result of new privacy laws prohibiting authorities and non-governmental organizations (**NGOs**) from sharing data without a victim’s explicit consent jeopardizes the protection and support of victims of human trafficking and modern slavery.

The Netherlands is predominantly a country of destination, but also to an increasing extent, a country of origin and a country of transit. Victims of human trafficking are men, women, and children subjected to sex trafficking and forced labour. The largest group of identified victims are Dutch girls enticed by young male traffickers, known as “lover boys,” who coerce vulnerable girls into sexual exploitation, often through a sham romantic relationship. Women and child refugees and asylum-seekers are vulnerable to sex trafficking. Men and women from Eastern Europe, Africa, and South and East Asia are subjected to labour trafficking in industries such as inland shipping, agriculture, horticulture, hospitality, domestic servitude, and forced criminal activity. Criminal groups force Romani children into pickpocketing and shoplifting. Refugees and asylum-seekers, including unaccompanied children, are vulnerable to labour trafficking.

The Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (**National Rapporteur on Human Trafficking**) is the independent monitoring and reporting authority in the field of human trafficking. The Rapporteur’s main task is to report to the Dutch Government on the nature and scale of human trafficking and sexual violence against children in the Netherlands. In addition, the National Rapporteur on Human Trafficking reports the effects of governmental policies. The current Rapporteur is Conny Rijken, who took office on 1 September 2022.

<sup>1</sup> *Global Slavery Index 2023* at p. 3, available at: <https://www.globalslaveryindex.org/>.

<sup>2</sup> U.S. Dep’t of State, Trafficking in Persons Report 85 (2023), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023-Introduction-V3e.pdf>. The U.S. Department of State rankings are based on the minimum standards specified in the U.S. Trafficking Victims Protection Act of 2000, “which are generally consistent with the [UN] Palermo Protocol.” *Id.* at 69.

## 1.2. The Netherlands' Policy and Legal Position

As a member state of the European Union, the Netherlands has ratified and implemented many treaties, conventions, and directives against modern slavery, slavery-like conditions, human trafficking, and child labour. For example, the criminal offences for human trafficking are based on various international instruments and, therefore, must be interpreted in light of them.

European parliamentarians have called for binding EU-wide legislation to regulate business and human rights. The Netherlands is one of the first EU member states to introduce a regulation on business and child labour. The Dutch Child Labour Due Diligence Act, which was passed by the Senate on 14 May 2019, was intended to enter into force in 2022. The Act obliges private businesses to monitor their supply chains to hinder child labour. However, it is currently uncertain when the official ratification will take place, as the government initially expressed its intentions to wait for European regulation before ratifying. On 23 February 2022, the European Commission published the proposal for the directive on corporate sustainability due diligence (CSRD). Based on this proposal and the OECD SOE-guidelines for multinational enterprises, another legislative initiative was presented to the Parliament at the beginning of 2023 to be debated. It was intended to enter into force on 1 July 2023, followed by some of the articles on 1 January 2024, but, probably due to the fall of the Dutch government in July 2023, no further debates on this law initiative currently have taken place.

According to the former National Rapporteur on Human Trafficking, international research and cooperation are key to protecting victims effectively. The Netherlands shares investigative information with foreign investigative services to prevent the human trafficking activities of (international) criminal organizations.

## 2. OVERVIEW OF THE NETHERLANDS' LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

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### 2.1. The Netherlands' Regional and International Law Obligations

#### 2.1.1. *Fundamental human rights*

As a Member State of the European Union, the Netherlands must abide by the directives and legal frameworks of both the European Union and the Council of Europe targeting human trafficking. This includes the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, revised in 2010) and the European Social Charter (1961, revised in 2006).

Most of the human rights treaties, to which the Netherlands is a party, are based on the Universal Declaration of Human Rights of the United Nations, which was signed in 1948. The Netherlands has signed and ratified many other conventions: the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1972), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1989), the Convention on the Rights of the Child (2002), and the International Convention for the Protection of All Persons from Enforced Disappearance (2011). The Netherlands is also a party to the United Nations Convention Against Transnational Organized Crime and its Protocols.

#### 2.1.2. *Modern slavery and trafficking*

In addition to the treaties and conventions just mentioned in Section 2.1.1. that prohibit slavery and trafficking, the Netherlands has signed and ratified a number of other treaties, conventions, and protocols:

the International Labour Organization (ILO) Convention No. 109 on the Abolition of Forced Labour (1957), the ILO Convention No. 182 on the Worst Forms of Child Labour (1999), the Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000), the Convention on the Rights of the Child (1990), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (**UN-Palermo Protocol**), the Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims (2011) (**Directive 2011/36/EU**), and the Council of Europe Convention on Action against Trafficking in Human Beings (2005) (**Warsaw Convention**).

### 2.1.3. *Effect under the Netherlands' law*

After Parliament's approval and official publication, "self-executing" obligations under international instruments have an automatic force of law according to article 93 of the Dutch Constitution. Treaty-law is considered "self-executing" if the obligations of the relevant treaty provision are clear and binding without further additional legislation. On the basis of the Dutch Constitution, self-executing international law is ranked at the top of the hierarchy. Article 94 of the Constitution stipulates that all applicable statutory regulations in force, including the Constitution itself and the Kingdom's Charter, do not apply if they are contrary to self-executing international law.

## 2.2. Human Rights Protections Under The Netherlands' Law

Chapter 1 of the Dutch Constitution sets forth fundamental rights. As indicated in Section 2.1.3., "self-executing" international instruments have automatic force of law after Parliament's approval and official publication. These include the Universal Declaration of Human Rights and other conventions listed in Section 2.1.1. The Dutch legal framework to protect human rights is thus the result of various national and international laws and conventions.

## 2.3. Criminalization of Modern Slavery

The Dutch Criminal Code (DCC) provides criminal offences for modern slavery and other forms of human trafficking. The federal government has the exclusive power to legislate criminal laws.

## 2.4. Supply Chain Reporting

As set out in Section 4., the Netherlands has introduced the Child Labour Due Diligence Act, and the submission of a legislative proposal on Responsible and Sustainable International Business that is likely to replace the Child Labour Due Diligence Act. Both laws oblige private businesses to verify their supply chains to prevent child labour. With the entering into force of the CSRD on 5 January 2023, the European Commission has acknowledged the importance of supply chain monitoring in the fight against human trafficking. The CSRD introduces mandatory human rights and environmental due diligence in the supply chain, including on risks linked to forced labour. Given the deadlines of the CSRD, the Dutch government likely will, after the election in November 2023, put this legislative proposal back on the agenda.

## 2.5. Investigation, Prosecution, and Enforcement

### 2.5.1. *Investigation and prosecution of criminal offenses*

The Minister of Justice has overall responsibility for coordinating anti-trafficking policies, but a public prosecutor handles the investigation and prosecution of criminal offences. The public prosecutor is responsible for instructing the police in criminal cases and deciding whether to prosecute.

All courts and tribunals have specialized judges for human trafficking cases. The former National Rapporteur on Human Trafficking recommended this measure following an extensive case law study of human trafficking cases. He found that case outcomes varied widely and concluded that greater judicial knowledge could improve legal certainty in these delicate matters.

In the Netherlands, local governments regulate legalized prostitution sectors and conduct anti-trafficking inspections of brothels. The police, local health authorities, the Labour Inspectorate, and fire prevention authorities regularly inspect brothels. The Centre for Crime Prevention and Safety provide municipal front office staff, enforcement officers, and inspectors with training and guidance on recognition of and responses to suspected human trafficking.

### 2.5.2. *Mutual assistance/international cooperation*

In line with the 2003 Action Plan of the Organization for Security and Co-operation in Europe, in 2013, the Netherlands established a National Referral Mechanism to coordinate assistance to victims of human trafficking. Furthermore, the Netherlands has adopted the “Together against Human Trafficking” program, which is an integrated program to tackle sexual exploitation, labour exploitation, and criminal exploitation.

In addition to law enforcement, the agencies involved include the Dutch Immigration and Naturalization Service (**IND**), the Repatriation and Departure Service under the Ministry of Justice, the National Rapporteur on Human Trafficking, the Task Force on Human Trafficking (an inspectorate under the Ministry of Social Affairs and Employment), the Royal Dutch Constabulary (a network of Regional Information and Expertise Centers), and CoMensha (the national expertise and coordination center for victims of human trafficking), which maintains a national register of trafficked persons and local governments.

The Warsaw Convention promotes international cooperation in the exchange of information amongst the member states of the European Union to combat human trafficking. The Warsaw Convention also obliges the Netherlands to coordinate national policies and actions against human trafficking, including through the establishment of specific coordinating bodies. For this purpose, the Netherlands established the Task Force on Human Trafficking. The Group of Experts on Action against Trafficking in Human Beings (**GRETA**) periodically evaluates the Netherlands’ implementation of the Warsaw Convention.<sup>3</sup>

GRETA acknowledged the progress made in the fight against human trafficking in a report published on 19 October 2018. It called on the Dutch authorities to increase its assistance for foreign victims of human trafficking. The Dutch Government immediately followed the recommendation to adopt a national action plan by implementing the program “Together against Human Trafficking.”

During International Human Rights Day on 10 December 2019, Belgium, the Netherlands, and Luxembourg signed a declaration of intent to take further steps in the cooperation against human trafficking within the Benelux.

Refer to Section 8. For more information.

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<sup>3</sup> Available at: <https://rm.coe.int/greta-2018-19-fgr-nld-en/16808e70ca>.

### 3. THE NETHERLANDS’ FEDERAL CRIMINAL OFFENSES RELATING TO MODERN SLAVERY, MODERN SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

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#### 3.1. Overview of Criminal Offenses

Title XVIII of the Dutch Criminal Code targets offences against personal freedom.<sup>4</sup> Article 273f of the Dutch Criminal Code is the central article for offences prohibiting human trafficking, reflecting a number of global and regional legal instruments, such as the UN Palermo-Protocol and implementation of Directive 2011/36/EU. The criminal offence for human trafficking and its definitions, therefore, should be interpreted in light of the objectives of the international instruments. The legislature has chosen to provide criminal offences for all forms of human trafficking, making Article 273f the Dutch Criminal Code’s longest article. In April 2023, the consultation phase closed for a new legislative proposal to broaden the scope but also to simplify Article 273f. The Dutch Criminal Code prescribes only a maximum for penalties of imprisonment and fines, both of which vary depending on the existence of aggravating circumstances.

#### 3.2. Modern Slavery Offenses Under the Criminal Code

##### 3.2.1. General

The Dutch Criminal Code has included slavery offences since 1886. Article 274 prohibits the slave trade. However, this article is no longer applied or is scarcely applied in cases. Article 273f for human trafficking is better tailored to modern forms of exploitation and human trafficking, including slavery offences. In May 2023, the Council of the Judiciary gave its advice on the legislative proposal to amend Article 273f and to introduce two new articles under the Dutch Criminal Code. The proposal is mainly aimed at making the current penal provision for human trafficking more accessible and simplified. Also, the proposal envisages criminalizing “serious prejudice” by the introduction of new articles (Article 273fa and 273fb) and an article with grounds for criminal aggravation (article 273h) and an article with the possibility to deprive the accused of certain rights upon conviction (article 273i). Moreover, it proposed similar amendments for the BES Criminal Code (Bonaire, St Eustatius, and Saba). The Counsel of the Judiciary has no objections to the purposes of the proposal but suggests it needs clarification and modification before proposing it to the Dutch Parliament.

Article 250ter in the Dutch Criminal Code first penalized human trafficking in 1911. This article made it punishable to traffic and exploit women for prostitution. In 1927, this article was extended to make it a crime to exploit underage boys. In 1994, human trafficking became gender neutral, also recognizing men as victims. In 2000, profiting from human trafficking became a criminal offence, and prostitution was legalized, provided that the prostitution was done voluntarily and the prostitutes were over 18 years old. The foundation for the current crime of human trafficking was laid in 2005 when article 273f of the Criminal Code was introduced and the definition of human trafficking was further extended. Human trafficking now includes exploitation of labour and services and unlawful trade of organs. In 2009, the legislature amended the human trafficking laws by increasing the maximum punishments. The legislative proposal also will likely increase the article 273f penalties.

The offences under article 273f, without any aggravating circumstances, are punishable by a maximum penalty of 12 years of imprisonment and a fifth category fine (EUR 90,000 in 2023).

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<sup>4</sup> In the Netherlands, only the federal government deals with offences prohibiting slavery and sexual servitude.

HUMAN TRAFFICKING PENALTIES IN THE NETHERLANDS	Duration of imprisonment	Amount of the fine
Human trafficking offence without aggravating circumstances	Maximum of 12 years	Maximum fine is a fine in the fifth category <sup>5</sup>
Attempt	Maximum of 12 years	Maximum fine is a fine in the fifth category
Aggravating circumstances: (i) the offence was committed against a minor or a person in a situation of vulnerability (ii) the offence was accompanied by violence (iii) the offence was committed by two or more perpetrators	Maximum of 15 years	Maximum fine is a fine in the fifth category
The offence has caused grievous bodily harm	Maximum of 18 years	Maximum fine is a fine in the fifth category
The offence caused the victim's death or was committed within the framework of a criminal organization	Maximum of 30 years or life	Maximum fine is a fine in the fifth category

The definition of “trafficking in persons” in article 273f of the Criminal Code is the same as that given in the UN-Palermo Protocol and Directive 2011/36/EU.<sup>6</sup> The definition, therefore, includes: the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, or abuse of a position of vulnerability; or by means of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation or removal of organs. Exploitation includes at least the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery, practices similar to slavery, servitude, or the removal of organs.<sup>7</sup>

To make all forms of human trafficking punishable under this article, article 273f of the Criminal Code has been subdivided into nine sub-clauses of criminal offences:

- Sub-clause 1:** trafficking;
- Sub-clause 2:** trafficking of a minor;
- Sub-clause 3:** trafficking across the border for sexual services;
- Sub-clause 4:** exploitation;
- Sub-clause 5:** exploitation of a minor;
- Sub-clause 6:** intentional profiting from exploitation;
- Sub-clause 7:** intentional profiting from forced organ removal;
- Sub-clause 8:** intentional profiting from exploitation of minors;

<sup>5</sup> EUR 90,000 in 2022.

<sup>6</sup> Article 3 UN-Palermo Protocol.

<sup>7</sup> Article 273f paragraph 2 CC.

**Sub-clause 9:** intentional profiting from enforcing to donate proceeds.

Sub-clauses 2 to 9 are *leges specialis* of sub-clause 1. To be a violation, there must be (i) an act, (ii) coercion, (iii) the intention of trafficking or exploitation, and (iv) a causal link between the action and the coercion. The offences do not require the use of force or coercion against the victim; it can be used against another person to persuade the victim or to make the victim give in to the offender's will. Coercion is not required for actions aimed at a minor as meant in sub-clauses 2, 5, and 8.<sup>8</sup> Coercion is also not required under sub-clause 3.<sup>9</sup>

Under sub-clauses 6 to 9, it is a punishable act to profit from human trafficking, meaning that a person (i) deliberately benefits from and (ii) knows or reasonably expects they will profit from an act of human trafficking.

### 3.2.2. *Extraterritorial application*

Based on article 2 of the Dutch Criminal Code, the Dutch Criminal Code applies when a person commits a punishable offence on Dutch soil. The committed offences punishable under article 273f may be cross-border. On the basis of the territory principle, the Netherlands has jurisdiction if a person also commits an offence in the Netherlands. Successive acts that take place inside and outside the Netherlands, including recruiting, can be an offence within the Netherlands.<sup>10</sup>

With the implementation of Directive 2011/36/EU, the Dutch legislature has provided for unconditional jurisdiction whenever persons with Dutch nationality or foreigners who are residents of the Netherlands commit an offence punishable under article 273f.<sup>11</sup> Before this implementation, the Netherlands exercised this unconditional jurisdiction only if the victim was a minor.

The Dutch Criminal Code also applies to victims of human trafficking who have Dutch nationality or a permanent residence in the Netherlands, if the law in the country where the offender committed the violation punishes the act.<sup>12</sup>

## 3.3. Modern Slavery-Like Offenses in The Netherlands' Legal Order

### 3.3.1. *Servitude*

The definition of trafficking in persons in article 273f of the Criminal Code includes servitude.

The Netherlands is a member of the Convention for the Protection of Human Rights and Fundamental Freedoms and is bound by decisions of the European Court of Human Rights. Article 4 of the Convention prohibits slavery and servitude. For the purposes of the Convention, "servitude" means an obligation to provide services imposed by the use of coercion. It is related to the concept of slavery, as the cases *Seguin v. France* and *Siliadin v. France* conclude.

The Court noted that servitude is a specific form of forced or compulsory labour, or, in other words, "aggravated" forced or compulsory labour. In fact, the fundamental distinction between servitude and

<sup>8</sup> Supreme Court January 28, 2020, ECLI:NL:HR:2020:122.

<sup>9</sup> Supreme Court July 6, 1999, NJ 1999/701.

<sup>10</sup> Supreme Court February 2, 2010, NJ 2010/89 en Lower Court of Almelo July 11, 2008, LJNB6969 (Sneep).

<sup>11</sup> Article 7 of the Criminal Code.

<sup>12</sup> Article 5 of the Criminal Code.

forced or compulsory labour within the meaning of article 4 of the Convention lies in the victims' feeling that their situation is permanent and unlikely to change.<sup>13</sup>

The Dutch Supreme Court has ruled that there can be a declaration of human trafficking even though the exploitation did not violate the victim's fundamental rights described in article 4 of the Convention. The view that the offence of human trafficking can occur only if the offender's conduct violates article 4 of the Convention has no legal basis.<sup>14</sup>

### **3.3.2. Forced labor**

The definition of trafficking in persons in article 273f of the Criminal Code includes forced labour.

To violate paragraph 1 sub-clause 1 of article 273f, there must be (i) an act of forced labour, (ii) coercion, (iii) the intention of forcing labour, and (iv) a causal link between the forced labour and the coercion. This crime is punishable by a maximum penalty of 12 years of imprisonment and a fine of the fifth category (EUR 87,000 in 2020).

### **3.3.3. Deceptive recruiting for labor or services**

The definition of trafficking in persons under article 273f of the Criminal Code includes deceptive recruiting for labour or services.

To violate paragraph 1 sub-clause 1, there must be (i) an act of deception, (ii) coercion, (iii) the intention of recruiting for labour or services, and (iv) a causal link between the recruiting and the coercion. This crime is punishable by a maximum penalty of 12 years of imprisonment and a fine of the fifth category (EUR 90,000 in 2023).

### **3.3.4. Early and forced marriage**

The Dutch Criminal Code does not have offences for early and forced marriages. However, Title XVIII of the Dutch Criminal Code has several articles that could pertain to early and forced marriage, depending on the specific circumstances:

- 273f for human trafficking offences;
- 279 and 280 for removal of a minor from parental authority;
- 281 for elopement;
- 282 and 282a for unlawful deprivation of liberty;
- 284 for coercion; or
- 285c for luring.

In practice, the main basis for the criminal prosecution of forced marriage is the criminal offence for coercion embodied in article 284 of the Criminal Code. Offenders can be sentenced to a maximum of two years of imprisonment or a fourth category fine (EUR 22,500 in 2023). To constitute a violation, there must be (i) an unlawful act, situation, or defamation and (ii) an intention to force marriage.

<sup>13</sup> Available at: [https://www.echr.coe.int/documents/guide\\_art\\_4\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_4_eng.pdf).

<sup>14</sup> Supreme Court March 29, 2016, ECLI:NL:HR:2016:529.



Article 285c of the Criminal Code might apply to planning and organizing a forced marriage, as that article prohibits deliberately luring a person outside or into the Netherlands with the intention of forcing that person to enter into a marriage. It is considered luring when a person is induced to travel abroad under false pretenses. This includes any act that reasonably would induce a person to travel abroad, whereas if that act had not taken place or if the person had known the actual purpose of the journey, that person would not have travelled abroad. Other preparatory acts are not punishable. Offenders of luring can receive a maximum of one year of imprisonment or a third category fine (EUR 9,000 in 2020).

### **3.3.5. Debt bondage**

The Dutch Criminal Code does not have an offence for debt bondage. Nor is debt bondage included in the definition of article 273f of the Criminal Code. However, the legislature’s broad definition of human trafficking in article 273f, when interpreted in light of international law, encompasses all forms of slavery offences. When the circumstances are not solely debt bondage, but qualify as forced labour, article 273f of the Criminal Code punishes the conduct. Refer to Section 3.3.2.

### **3.3.6. Any other relevant offenses**

The Netherlands has no other relevant slavery-like offences, but might introduce the new proposed articles to criminalize the concept of serious prejudice. However, the Council of the Judiciary has expressed its concerns about the proposed definition of “serious prejudice” and suggests clarification. Ambiguity in the definition creates the risk that certain cases, where current law finds sufficient evidence for a conviction of section 273f subsection 1 under 4 of the Criminal Code, would be qualified, for safety’s sake, as serious prejudice, resulting in lower penalties. The purpose of the bill, to broaden criminal liability and better protect victims, would then not be served.

### **3.3.7. Extraterritorial application of the offenses**

Refer to Section 3.2.2. for the extraterritorial application of the offences of servitude (discussed in Section 3.3.1.), forced labour (discussed in Section 3.3.2.), deceptive recruiting for labour or services (discussed in Section 3.3.3.), and debt bondage (discussed in Section 3.3.5.).

For the offence of forced marriage (discussed in Section 3.3.4.), the extraterritorial application of article 284 of the Criminal Code is extended. Due to an amendment in 2013, the Dutch Criminal Code applies also to offenders with Dutch nationality or a permanent residence in the Netherlands, and there is no requirement that the act is a criminal offence in the country where the coercion (forced marriage) took place.<sup>15</sup>

## **3.4. Human Trafficking/Smuggling-Related Criminal Offenses**

### **3.4.1. International and domestic trafficking/smuggling of people**

Article 197a of the Criminal Code penalizes human smuggling. Under the Dutch Criminal Code, human trafficking and human smuggling have different meanings. Human trafficking is a crime against personal freedom. The definition of human smuggling covers only assistance with illegal entry, transit, and residence. Therefore, article 197a is included in Title VIII of the Criminal Code that targets crimes against public authorities.

On 12 December 2000, the Netherlands signed the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, concluded in New York on 15 November 2000, supplementing the Convention against

<sup>15</sup> Article 7 paragraph 2 sub-clause e of the Criminal Code.

Transnational Organized Crime, also concluded in New York on 15 November 2000 (**Protocol**). The Protocol entered into force on 28 January 2004. One of the Protocol’s objectives is to align the criminal offence of human smuggling internationally.

Human smuggling without any aggravating circumstances is punishable by a maximum penalty of imprisonment of six years or a fifth category fine (EUR 90,000 in 2023). If a person exercising any office or profession committed the offence, then imprisonment not exceeding eight years or a fifth category fine will be imposed. A judge can disqualify that person from holding office or exercising a profession, and the court may decide to make this judgment publicly available. The maximum penalty of imprisonment is 10 years if the offender commits the offence as a profession or consistent practice or in cooperation with multiple persons. If one of the offences as described in paragraph one and two of article 197a is committed with the intent to prepare or facilitate a terrorist crime, the imprisonment penalty imposed on the offence shall be increased by one third.<sup>16</sup>

HUMAN TRAFFICKING PENALTIES IN THE NETHERLANDS	Duration of imprisonment	Amount of the fine
Human smuggling offence without aggravating circumstances	Maximum of 6 years	Maximum fine is a fine in the fifth category <sup>17</sup>
A person committed the offence in the exercise of any office or profession	Maximum of 8 years	Maximum fine is a fine in the fifth category
Aggravating circumstances: (i) the offence was committed as a profession or consistent practice (ii) the offence was committed by two or more perpetrators	Maximum of 10 years	Maximum fine is a fine in the fifth category
The offence has caused grievous bodily harm	Maximum of 15 years	Maximum fine is a fine in the fifth category
The offence caused the victim’s death	Maximum of 18 years	Maximum fine is a fine in the fifth category

Assisting with entry or transit is punishable under paragraph 1 of article 197a. Assisting with providing residence is an offence under paragraph 2 and requires that the offender has a profit motive.

Paragraph 1 punishes (i) assisting another or providing another with opportunity, means, or intelligence (ii) in gaining entry into or transit through the Netherlands, another member state of the European Union, Iceland, Norway, or a state that has acceded to the Protocol (iii) when the offender knows or has serious reasons to suspect that such entry or transit is unlawful.

Paragraph 2 of article 197a of the Criminal Code requires a person who, (i) for profit purposes, (ii) assists another or provides another with opportunity, means, or intelligence (iii) in gaining residence in the Netherlands, another member state of the European Union, Iceland, Norway, or a state that has acceded to the Protocol, (iv) when the offender knows or has serious reasons to suspect that the residence is unlawful.

<sup>16</sup> Article 197a Dutch Criminal Code, paragraph 7.

<sup>17</sup> EUR 90,000 in 2023.

### **3.4.2. *International and domestic trafficking in children***

Article 273f paragraph 1 sub-clause 2 makes trafficking in children a crime.

When the victim is younger than 18 years old, no coercion is required to commit the crime. The act of trafficking in children carries a maximum penalty of 15 years and a fine of the fifth category (EUR 90,000 in 2023). The offender has the obligation to investigate the victim's age; therefore, the offender has no excuse for not knowing the victim's actual age.

### **3.4.3. *Victim harboring***

The definition of trafficking a person in article 273f of the Criminal Code includes victim harbouring.

To violate sub-clause 1 of article 273f, there must be (i) an act of victim harbouring, (ii) coercion, (iii) the intention of victim harbouring, and (iv) a causal link between the victim harbouring and the coercion. This crime is punishable by a maximum penalty of 12 years of imprisonment and a fifth category fine (EUR 90,000 in 2023).

### **3.4.4. *Extraterritorial application of human trafficking and smuggling offenses***

Refer to Section 3.2.2.

### **3.4.5. *International and domestic organ trafficking***

Article 273f, paragraph 1, sub-clause 1 makes coerced organ trafficking a crime, and sub-clause 7 prohibits profiting from forced organ donation.

To violate sub-clause 1, there must be (i) an organ removal, (ii) coercion, (iii) the intention of the organ removal, and (iv) a causal link between the organ removal and the coercion. Taking the bodily harm of this offence into account, the maximum punishment for this crime is 18 years of imprisonment and a fifth category fine (EUR 90,000 in 2023).

A person violates sub-clause 7 when (i) the person deliberately benefits from and (ii) knows or reasonably suspects that the person will profit from a forced organ removal as described under sub-clause 1. The crime is punishable by a maximum penalty of 12 years of imprisonment and a fifth category fine (EUR 90,000 in 2023).

### **3.4.6. *Criminalization of clients***

Under article 248b of the Dutch Criminal Code the client of an underaged sex worker (from ages 16 to 18 years) is punishable by a maximum penalty of four years and a fourth category fine (EUR 22,500 in 2023).

On 1 January 2022, article 273g entered into force which expands the criminalization of clients of sex workers. Article 273g of the Dutch Criminal Code states that a client who knows or has serious reason to suspect that the other person performs sexual acts under the circumstances referred to in Article 273f, first paragraph, under 1°, is punishable by a maximum penalty of four years and a fourth category fine (EUR 22,500 in 2023). If the person who performs sexual acts under the circumstances of Article 273f, first paragraph, under 1°, is under the age of 18, the client is punishable by a maximum penalty of six years and a fourth category fine (EUR 22,500 in 2023). A 2022 study by The Centre of Child Trafficking and Human Trafficking (CKM) shows that a significant group of clients actively knew or should have known about the

coercion the person offering sexual acts was under, but no one had been punished under the new Article 273g. The CKM calls for more active government action.<sup>18</sup>

### 3.5. Online Exploitation of Children Offenses

#### 3.5.1. General

Title XIV of the Dutch Criminal Code targets sexual offences, including crimes of online child exploitation. Articles 240b and 244-250 of Title XIV of the Criminal Code overlap with article 273f, as trafficking of children often involves (online) exploitation of children.

#### 3.5.2. Child pornography material or child abuse material

Article 240b of the Criminal Code punishes distributing, offering, openly displaying, manufacturing, importing, transiting, exporting, acquiring, and gaining access to child pornography by means of an automated work or using a communication service, including watching child pornography via the internet.

Child pornography is defined as an image or a data carrier containing an image of sexual behavior by a person who has apparently not reached the age of 18. The legislature intended a broad definition in which virtual child pornography (not involving real children) is included if it depicts a realistic scene. This offence without aggravating circumstances is punishable by a maximum penalty of four years of imprisonment or a fifth category fine (EUR 90,000 in 2023). The maximum penalty of imprisonment is eight years if the offender commits the offence as a profession or consistent practice.

#### 3.5.3. Online grooming

Articles 248a and 248e of the Criminal Code have been amended to improve and strengthen the detection and prosecution of digital crimes. Article 248a punishes any person who deliberately induces minors to commit or tolerate immoral or obscene conduct, with or without technical assistance, including the creation of a virtual profile impersonating a person under the age of 18 years. This crime is punishable by a maximum penalty of four years of imprisonment or a fourth category fine (EUR 22,500 in 2023).

Article 248e makes it an offence if a person proposes and intends to convert “digital abuse” into physical sexual conduct involving a minor under the age of 16 years. This offence is punishable by a maximum penalty of two years of imprisonment or a fourth category fine (EUR 22,500 in 2023) and can be committed by persons under the age of 18 years.

#### 3.5.4. Extraterritorial application of online exploitation of children offenses

Refer to Section 3.2.2.

### 3.6. Child Sex Tourism Offenses

The Dutch Criminal Code does not have specific offences for child sex tourism, nor does article 273f of the Criminal Code mention it. However, the legislature’s broad definition of human trafficking is intended to encompass all forms of exploitation offences prohibited by international law.

<sup>18</sup> Available at: <https://www.hetckm.nl/dossiers/slachtoffers-van-uitbuiting-zichtbaar-maken-nl/meer-dan-de-helft-van-jonge-slachtoffers-mensenhandel-langer-dan-een-jaar-uitgebuit/>.

Articles 240b and 244-250 of Title XIV of the Dutch Criminal Code provide offences for sexual or lewd acts against children. Those offences could punish child sex tourism. The Netherlands has unconditional jurisdiction for these crimes when committed by Dutch nationals or foreigners who are Dutch residents.<sup>19</sup>

## 4. THE NETHERLANDS' SUPPLY CHAIN REPORTING LEGISLATION

### 4.1. Overview

Beginning at least in 1999, the Dutch Parliament has discussed topics of socially responsible business conduct and corporate social responsibility. This discussion has become increasingly international and more focused on human rights violations and environmental harm arising in the global supply chains of Dutch companies operating internationally. International initiatives and European directives have required countries to monitor the way that companies in their territory manage their supply chains.

In May 2019, the Dutch Senate adopted a private member's bill for the Child Labour Due Diligence Act. This bill obligates companies to use due diligence to prevent child labour in their supply chains. Companies that fall under the scope of this act will need to take preparatory measures to make sure they have the processes in place to conduct this supply chain due diligence.

In March 2021, a bill proposal on Responsible and Sustainable International Business Conduct was submitted by members of the Parliament. This proposal can be seen as an elaboration on the obligations included in the Child Labour Due Diligence Act. It covers not only child labour but also limitation of freedom of assembly and collective action, discrimination, forced labour, unsafe working conditions, slavery, exploitation, and environmental damage. As it has a more extensive scope and purpose on supply chain reporting than the Child Labour Due Diligence Act, it is expected to replace the Child Labour Due Diligence Act. In November 2022, six Dutch political parties submitted an amended proposal on the bill to the Parliament. The amendment was made to align the bill with the EU-wide CSRD. Furthermore, the initiators of the bill wanted to put pressure on other European Member States to adopt their own legislation on sustainable business conduct.

### 4.2. International and European Supply Chain Legislation

#### 4.2.1. National Action Plan

Following the 2011 publication of the United Nations Guiding Principles on Business and Human Rights (**UN Guiding Principles**)<sup>20</sup> and their unanimous endorsement by the UN Human Rights Council on 16 June 2011, the Government put in place a Dutch National Action Plan on Business and Human Rights (**NAP**).<sup>21</sup> The NAP is the Netherlands' national implementation of the UN Guiding Principles.<sup>22</sup> These principles are based on three main pillars:

<sup>19</sup> Article 7 paragraph 2 sub-clause c of the Criminal Code.

<sup>20</sup> Available at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>21</sup> Available at: <https://www.business-humanrights.org/en/netherlands-govt-releases-english-translation-of-national-action-plan-on-business-and-human-rights#c79286>.

<sup>22</sup> Available at: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>. See Organization for Security and Cooperation in Europe, Compendium of relevant reference materials and resources on ethical sourcing and prevention of trafficking in human beings for labour exploitation in supply chains, 2d updated edition, (2020) at p. 47, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.osce.org/files/f/documents/8/c/450769.pdf>.

1. **First Pillar – State Duty to Protect:** referring to states’ duty to respect, protect, and fulfil human rights and fundamental freedoms;
2. **Second Pillar – Business Responsibility to Respect:** referring to the responsibility of business enterprises to respect human rights;
3. **Third Pillar – Access to Remedy:** referring to the need for rights and obligations to be matched to appropriate and effective remedies when breached.

Furthermore, the Dutch Government consulted with representatives of the business community, civil society organizations, implementing organizations, and other experts to learn their ideas on the NAP’s implementation. From these consultations, several key action points emerged:

- **An active role for the government** – instead of just operating as a facilitator with a reactive role, the Government should take more responsibility for implementing the principles and ensuring an international level playing field for companies.
- **Policy coherence** – the Government should be consistent on the subject of human rights and business in developing and implementing policy both nationally and internationally;
- **Clarifying due diligence** – the Government should clarify the UN Guiding Principles, using language companies understand and explaining the Government’s expectations of them;
- **Transparency and reporting** – companies should be encouraged or required to report on their human rights policies and their results, creating accountability and transparency and facilitating dialogue with other stakeholders; and
- **Scope for remedy** – the Government has a major role in implementing the third pillar of the UN Guiding Principles and providing information on it. The terms “remedy” and “grievance mechanism” include any routine, state-based or non-state-based, judicial or non-judicial, process through which victims can raise grievances concerning business-related human rights abuses and can seek remedies.

The Dutch Government has also rolled out a number of initiatives aimed at creating a more coherent policy on the subject of human rights and business and has launched training courses and publications in the field of due diligence.

#### 4.2.2. *Non-financial reporting directive*

In accordance with the Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU with regard to disclosure of non-financial and diversity information (**NFRD**) by certain large undertakings and groups, the Netherlands requires “large companies” to disclose certain non-financial information. The Ministry of Finance has transposed the NFRD into two separate regulations: “disclosure of non-financial information” and “disclosure of diversity policy.”

The disclosure of non-financial information is mandatory for public entities only, such as listed companies, banks, and insurers. The NFRD’s threshold limit is a minimum of 500 employees and a balance sheet total of EUR 20 million or a net turnover of more than EUR 40 million. The disclosure of diversity policy is specifically meant for listed companies.

On 20 February 2020 the Commission launched a public consultation on the review of the NFRD to strengthen the foundations for sustainable investment. The rules under NFRD will remain in force until companies have to apply under the CSRD.

### 4.2.3. *The Corporate Sustainability Reporting Directive (CSRD)*

On 29 April 2020, the European Justice Commissioner Didier Reynders announced that the EU planned to develop a legislative proposal that would obligate companies to carry out due diligence to monitor and report potential human rights and environmental impacts from their operations and supply chains.<sup>23</sup>

On January 2023, the Corporate Sustainability Reporting Directive (**CSRD**) entered into force amending Directive 2013/34/EU (NFRD) as discussed above in Section 4.2.2.<sup>24</sup> The deadline for EU member states to implement the CSRD is 6 July 2024. Under article 4 of the CSRD, companies subject to the CSRD rules have to comply with the new reporting rules from 1 January 2024 for financial years starting on or after 2024. Until then the rules introduced by Directive 2012/34/EU remain in force.<sup>25</sup> The CSRD modernizes and strengthens the rules concerning the social and environmental information that companies have to report. Also, the CSRD is applicable to a broader scope of companies and organizations: the CSRD's threshold limit is a minimum of 250 employees (instead of 500 under the NFRD) and a balance sheet total of EUR 20 million or a net turnover of more than EUR 40 million. A special disclosures regime is being developed for non-EU companies with a (consolidated) turnover of more than €150 million in the EU.

## 4.3. Child Labor Due Diligence Act

### 4.3.1. *Overview*

In May 2019, the Senate of the Dutch Parliament adopted the Child Labour Due Diligence Act. The act requires every company (including foreign companies) supplying goods and services to end users in the Netherlands to carry out due diligence to prevent child labour from producing those goods or services. The preamble states the act's purpose:

a statutory basis for the requirement that companies selling goods and services on the Dutch market take all reasonable measures to prevent the use of child labour in the production of those goods and services is desirable in order to ensure that consumers can purchase those goods and services in good conscience.

The act requires companies to conduct due diligence throughout their supply chains to determine whether children were used in the production of goods and services supplied. Although the actual obligation and its enforcement focuses on the company that supplies the goods or services to Dutch end users, the act also covers the activities of all entities throughout the supply chain.

The companies to which the act applies must issue a declaration to the supervising authority stating that they conduct due diligence to prevent the use of child labour in the production of goods and services supplied to Dutch end users.

### 4.3.2. *Base obligation to provide statement of due care*

Companies that buy goods or use services from a supplier that has submitted a declaration to the supervising authority with respect to its goods or services, as explained in Section 4.3.1., are assumed to

<sup>23</sup> Available at: <https://www.business-humanrights.org/en/latest-news/eu-commissioner-for-justice-commits-to-legislation-on-mandatory-due-diligence-for-companies/#:~:text=On%2029%20April%202020%2C%20the,a%20Sustainable%20Corporate%20Governance%20initiative.>

<sup>24</sup> Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464.>

<sup>25</sup> Available at: [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en.](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en.)

have conducted due diligence with respect to those goods or services. Companies that only purchase those goods or services are not required to issue such a declaration themselves.

A further administrative order is needed to identify the supervisory authority and specify the contents of the declarations.

#### **4.3.3. Definition of “due care”**

The act does not define “due diligence” or “due care.” The company has to investigate whether there is a reasonable suspicion that child labour has produced the (to be) supplied goods and services. When it has such a suspicion, the company has to create an action plan. The act refers to a secondary administrative order, which is needed to provide further detail on the due diligence investigation and the necessary action plan. When drawing up the administrative order, the Dutch legislature will have to take into account the ILO-IOE Child Labour Guidance Tool for Business, which provides practical guidelines for companies to combat child labour in the supply chain in line with the UN Guiding Principles.

#### **4.3.4. Penalties**

Any person aggrieved by a company’s violation of the act can file a complaint with the supervisory authority. The breaching company has a six-month remedy period. The supervisory authority will respond only to complaints that are filed with the company first and not solved satisfactorily within the remedy period.

The supervisory authority will be able to impose both administrative and criminal penalties. Administrative penalties can be imposed where the company fails to meet the substantial requirements of its strategy to mitigate child labour and can amount to a minimum of EUR 4,350 or a fine of EUR 870,000 or, if that is not deemed to be adequate, 10% of the company’s worldwide turnover in the preceding year. Before imposing such an administrative fine, the supervising authority must issue a compliance order.

Article 9 of the Child Labour Due Diligence Act states that if a company violates the duties that are imposed and that if during the five years preceding the violation an administrative penalty was imposed for the same violation, commissioned by or under actual management of the same director, it will constitute an economic offence. The criminalization in the Economic Offences Act will be included under article 1, subsection 2. Criminal penalties can carry with them a prison sentence with a maximum of two years or a fine amounting to EUR 22,500, if the violation was not committed intentionally. If the violation was committed intentionally, penalties include imprisonment for a maximum term of six years or a fine of EUR 90,000 (for individuals), or a fine, or even the 10% turnover fine, identical to the administrative penalty.

## **4.4. RESPONSIBLE AND SUSTAINABLE INTERNATIONAL BUSINESS CONDUCT ACT**

### **4.4.1. Overview**

On 11 March 2021, a bill on Responsible and Sustainable International Business Conduct was submitted by members of Parliament. In November 2022, an amended proposal of the bill was submitted to the Dutch Parliament to align the bill to the EU-wide CSRD and to create pressure on other European Member States to adopt their own legislation on sustainable business conduct. The proposal establishes a duty of care to prevent so-called adverse effects on the environment, human rights, or labor conditions. It applies to companies established and located in the Netherlands, or to companies that provide products or services on the Dutch market. The Proposal can be seen as an elaboration on the obligations included in the Child Labour Due Diligence Act: in addition to child labor, there are seven other areas covered, including limitation of the freedom of assembly and collective action, discrimination, forced labor, unsafe working conditions, slavery, exploitation, and environmental damage. As the Proposal covers all the areas of the



Child Labour Due Diligence Act and more, the idea is that its entry into force will replace the Child Labour Due Diligence Act altogether.

It is not clear when the Proposal will enter into force. As described in Section 1., elections are coming in November 2023, and the government is currently in a caretaker capacity. The ambition of the Dutch government probably still is to introduce the various obligations set out in the proposal on a phased-in basis to give companies time to implement these obligations. The CSRD will need to be implemented into national law on several salient points by 6 July 2024.

#### **4.4.2. General duty of care and specific due diligence obligations**

The Proposal makes a distinction between the applicability of (i) a general duty of care and (ii) specific due diligence obligations that apply additionally to companies meeting a certain threshold.

##### General duty of care

The general duty of care applies to (i) all companies in all sectors which are established in the Netherlands, including state-owned enterprises, contracting authorities, and letterbox companies with activities outside the Netherlands, and (ii) companies which are not established in the Netherlands which perform an activity in the Netherlands or sell a product on the Dutch market.

##### Specific due diligence obligations

The specific due diligence obligation applies only to “large” companies. A company qualifies as “large” if it satisfies two out of three conditions:

- (i) balance sheet total of EUR 20 million;
- (ii) net turnover of EUR 40 million; or
- (iii) average employee base of 250 during the financial year.

The specific due diligence obligations are, as the text of the Proposal currently stands, also applicable to foreign companies performing activities in the Netherlands or selling products on the Dutch market, and which meet two of the above-mentioned criteria.

The due diligence obligations mainly aim to achieve increased transparency on the approach that undertakings employ to mitigate and minimize environmental, social, and governance (**ESG**) risks. Under the bill, other facets of the due diligence obligation include an obligation to cease a company’s activities if adverse effects are (likely) to arise, to have a monitoring system to ensure reparations for damages, and to actually make reparations for damages incurred. An important distinction to be made with the Child Labour Due Diligence Act is the fact that the Child Labour Due Diligence Act applies only to the production of goods and provision of services, while the Proposal applies throughout the entire production chain.

#### **4.4.3. Penalties**

The Proposal does not appoint a supervisory authority, which will have to be arranged in a separate decree. A violation of the general duty of care is not subject to administrative or criminal enforcement. However, the duty of care can be subject to enforcement under civil law, on the basis of an unlawful act, if another party incurs damages or is otherwise harmed by the undertaking not keeping to its duty of care.

The specific due diligence obligation is enforced under both administrative and criminal law. Once a supervisory authority is appointed, it will be allowed to issue binding instructions and impose orders subject to a penalty or administrative fines. The authority will also be able to publicly publish the order or the fine, to increase the pressure on undertakings to keep to the duties as set out in the Proposal. Some violations

of obligations under the Proposal are criminally sanctioned if, similar to the violations listed in the Child Labour Due Diligence Act, within a period of five years, an administrative penalty has been imposed on the undertaking at least twice for that same violation. The violation is punishable under criminal law with a prison sentence of up to six years or a category-five financial penalty, amounting to EUR 90,000. For corporations, a fine of EUR 870,000, or even the 10% turnover fine, can be imposed.

## 4.5. Initiative Note “Against Slavery and Exploitation”

### 4.5.1. Overview

During the Dutch parliamentary year 2019–2020, a number of members of the Parliament submitted a so-called “Initiative Note” to the Dutch Government, titled “Against Slavery and Exploitation – a bottom-line for corporate social responsibility.” Typically, an initiative note allows a member of the Dutch Parliament to draw attention to certain policy matters and suggest how legislation can deal with those matters.

The note focuses on how to implement the OECD Guidelines (further discussed in Section 4.5.2.) in the Dutch corporate world to fight breaches of human rights and environmental damage. The note states that the current implementation is insufficient and new measures are needed to achieve a bottom-line for international corporate social responsibility. The note criticizes the current policy for trying to achieve these goals through voluntary covenants between the Government and representatives of different sectors of the Dutch economy, also referred to as “IRBC”-covenants. **IRBC** stands for International Responsible Business Conduct (*Internationaal Maatschappelijk Verantwoord Ondernemen (IMVO)*).<sup>26</sup> According to the note, the covenants do not sufficiently cover the risks, and not enough companies participate. The note concludes that a bottom-up legislative approach, starting in different European member states, would create the best foundation to eventually establish all-encompassing European legislation.

### 4.5.2. OECD guidelines

The OECD Guidelines are an international legal instrument adopted by all OECD members and open for adherence to interested non-OECD members. To date, around 50 countries have adhered to the OECD Guidelines or are in the process of adhering. These countries represent some of the largest markets in the world and thus a large majority of global trade and investment activity. The OECD Guidelines are part of the OECD Declaration and Decisions on International Investment and Multinational Enterprises.

The OECD adopted its Guidelines in 1976 and has reviewed them several times to ensure that they remain a leading tool to promote responsible business conduct. In 2011, the OECD Guidelines added a new chapter 4 on Human Rights. Governments have a duty to protect human rights, and business enterprises have a responsibility to respect internationally recognized human rights. To meet that responsibility, Chapter 4 of the OECD Guidelines requires enterprises to comply with four obligations:

- to acknowledge and respect internationally recognized human rights and to help prevent or tackle violations of them. These internationally recognized human rights, which the Universal Declaration of Human Rights describes, include the right to life; the right to freedom; equality before the law, and due process; no unfair imprisonment; no torture; no slavery; the rights to privacy and property; freedom of speech; the right to social security; the rights to relax, and to have shelter, food, and education; the right to peace; and the duty to protect these rights;

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<sup>26</sup> See also Organization for Security and Cooperation in Europe, Compendium of relevant reference materials and resources on ethical sourcing and prevention of trafficking in human beings for labour exploitation in supply chains, 2d updated edition, (2020) at p. 47, available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.osce.org/files/f/documents/8/c/450769.pdf](https://www.osce.org/files/f/documents/8/c/450769.pdf).

- to address and reduce unfavourable impacts on human rights directly related to one’s business or value chain;
- to have a clear policy demonstrating the enterprise’s respect for human rights; and
- to exercise due diligence to protect human rights in the value chain by performing a risk analysis that maps potential human rights risks and describes the measures taken to prevent or reduce those risks.

On 8 June 2023, the OECD Guidelines was updated.

### 4.5.3. IRBC-policy

Unlike countries such as the United Kingdom, France, and Switzerland, which have introduced specific legislation to mandate responsible business conduct, the Dutch Government traditionally seeks consensus. The Government has put in place covenants for a number of industrial sectors that set forth business obligations with respect to human rights and the environment.<sup>27</sup> Companies are not obliged to become a party to a covenant but can voluntarily commit themselves to making certain efforts and implementing certain measures (including due diligence procedures).

Between 2014 and 2019, about nine IRBC-covenants were put in place. These covenants usually contain voluntary arrangements between the Government, companies, and an array of interested organizations on how companies intend to deliver on corporate social responsibility. The intention is to establish covenants in all 13 economic sectors that were identified as risk areas. To date, nine sectors have agreed to covenants:

- Garments and Textile;
- Banking;
- Gold;
- TruStone (covering the natural stone sector);
- Food Products;
- Insurance;
- Pension Funds;
- Metals; and
- Wind Energy.

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<sup>27</sup> The Dutch Government requested KPMG to perform a risk analysis on 13 economic sectors. KPMG produced its report in 2014: “KPMG (2014), *MVO Sector Risico Analyse: Aandachtspunten voor dialoog*,” <https://www.rijksoverheid.nl/documenten/rapporten/2014/09/01/mvo-sector-risico-analyse>.

## 5. FORCED LABOR: OVERVIEW OF THE NETHERLANDS’ APPLICABLE EMPLOYMENT AND MIGRATION LAWS

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### 5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

#### 5.1.1. General

The Dutch Constitution requires the Dutch legislature to set rules concerning the legal status and protection of working persons and to ensure that every Dutch national has a free choice of work.<sup>28</sup> As such, Dutch employment law provides civil mechanisms through which victims may seek civil remedies. In addition, various European and international treaties and conventions emphasize that no one shall be required to perform forced or compulsory labour.<sup>29</sup>

Based upon this legislation, victims of forced labour and trafficking can seek civil legal remedies. Some legislation protects victims even though they may not have entered into an employment agreement with those who have trafficked or exploited them. In addition, general domestic employment legislation might, under certain circumstances, protect victims of forced labour and trafficking. However, this general legislation mostly requires a victim to be an “employee.”

#### 5.1.2. Foreign Nationals Employment Act

The Foreign National Employment Act 1994 forbids employers from employing or hiring foreign nationals outside of the EEA and Switzerland without certain permits, subject to (administrative) fines. This act provides a mechanism for victims of forced labour and trafficking, including illegal employment, under certain circumstances to claim payment of outstanding wages from employers, assuming an employment relationship of six months.<sup>30</sup> The scope of the Foreign National Employment Act is broad and does not require an employment agreement. The Inspectorate of the Ministry of Social Affairs and Employment (**Inspectorate SZW**) supervises whether the employer or hirer complies with this act. Violators are “named and shamed” on a government website.<sup>31</sup> The Government tracks down, suppresses, and punishes cases of human trafficking and forced labour.<sup>32</sup>

#### 5.1.3. Civil Code

Title 10 of Book 7 of the Dutch Civil Code (**DCC**), passed in 1907, is one of the most important sources of employment law. Even before 1907, legislation prohibiting child labour (*Kinderwetje Van Houten* – 1874) and targeting poor working conditions (*Arbeidswet* – 1889) was in place. Title 10 of Book 7 of the DCC provides various protective rules for employees with an employment agreement. Even though victims of forced labour and trafficking may not have an express employment agreement, the combination of labour, a certain payment for this labour, and a relationship of authority can amount to an employment agreement. An employment agreement entails certain rights for the victims, such as the employer’s obligation to pay

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<sup>28</sup> Article 19(2) and (3) of the Dutch Constitution.

<sup>29</sup> Article 4 ECHR, Article 8 ICCPR, ILO Forced Labour Convention (nr. 29, 1930) and ILO Abolition of Forced Labour Convention (nr. 105, 1957). Dutch courts also may use European and International conventions as interpreting tools: Court of Appeal’s-Hertogenbosch January 1, 1974, ECLI:NL:GHSHE:1974:AD7420.

<sup>30</sup> Article 23 of the Foreign National Employment Act.

<sup>31</sup> Available at: <https://www.inspectieresultatenszw.nl/>.

<sup>32</sup> E.g., Lower Court of Zeeland-West-Brabant January 27, 2020, ECLI:NL:RBZWB:2020:305; Lower Court of The Hague October 4, 2019, ECLI:NL:RBDHA:2019:10324 and Council of State August 28, 2019, ECLI:NL:RVS:2019:2924.

at least the statutory minimum wage, continue payment during an employee’s illness, and provide a certain amount of holiday days. There is also compensation for injuries and mechanisms to recover unpaid salaries. This so-called “legal presumption of an employment agreement” requires that the victim has performed paid work for at least 20 hours per month or worked on a weekly basis for three consecutive months.<sup>33</sup>

In the Netherlands, a civil claim can be combined with criminal proceedings. Human trafficking and forced labour are crimes.<sup>34</sup> If the public prosecutor decides to prosecute the suspect for human trafficking or forced labour, the victim may “join” in the criminal proceedings as an aggrieved party (refer to Section 3.). The victim then can submit a claim for compensation against the accused.<sup>35</sup> Compensation may consist of financial redress for the victim’s tangible or intangible damage. If the victim does not recover all actual damages via this criminal procedure, the victim still may initiate civil proceedings to claim compensation from the offender. In case of the court’s favorable decision, however, the victim is responsible for ensuring that the offender pays this compensation. Finally, the victim can request compensation through the Violent Offences Compensation Fund. Victims may apply to the Violent Offences Compensation Fund for a one-off payment as financial compensation for any damage incurred. The amount of this payment may vary between EUR 1,000 and EUR 35,000.

## 5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

The Foreign Nationals Employment Act 1994 does not require an employment agreement. In this act, “employer” refers to anyone to whom benefit services are provided, either directly or indirectly.<sup>36</sup> As a result, both the actual employer as well as the intermediary fall within the scope and can be held liable for payment of wages. Victims working in the Netherlands are likely to fall under the protection of this act, as “employee” is not defined.

To receive protection under Title 10 of Book 7 DCC, a victim must be an employee having an employment agreement. The same rule applies for the Minimum Wage and Minimum Holiday Allowance Act and the Working Conditions Act. Victims of forced labour or trafficking still can fit within the Dutch Civil Code, as well as the Working Conditions Act, if they meet the criteria to be considered an “employee” under article 7:610 DCC. Those criteria are:

- committed to perform some form of labour;
- receives a form of payment for this labour; and
- is subject to another person’s authority (the employer).<sup>37</sup>

Victims of human trafficking and forced labour likely will not have any written agreement with their employer. Yet, the victims can still have the same claims as if they had had an employment agreement: if they performed acts of labour weekly or for at least 20 hours a month for three consecutive months and have received some form of remuneration by the assumed employer for these acts of labour, it is presumed that their work is performed based on an employment agreement.<sup>38</sup>

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<sup>33</sup> Article 7:610a DCC.

<sup>34</sup> Article 197a–197d of the Dutch Criminal Code.

<sup>35</sup> Article 51(f) of the Dutch Code of Criminal Procedure.

<sup>36</sup> Article 1(b) of the Foreign Nationals Employment Act.

<sup>37</sup> Article 7:610 DCC.

<sup>38</sup> Article 7:610a DCC.

### 5.3. Statutory Rights

National legislation assures employees of certain minimum standards and provides employees with certain claims. Trade unions and other employee representative bodies also help to protect employees. The statutory rights of employees also could serve as a basis for damage claims by victims of human trafficking and forced labour.

#### 5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

The Dutch Minimum Wage and Minimum Holiday Allowance Act entitles employees to a minimum wage and minimum holiday allowance.

As of 1 July 2020, the minimum wage in the Netherlands is, based on full-time employment and provided that the employee is 21 years or older, EUR 1,995 gross per month. In addition, the employee is in principle entitled to at least an additional 8% holiday allowance.

In the event of underpayment, employees may file a wage claim in court. Furthermore, employees receiving less than the statutory minimum wage also may report the underpayment to the Inspectorate SZW, which can penalize the underpaying employer up to a maximum EUR 10,000 (2023). The legal minimum of holiday days in the Netherlands is four times the number of days worked per week (meaning 20 holiday days based on a full-time working week).<sup>39</sup>

The Working Hours Act and the Working Hours Decree aim to protect employees against excessive working hours. The applicable maximum depends on the employee's position and sector. Generally, employees may not work longer than 12 hours per day/60 hours per week. For more information, refer to Section 5.3.7. The Inspectorate SZW supervises whether employers are complying with the rules governing working hours and can impose fines. Dutch employers are obliged to register working hours and work breaks in writing.<sup>40</sup>

Collective labour agreements also may determine minimum wages and working hours.

#### 5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

The Labour Market Fraud Act (Bogus Schemes) addresses exploitation, displacement, and unfair competition in labour conditions. It aims to strengthen the legal position of un(der)paid employees by introducing “chain liability.” As a result, employees can hold principals who are higher up in the chain liable for payment of wages to which the employees are entitled according to their contract, collective labour agreement, or minimum wage legislation.<sup>41</sup> The Inspectorate SZW supervises compliance and can impose fines.

The Employment Conditions (Posted Workers in the European Union) Act stipulates certain minimum terms of employment for foreign workers temporarily posted in the Netherlands. The act applies to all employers from EU countries and provides a basis for wage claims. The act provides certain minimum entitlements in Dutch law for these workers, such as (i) minimum wage, (ii) sufficient resting periods, (iii) safe working conditions, (iv) leave, and (v) equal treatment. As of 1 March 2020, employers have to notify the Dutch Ministry of Social Affairs when temporarily posting foreign workers in the Netherlands.

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<sup>39</sup> Article 7:634 DCC.

<sup>40</sup> Article 4:3 of the Dutch Working Time Act. Also see the recent ECJ judgment in this respect requiring all EU member states to register the daily working time of their employees: C-55/18.

<sup>41</sup> Articles 7:616a–616f DCC.

### 5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

Apart from the statutory deductions (*e.g.*, wage tax and national insurance contributions) and agreed upon deductions (*e.g.*, pension contributions), employers may not make any deductions from an employee's salary.<sup>42</sup> Employers, in principle, have to pay at least the full minimum wage in cash. Only deductions for costs of housing (rent) and health insurance are allowed under certain strict conditions.<sup>43</sup> Employees can nullify clauses that authorize employers to make other deductions and can file a wage claim in court.<sup>44</sup>

As in many other European countries, the Netherlands forbids debt bondage in its criminal code. Refer to Section 3.3.5. Dutch employment laws do not contain provisions specifically tackling debt bondage.

### 5.3.4. *Remedies*

Where employers have not paid victims of forced labour or trafficking wages or other entitlements established by the DCC or other legislation, these individuals (or the trade union on their behalf) can start court proceedings and file a wage claim, including interest or claim compensation.

Additionally, the Inspectorate SZW also can impose fines on employers who are violating the employment legislation. For some violations, employers can be criminally prosecuted.

Victims also can intervene as an injured party or seek compensation measures in the criminal procedure.

### 5.3.5. *The well-being of workers: Preventing work-related psychosocial risks.*

Article 3(2) of the Working Conditions Act obligates employers to prevent or limit the psychosocial workload. "Psychosocial workload" is defined as an increased stress level within the working environment resulting from undesirable behavior, such as bullying, sexual intimidation, discrimination, aggression, or violence. Employers must assess the workplace, map the risks, and take appropriate measures to prevent psychosocial workloads.<sup>45</sup>

### 5.3.6. *The well-being of workers: Promotion of workers' health*

In general, employers must provide a safe working environment and prevent employees from suffering injuries while performing their work. Employers are liable for any workplace accident or occupational illness, except if it results from an employee's deliberate intent or intentionally reckless behaviour, or if the employer can prove that it has fulfilled its obligations under Dutch legislation.<sup>46</sup> Employers are equally liable for injuries suffered by temporary personnel while performing their duties on the premises.

The Working Conditions Act and Working Conditions Decree require every employer to implement a health and safety policy that fosters optimal working conditions as much as possible. Every company with personnel must have an occupational health service or health and safety expert assess whether and how the work can be dangerous or unhealthy for employees: the hazard identification and risk assessment (**RI&E**). The Inspectorate SZW supervises compliance with the Working Conditions Act and can impose fines or shut down a workplace in case of repeated violations.

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<sup>42</sup> Article 7:631 DCC and article 13 of the Minimum Wage and Minimum Holiday Allowance Act.

<sup>43</sup> Article 7:632 DCC.

<sup>44</sup> Article 7:631 DCC. Lower Court of Limburg, November 11, 2016, ECLI:NL:RBLIM:2016:9607.

<sup>45</sup> Article 2.15 Working Conditions Decree.

<sup>46</sup> Article 7:658 DCC.

### 5.3.7. *The well-being of workers: Rest time*

The Working Hours Act stipulates that an employee may work a maximum of 12 hours per shift and 60 hours per week. However, an employee may not work this maximum every week. In a period of four weeks, the employee may work a maximum of 55 hours per week. Although a collective labour agreement may stipulate otherwise, it may never allow more than 60 hours per week. In a period of 16 weeks, the employee may not exceed the legal limit of 48 hours per week. There are certain exceptions to these hours for specific positions, such as for doctors. In other sectors, more strict legislation can apply, as for instance in the transport sector.

After a working day, an employee must have 11 consecutive hours of rest time. This rest period may be shortened to eight hours once in a seven-day period if the nature of the work or business circumstances require. In the event of a five-day working week, an employee must have 36 consecutive hours of non-working time after the end of a working week. However, a longer work week is possible, provided that the employee has at least 72 consecutive hours of non-work time in a period of 14 days. Special rules for specific occupations apply.

An employee who works more than five-and-one-half hours is entitled to a break of at least 30 minutes. This break may be split into two 15-minute breaks. An employee who works more than 10 hours is entitled to a break of 45 minutes, which may be split into three breaks of 15 minutes. Special rules for specific positions can apply.

### 5.3.8. *Collective labour agreements often include additional agreements on working hours, rest time, and breaks. The well-being of workers: Freedom to change jobs and right to leave*

Article 19 of the Dutch Constitution stipulates that every Dutch national has a free choice of work. This right applies to self-employed workers, whether paid or unpaid.

Victims of human trafficking are guaranteed the freedom to change jobs and the right to leave their employment in various European and international treaties and conventions, such as article 6 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the European Social Charter. The freedom to choose one's employment likewise prohibits forced labour.

## 5.4. **Rights to a Safe Workplace and Compensation Associated with Injuries or Illness**

The Working Conditions Act requires certain minimum working conditions to ensure a safe and healthy workspace: employees should be able to do their jobs without risking their physical or mental health. In addition, the DCC also obligates employers to provide a safe workplace.<sup>47</sup> Article 7:658 of the DCC establishes employers' general duty of care for their employees, as well as their liability for their employees' damages. Employees who suffer damages while performing their duties (and who act as one would expect) can claim compensation for damages.

The Working Conditions Act requires an immediate report of serious occupational accidents to the Inspectorate SZW. The Inspectorate SZW registers all important information and determines whether to investigate an accident. An employer can face criminal prosecution in the event of very serious and fatal accidents.

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<sup>47</sup> Article 7:658 DCC.



## 5.5. Access to Justice and Practical Issues Associated with Enforcing Social Legislation

Victims of human trafficking and forced labour can file civil claims for damages and wages. However, a victim submitting and substantiating such a claim has financial risks, such as legal assistance and court costs, if the claim fails. Furthermore, the outcome of proceedings is not clear beforehand, and it is not easy to submit and substantiate such claims, especially for migrant workers. In addition, victims must arrange for collection of an assigned claim. The process of bringing a claim can be lengthy and complex, and enforcement of judgments can be difficult. However, victims of human trafficking and forced labour are not left on their own: several institutions in the Netherlands offer assistance, such as the national Coordination Centre against Human Trafficking (**CoMensha**).<sup>48</sup> CoMensha and the Inspectorate SZW work together where needed.<sup>49</sup>

The Dutch Immigration and Naturalization Service (**IND**) has an important task in the early detection and in passing on signs of human trafficking to the investigative authorities. The IND also arranges housing for human trafficking victims and witnesses reporting human trafficking.

## 5.6. Interaction Between Employment Law and Migration

### 5.6.1. *Employment rights affected where employment is unlawful under migration law*

The Netherlands prohibits persons from entering the country without the required permits, subject to arrest and deportation. Currently, victims who are in the Netherlands illegally will not face criminal prosecution. Some mitigating regulations can help victims of human trafficking or forced labour.

Victims of forced labour can still file a wage claim despite their breach of migration laws. Victims without a residential permit also can benefit from the B8/3-regulation in the Aliens Act Implementation Guidelines.

### 5.6.2. *Rights/remedies available under applicable migration law and regulations*

The B8/3-regulation in the Aliens Act Implementation Guidelines benefits victims without a residential permit. This regulation provides victims who are thinking of pressing charges with (i) a reflection period of three months during which the victim cannot be forcibly deported, (ii) a temporary residence status during the criminal proceedings, and (iii) assistance with shelter and medical care. The temporary residence permit remains valid for the duration of the investigation, prosecution, and trial.

Refer to Section 8.2.5. for more detailed information.

## 5.7. Employment Laws and Child Labor

Child labour was very common in the Netherlands until 150 years ago. In 1874, the Van Houten Children's Act prohibited children under the age of 12 from working. While this act was not strictly enforced, the introduction of compulsory education in 1901 ended child labour in the Netherlands.

The Civil Code, the Working Hours Act, the Regulation on Child Labour, and the Criminal Code prohibit child labour. Generally, the ban on child labour applies to all children under 13 years old. As of that age, children are allowed to have a "light" job on the side next to school activities, subject to certain conditions. As of 15 years old, children are allowed to do light work without supervision after school for no more than five days

<sup>48</sup> Available at: <https://www.comensha.nl/en/>.

<sup>49</sup> Available at: <https://www.inspectieszw.nl/onderwerpen/slachtoffers-arbeidsuitbuiting>.

per week. Youth who are 16 and 17 years old may perform any kind of work as long as, in principle, it is not dangerous and it does not interfere with school attendance. From the age of 18, people are considered to be adults, to whom the normal rules of labour apply (including the Working Conditions Act).

The Inspectorate SZW supervises compliance with these civil laws and can impose a penalty.<sup>50</sup> Employers also can be criminally prosecuted for facilitating and using child labour.<sup>51</sup>

Refer to Section 4.3. for more information on the Child Labour Due Diligence Act.

## 6. GOVERNMENT PROCUREMENT RULES

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### 6.1. Overview

With annual public procurement worth over EUR 73 billion as last researched in 2018,<sup>52</sup> the Dutch Government and public authorities have significant leverage over the due diligence behavior of tendering companies. The Netherlands' legislative framework of public procurement is aimed at improving international terms and conditions of employment and eliminating child labour, starvation wages, and inhumane working conditions.

### 6.2. European Procurement Rules

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (**Public Contracts Directive 2014**) sets out the EU legal framework for procurement by public authorities.

Under article 18 of the Public Contracts Directive 2014, member states must take appropriate measures to ensure that public contracts comply with applicable environmental, social, and labour laws. It mandates compliance with several international conventions in the performance of public contracts, including:

- ILO Convention 105 on the Abolition of Forced Labour, which prohibits the use of forced and compulsory labour in the circumstances covered by the Convention;
- ILO Convention 138 on Minimum Age, which stipulates a minimum age for admission to employment or work; and
- ILO Convention 182 on Worst Forms of Child Labour, which prohibits the worst forms of child labour, such as slavery, prostitution, illicit activities, and hazardous work by persons under the age of 18.

Under article 67 of the Public Contracts Directive 2014:

- the contracting authorities shall base the award of public contracts on the most economically advantageous tender; and
- the most economically advantageous tender shall be identified on the basis of price or cost and may include the best price-quality ratio, which shall be assessed on the basis of criteria,

<sup>50</sup> Examples in case law: Council of State October 24, 2018, ECLI:NL:RVS:2018:3492 and March 25, 2020, ECLI:NL:RVS:2020:878.

<sup>51</sup> Example: Lower Court of Zwolle February 12, 2018, ECLI:NL:RBOVE:2018:409.

<sup>52</sup> Ministry of Foreign Affairs of the Netherlands (*Ministerie van Buitenlandse Zaken*), available at: [IOB Evaluation no 433 – Mind the Governance Gap, Map the Chain](#) (2019).

including qualitative, environmental, and social aspects, linked to the subject-matter of the public contract in question.

Under article 69 of the Public Contracts Directive 2014, contracting authorities must require an explanation of the price and costs if the tender appears to be abnormally low. The explanation may relate to compliance with the provisions of article 18 on the principles of procurement.

Under article 70 of the Public Contracts Directive 2014, the contracting authorities may lay down special conditions relating to the performance of a contract, including social or employment-related considerations.

As of 1 January 2022, the scope of the Public Contracts Directive 2014 is limited to procurements with a value estimated to be greater than or equal to several thresholds (**EU Procurement Thresholds**):<sup>53</sup>

- EUR 5,382,000 for public works contracts;
- EUR 140,000 for central government supply and service contracts, with special carve-outs for the defense sector;
- EUR 215,000 for sub-central government supply and service contracts, with special carve-outs for the defense sector; and
- EUR 750,000 for social and other specific services, such as supply of nursing personnel, community services, and legal services.

### 6.3. Federal Government Procurement Rules

Amendments to the Dutch Public Procurement Act 2012 transposed the Public Contracts Directive 2014 into Dutch law. The amendments entered into force on 1 July 2016. In particular, articles 2.29, 2.80, 2.81, and 2.114–2.116 of the Act apply only to procurements with a value estimated to be greater than or equal to the EU Procurement Thresholds.<sup>54</sup>

On 16 October 2009, in a letter to the Parliament,<sup>55</sup> the Minister for Housing, Spatial Planning and the Environment, the Minister for Social Affairs and Employment, and the Minister for Development Cooperation set out social criteria applicable to government procurements with a value greater than or equal to the EU Procurement Thresholds. These criteria became known as the International Social Conditions (**ISCs**).

The ISCs are incorporated as contractual clauses and are enforceable in line with ordinary contract law principles. The ISCs adopt several international standards aimed at preventing human trafficking:

- The ILO conventions discussed above;
- The Universal Declaration of Human Rights adopted by the UN General Assembly, which establishes the basic concepts of dignity and liberty and prohibits all forms of slavery;

<sup>53</sup> Public Contracts Directive 2014, Article 4.

<sup>54</sup> Dutch Public Procurement Act 2012, Article 2.1.

<sup>55</sup> Available at: [KST 30196-82, 2009](#).

- The International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly, which recognizes the right of everyone to just and favorable working conditions; and
- Additional standards for some product groups that have value chain initiatives, such as coffee, tea, cocoa, textiles, flowers, and natural stone.

The ISCs are mandatory for central government tenders (i) at or above the EU Thresholds and (ii) for eight product categories:<sup>56</sup>

1. Work wear;
2. Catering;
3. Energy;
4. Office and computer supplies;
5. Laboratories;
6. ICT work environment for the State;
7. Data centers; and
8. Data connections and 4G and 5G data connections.

Furthermore, the contractors are subject to due diligence reporting requirements:<sup>57</sup>

	REQUIREMENT	TIMEFRAME
1.	Risk analysis of the value chain mapping the risks	Within 3 months after the tender is awarded
2.	Action plan to mitigate the risks contained in the risk analysis	Within 6 months after the tender is awarded
3.	Reports on the activities undertaken by the contractor that amount to a “reasonable effort” to adhere to the ISCs	Annually during the lifetime of the contract

<sup>56</sup> International Social Conditions Specification Text Manual ([Handreiking bestektekst Internationale Sociale Voorwaarden](#)) published by the Ministry of the Interior and Kingdom Relations (*Ministerie van Binnenlandse Zaken en Koninkrijksrelaties*), version dated 07 September 2017.

<sup>57</sup> Due Diligence Manual ([Handreiking due diligence](#)) published by the Ministry of the Interior and Kingdom Relations (*Ministerie van Binnenlandse Zaken en Koninkrijksrelaties*), [version dated 01 April 2017](#).

## 6.4. Local Procurement Rules

The Netherlands is a highly decentralized unitary state in which power is shared among the central government, 12 provinces, and 393 municipalities. In the Dutch system, each contracting authority is responsible for the management of its own public procurement procedure.<sup>58</sup>

At the end of 2016, various Dutch Government actors jointly presented a single manifesto to the Parliament outlining their ambitions for socially responsible procurement. All signatories to the manifesto undertook to publish an action plan setting specific and measurable public procurement goals. These action plans may contain standard questions for contractors to answer about how they implement ISCs.<sup>59</sup> By the end of the first quarter of 2019, 160 government entities at different levels had signed the manifesto, and over 100 action plans had been published.<sup>60</sup>

## 7. RESTITUTION AND VICTIM COMPENSATION

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### 7.1. Overview

Countries have a duty under international human rights laws to provide victims of human rights violations with adequate and appropriate remedies and to protect them from further harm.<sup>61</sup> In the Netherlands, victims of human trafficking have the right to obtain reimbursement of suffered tangible and intangible damages. Tangible damages under Dutch law are damages and losses that can be expressed in monetary terms. This entails both incurred losses and missed profits. Tangible damages are, for example, financial damage due to withholding of income, damage to property, or medical expenses. Intangible damage is damage caused by grief, pain, and loss of enjoyment in life resulting in psychological problems or physical pain.

There are three remedies to compensate a victim of human trafficking. First, a victim can claim compensation in the criminal proceeding in which the offender is prosecuted. In this process, the victim can join and file a civil claim for compensation. In addition, the court may impose compensation measures. Second, a victim can claim compensation through civil proceedings. Civil proceedings are possible, but are usually only initiated if the criminal proceedings have awarded no or only partial compensation. Third, and as a last resort, a victim can apply to the Criminal Injuries Compensation Fund, which is only available for otherwise uncompensated claims.

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<sup>58</sup> PWC, [Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment \(ESI\) Funds, Final Report: Country Profiles](#) (Publications Office of the European Union 2016).

<sup>59</sup> Available at: [KST 30196-487, 2016](#).

<sup>60</sup> Ministry of Foreign Affairs of the Netherlands (*Ministerie van Buitenlandse Zaken*), [IOB Evaluation no 433 – Mind the Governance Gap, Map the Chain](#) (2019).

<sup>61</sup> Commentary Recommended Principles and Guidelines on Human Rights and Human Trafficking, United Nations Human Rights, Office of the High Commissioner for Human Rights, 2010, pp. 141–151; Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011 (A/HRC/17/35), pp. 4–5.

## 7.2. Judicial Process

### 7.2.1. Criminal proceedings

A victim of human trafficking can obtain compensation in criminal proceedings in three ways:<sup>62</sup>

- the victim can join criminal proceedings and file a civil claim against the suspect;
- the court can impose a compensation measure;
- the judge can decide to impose a special condition on sentencing; however, in practice, judges rarely use this option.

Victims of human trafficking may join the criminal proceedings against the offender with a civil claim for full or partial compensation for their damages. They can write a “victim impact statement” to describe the impact and consequences of the human trafficking offence (*e.g.*, emotional distress or financial loss). This so-called injured party claim is a civil claim attached to a criminal procedure. Consequently, the criminal court decides whether the claim is admissible. If a claim is admissible, the criminal court will decide the amount that the offender must pay, and it can impose a criminal compensation order to enforce the sanction. This means that an offender who fails to make the payment faces a period of substitute detention. However, the handling of the civil claim should “not pose a disproportionate burden on the criminal process.”

In January 2011, the Act on Strengthening the Positions of Victims in Crimes entered into force. Victims of violent crimes and sexual offences can seek an advance payment from the state if:

- the offender was convicted and ordered to pay damages to the victim as part of the criminal sentence; and
- the offender fails to pay these damages for a period of eight months after the sentence has become final.

According to several studies (CoMensha, 2013; FairWork, 2013; National Rapporteur on Human Trafficking, 2012), only 4% of registered human trafficking victims claim compensation in criminal proceedings. Investigation authorities and the Public Prosecutor Service have a duty to inform the victim about the possibilities of obtaining compensation.

Victims who do not have a residence permit will receive a temporary residence permit from the IND, if a victim decides to report the crime or otherwise cooperate with the criminal investigation.

### 7.2.2. Civil proceedings

Any victim can claim compensation from an offender in civil proceedings. In practice, human trafficking victims seldom bring civil proceedings, especially not in cases of sexual exploitation. According to a study by FairWork, in 2013, no victims sought compensation through the civil courts that year. Civil proceedings are expensive and time-consuming. The outcome of the proceedings is uncertain, because victims have the burden of producing evidence and proving their claims, even though facts proven in the criminal case are accepted as evidence in the civil case. Further, collecting a favourable judgment is the victim’s responsibility. The FairWork Foundation reports that victims of labour exploitation have brought claims for unpaid wages.

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<sup>62</sup> Article 51f–51h of the Code of Criminal Procedure.

## 7.3. Fund for Financial Aid for Victims of Violent Crimes

### 7.3.1. General

The Criminal Injuries Compensation Fund provides financial compensation to victims of violent crimes committed in the Netherlands. The Fund can compensate a victim for an amount between EUR 1,000 and EUR 35,000. Applications to the Fund are permitted only for otherwise uncompensated claims. The Fund is an independent part of the Ministry of Security and Justice.

### 7.3.2. Victims

To access financial aid through the Fund, victims of human trafficking must prove that they have been victims of intentional acts of violence that resulted in serious physical or psychological injuries. It is not required that the offender is prosecuted or sentenced. Victims are eligible if there has been sexual exploitation or the removal of organs in the Netherlands or if the human trafficking involved frequent physical violence or threats of physical violence over a longer period. In other cases of exploitation, the severity of the injury must be medically proven. The victims' nationality or residency status is not of importance. If the victims died, a relative can submit the application.

### 7.3.3. Application process and determination of amount

Application forms are available on the Criminal Injuries Compensation Fund's website<sup>63</sup> and must, in principle, be submitted within 10 years after the violent crime was committed or the victim's death. The application form must submit evidence, such as police reports, medical reports, receipts, and losses. Sometimes the Fund will have to carry out a further investigation, for example by contacting police and medical experts. On average, the Fund will decide a claim within four months. In case of a favourable decision, the Fund will make the payment within three weeks. The victim must report to the Fund any compensation received after the Fund's payment from, for example, the offender or an insurance company.

The amount granted to a victim depends on several factors. The Fund works with a list of injuries that it has developed in cooperation with its medical advisers. The list indicates the amount of compensation for the type of intangible damage, distinguishing between physical and psychological injuries. The list has eight categories linked to increasing amounts of compensation. On the basis of the nature and severity of the injury, the Fund will determine which category applies. The more severe the injury, the higher the amount of compensation. The final amount will depend on the specific characteristics of the case. The amount will be reduced if: (i) the victim has participated in the violence or criminal activities, or (ii) damages were (partly) compensated in another way, for instance by the offender or an insurance company.

If the victim does not agree with the Fund's decision, the victim can file an appeal within six weeks at the Commission Criminal Injuries Compensation Fund. Usually, the Commission will hear the victim in a special hearing and then decide the appeal within six weeks after the hearing. If the victim disagrees with the Commission's decision, the victim can lodge an appeal at the Court of first instance.

<sup>63</sup> Available at: <https://www.schadefonds.nl/>.

## 8. THE NETHERLANDS’ MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

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### 8.1. Overview

In the Netherlands, central and local government units and NGOs collaborate to combat human trafficking. This section provides an overview of the organizations that work to prevent and investigate human trafficking and labour exploitation and that assist victims. It also summarizes the Dutch Government’s program “Together Against Human Trafficking.”

### 8.2. National Institutional Coordination

#### 8.2.1. *Task Force on Human Trafficking*

The Task Force on Human Trafficking is a network of the Public Prosecution Service, the police, municipalities, and civil society organizations. It enhances the Netherlands’ approach to human trafficking by closely monitoring the latest developments and drawing up plans together.

#### 8.2.2. *Role of municipalities in combating human trafficking*

Dutch municipalities are the third tier of public administration in the Netherlands after the central government and the provinces. As of January 2023, there are 342 municipalities and three special municipalities in the Netherlands.

Municipalities are partly responsible for helping to prevent human trafficking and for providing assistance and shelter to victims. The Dutch Government requires every municipality to have a clear approach to human trafficking. Municipalities are in constant contact with various chain partners and can use administrative resources to tackle human trafficking.

A municipality complies with the basic administrative approach to human trafficking if the municipality:

- works on active detection of human trafficking;
- has an official who acts as a contact person within the municipality, is familiar with the administrative options for taking action against human trafficking, and is familiar with the authorities that assist victims of human trafficking; and
- has a policy and local regulations that support the municipality’s approach to human trafficking (including a policy aimed at providing information and assistance to sex workers and victims of sexual exploitation).

#### 8.2.3. *Victim assistance*

CoMensha is a national organization that is committed to standing up for the rights and interests of victims of human trafficking in the Netherlands and abroad, including the Dutch Caribbean. CoMensha provides insight into the nature and extent of human trafficking in the Netherlands on the basis of data registration. In addition, it coordinates initial care or shelter for victims and identifies potential hurdles in the overall approach to human trafficking, recommending steps where necessary. Furthermore, CoMensha invests in fostering a better awareness of human trafficking and provides training sessions on identifying human trafficking practices.



CoMensha acts as an intermediary for and advises on the initial care, placement, and assistance of potential victims of human trafficking. Registration for the Categorical Accommodation and Assistance for Victims of Trafficking in Human Beings is conducted through CoMensha. CoMensha's national help desk is intended for potential victims, civilians, and professionals alike, as well as anyone with questions regarding human trafficking practices. The help desk mainly advises professional partners, such as aid workers, shelters, law enforcement authorities, the Government, lawyers, and reception centers for asylum seekers, on providing assistance to victims. It also answers legal questions on the reflection period, the reporting of human trafficking offences, and residence permits.

CoMensha registers the details of all victims of human trafficking in the Netherlands. It collects data on the specific industry, country of origin, age, and the person reporting the crime. This information is anonymized and used by organizations, such as the Ministry of Security and Justice and the National Rapporteur on Human Trafficking, to map human trafficking practices in the Netherlands. CoMensha recommends strategies to combat human trafficking and highlights any obstacles and policy issues. CoMensha works closely with law enforcement authorities, aid workers, shelters, regional and national authorities, and international partners, as well as the La Strada International Network and the EU Civil Society Platform against Trafficking in Human Beings.

#### **8.2.4. Reporting bodies**

Any suspicions of human trafficking practices can be reported to the police. Anonymous crime reports also can be made to Crime Stoppers Netherlands.

CoMensha has a registration facility on its website to register victims of human trafficking.

The Inspectorate SZW (refer to Section 5.1.) investigates labour exploitation. The Inspectorate SZW follows up on victims' reports of crimes and subsequently contacts the Aliens, Identification and Human Trafficking department of the police to ensure that victims can use the Residence Scheme for Victims of Human Trafficking.

#### **8.2.5. Immigration and Naturalization Service**

The IND has an important role in the early identification of human trafficking by reporting any indications or suspicions of human trafficking to the investigative authorities. It also implements the Residence Scheme for Human Trafficking, which provides housing for victims and witnesses reporting human trafficking.

Under this scheme, suspected victims without residence permits are allowed a reflection period of up to three months to decide whether to report a human trafficking offence or cooperate in a criminal investigation. Their departure is suspended during this time. Victims who decide to report or participate in a criminal investigation receive a temporary permit for the duration of the criminal investigation and criminal proceeding. After this period, a victim can apply on non-temporary humanitarian grounds for a residence permit that may be issued if: (i) the public prosecutor decides to prosecute; (ii) the lawsuit is still pending and the victim has had a temporary residence permit under the Residence Scheme for Victims of Human Trafficking for at least three consecutive years; or (iii) there are special, individual reasons for allowing the victim to stay in the Netherlands (such as the risk of reprisals upon return). The IND also can refuse or withdraw residence permits for persons proven to be involved in an (attempted) human trafficking offence.

In tackling human trafficking, the IND works closely with various chain partners, including the police and the Public Prosecution Service. The IND is also a partner of the Expertise Center for Human Trafficking and Human Smuggling. In addition, the IND participates in national and international projects and initiatives to combat human trafficking.

### 8.2.6. FairWork

FairWork is a foundation committed to preventing and combating modern slavery in the Netherlands, making victims heard, and providing them with support. The organization focuses on human trafficking practices outside of the sex industry, more commonly known as labour exploitation. FairWork acts as a development center to detect and assist victims of labour exploitation, as well as to train professionals.

FairWork focuses primarily on victims of labour exploitation who have come to the Netherlands as migrants. Cultural mediators and volunteers who act as a bridge between victims and the Dutch authorities put victims in contact with FairWork. FairWork informs potential victims of their rights to employment, protection, compensation, and unpaid wages. FairWork also provides assistance in reporting crimes, returning victims to their country of origin, filing reports to various institutions, and referring victims to other organizations.

Services provided by FairWork include:

- Legal assistance,
- Information about compensation,
- Assistance when returning to country of origin,
- Ambulatory care, and
- Practical support.

## 8.3. Together Against Human Trafficking

“Together Against Human Trafficking” is the Dutch Government’s integrated program for tackling sexual exploitation, labour exploitation, and criminal exploitation.

### 8.3.1. Goals and ambitions

The stated goals of the “Together Against Human Trafficking” program are to:

- prevent people from becoming victims of human trafficking;
- quickly and adequately identify (potential) victims and remove them from the situation, providing the necessary care and support; and
- frustrate and tackle perpetrators by any means possible under both criminal and administrative law, such as erecting barriers, as well as preventing repeat offences.

### 8.3.2. Action Line 1: Further development of the basic approach to tackling human trafficking

To detect victims of human trafficking, the Dutch Government is committed to:

- involving medical staff and youth services organizations in identifying potential instances of human trafficking;
- developing new information materials and disseminating existing resources to educate the public; and

- raising social awareness of human trafficking.

To detect the perpetrators of human trafficking, the Dutch Government is strengthening the investigative capacity of law enforcement agencies at both national and international levels. The Dutch Government is also looking into the possibility of using administrative law alongside criminal law to enable the authorities to act more often and more quickly. The interests of victims of human trafficking are given priority; in addition to the already existing rights to compensation, trial participation, shelter, and assistance. The Dutch Government is working on establishing safeguards to protect victims' privacy.

### **8.3.3. Action Line 2: Further development of the basic approach to tackling labour exploitation**

The Inspectorate SZW and the Ministry of Justice and Security are working on raising social awareness of labour exploitation. Furthermore, the Inspectorate SZW investigates and analyses groups that are vulnerable to labour exploitation and, based on the research results, chooses the appropriate means of intervention.

To improve enforcement, the Inspectorate SZW is developing a platform for recording and handling all signs and reports of labour exploitation. A Quick Response Team has been set up to investigate those reports.

Victims of labour exploitation are entitled to the same protections as victims of human trafficking. The Ministry of Social Affairs and Employment will explore how to simplify the process for labour exploitation victims to claim overdue wages. There is also increased focus on cases that do not fall within the legal definition of labour exploitation because they lack coercion or deception, but nevertheless result in a “serious disadvantage” to employees, such as long working days, underpaid work, or poor working conditions. Also, various NGOs and public bodies are holding meetings on helping victims to find employment.

### **8.3.4. Action Line 3: Victim and perpetrator prevention**

Dutch businesses are expected to apply the OECD Guidelines and the UN Guiding Principles and to carry out due diligence on their supply chains.

There is also increased interaction with the youth community to better educate young people on the various shapes and forms of human trafficking.

Because the migrant population is particularly at risk of human trafficking, awareness-raising campaigns are aimed at this particular segment.

### **8.3.5. Action Line 4: Strengthening the municipal approach**

Because human trafficking often manifests itself at a local level, municipalities are an important partner in the integrated approach to trafficking. For this reason, every Dutch municipality has been asked to develop an approach to tackling human trafficking. The independent foundation Centre for Crime Prevention and Safety supports the municipalities.

All Registration of Non-Residents counter employees have received training on recognizing the signs of human trafficking. There are plans to roll out similar training to other municipal employees.

### **8.3.6. Action Line 5: Sharing knowledge and information**

The Task Force on Human Trafficking organizes regular networking meetings to facilitate knowledge sharing amongst various professionals. Some of the most invaluable knowledge now comes from the so-called “experts by experience” —former victims of human trafficking who retell their experiences and contribute

to policy development. There is also a drive for more international sharing of expertise, both within the EU and through international organizations, such as the UN.

One of the challenges facing the Dutch Government (and, for that matter, all governments) is the fact that human trafficking is a hidden crime. A significant number of victims do not voluntarily seek assistance or consent for their data to be passed on to care providers. Suggestions to register all victims of human trafficking regardless of consent have been turned down because of privacy concerns arising from the General Data Protection Regulation and the European Convention on Human Rights. Instead, the Dutch Government is looking at alternative approaches to use the available data more efficiently and, where appropriate, remove barriers to information exchange.

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