



# EU and US approaches to the management of immigration

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## The Netherlands

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Development





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The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Policy Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Policy Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

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## Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US- Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification<sup>1</sup>, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

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<sup>1</sup> Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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## **Chapter 1: The terms of the policy debate**

### **1.1. Introduction**

In 2002 and at the beginning of 2003, the Netherlands experienced a series of dramatic political events, which have had a serious effect on the national migration policy debate. The following introduction was, therefore, considered opportune to explain the political roller coaster in which the country found itself.

#### *Migration, Immigration and Asylum*

It should be noted that in a strict sense "migration" or "migration policy" include both "immigration" and "asylum". Despite the fact that in this document, we use the word "migration" and the related terminology, it is intended to focus on immigration matters rather than on asylum.

### **1.2. Violent mood swings in the Dutch political setting**

Until mid-2002, a coalition government, dominated by the Labour Party (PvdA), the People's Party for Freedom and Democracy (Liberals, VVD), and the smaller Democrats 66 (D66) had been in power for almost eight years (2 terms). Before 2002, the Netherlands had experienced several years of high economic growth, with a labour force close to overstressing the situation of full-employment. Various national and international institutions had even warned of "overheating" of the Dutch economy. In these prosperous times, Dutch policy-makers focused on economic topics, holding on to the economic momentum and leading the country in the Euro-era.

A few months later, when political parties were preparing themselves for the next local town/city council elections (6 March 2002) and for the general elections scheduled in May 2002, it became apparent that the "purple" coalition (PvdA, VVD & D66) had neglected to properly address a variety of issues. On the one hand, the discontent on social and – particularly - security issues was largely fuelled by the events of 11 September 2001. On the other hand, the coalition parties had underestimated the general dissatisfaction and the new politician Pim Fortuyn, who managed to turn this dissatisfaction to his - as it turned out to be - overwhelming political advantage.

Despite the economic growth, the country's economy suffered from a short supply of employees on the labour market, together with low government expenditures in the field of public transportation, education, the health sector and the police force, its negative effects here and there intensified by unsuccessful privatisation operations. The shortage of employees was mostly attributed to the stressed labour market. The reasons why the government did not invest in the social structure are often attributed to the budget reforms, partly necessary to join the Euro, partly the own preference of the political coalition.

Before 11 September 2001, there was already a smouldering feeling of insecurity among the general public, which had been underrated and downplayed. The insufficiently funded police force acting in a highly individualised society with diminishing social coherence was not able to keep pace with the rising crime rate. The events of 11 September 2001 consequently triggered a massive concern for

security matters. In analysing the terrorist threats, the migrant - in particular the Muslim - population and its social and integration problems were consequently put in the spotlight.

### *Guest Workers*

In the 1960's, there was also a labour shortage. A large number of low qualified "guest workers", mainly from Morocco and Turkey, were invited to come and work in the Netherlands, in order to find a solution for this shortage in low qualified workers. What was initially conceived as a temporary solution resulted in many of these workers remaining in the Netherlands to this very day. Because of the premise that the "guest workers" were only here temporarily, at first, no attempt was made to create a government policy on the education and integration of these people within Dutch society. Only in the last decade were the first steps made to create programmes to integrate migrants and teach them Dutch. Due to various reasons like the voluntary character of these integration programmes, the long waiting lists, the (initial) low quality of the teaching material, and the low educational level of the migrant population, the integration programme for migrants failed to do what they were meant to do: create a permanent and solid basis for mutual respect and acceptance, a multicultural society.

Social and integration problems boosted crime among certain groups within the next generations of migrants. Unfortunately this was not adequately identified nor addressed, due to the strong influence of "politically correct" thinking. The identification of the ethnicity of offenders was most of the time prohibited by privacy and non-discrimination regulations. Although they are very useful concepts, these rules, combined with "political correctness", prevented the identification of problems and consequently left them without real solution.

At the same time, in large cities - especially Rotterdam and Amsterdam - the police force could hardly cope with crime, especially in poor suburbs, traditionally dominated by migrants mostly from Morocco and Turkey. Crimes committed, for example, by Moroccan youth gangs became more and more visible, although politicians and newspaper editors tried to stick with the prevailing moral code of "political correctness"; i.e. not to mention the ethnicity of the perpetrators. Within the government, the Labour Party (PvdA), in particular, did not manage to recalibrate its course in time and address the problems concerning the migrant community.

### *Pim Fortuyn & the 2002 elections*

In early 2002, the growing feeling of discontent, the problems within the migrant society, and the integration of migrants, were skilfully addressed by the new right-wing populist politician Pim Fortuyn. To the surprise of the traditional parties, he attacked "politically correct thinking" with great intensity. In the beginning, Pim Fortuyn was the anchorman of the new national political party *Leefbaar Nederland* (LN - Liveable Netherlands). Though swiftly dismissed by this party after an interview in a leading national newspaper in which he stated that Islam was to be regarded as a backward and ignorant religion, and heavily criticised core articles of the constitution. In the same interview he offered to discuss very openly the difficulties between the Dutch and the migrant population in the Netherlands; for example, the issue of (juvenile) crime among the migrant population, or the views on moral values (at certain points heavily clashing), such as the very strict view of Islam towards homosexuality versus the relatively accepted status of gay people in Dutch society. In his view, it was impossible to discuss these subjects thoroughly in the Netherlands without violating non-discrimination laws or freedom of religion. Therefore it was in



his view necessary to amend the articles of the Dutch constitution on non-discrimination and the right to religious freedom.

Dismissed by Leefbaar Nederland, but still in time for the general elections scheduled for 15 May, 2002, Fortuyn quickly founded and registered his own political party, *Lijst Pim Fortuyn* (LPF - Pim Fortuyn List). At the same time, Fortuyn also participated in the March local elections and nominated himself member of the Rotterdam City Council on behalf of the local branch of Leefbaar Nederland: Leefbaar Rotterdam. Local elections were held on 6 March. The Rotterdam City Council, dominated for decades by the Labour Party (PvdA), was suddenly taken over by Fortuyn and his political party, Leefbaar Rotterdam. Their overwhelming electoral victory left the local Labour Party (PvdA) in shock and ruins.

On 6 May, as he was leaving a radio station after a live interview, Pim Fortuyn was shot by a white environmental extremist.

On 15 May, the new LPF won the general elections by gaining 17% of the votes (26 seats out of 150 in the Lower House), while the Christian Democratic Appeal (CDA) became the largest party with 27.9% (43 seats). Despite a loss of votes by the People's Party for Freedom and Democracy (Liberals, VVD) - 24.7% (38 seats) to 15.5% (24 seats) - CDA, LPF and VVD formed a coalition government. The Labour Party (PvdA) was left decimated and in the opposition after losing about half of its votes (29% - 45 seats to 15.1% - 23 seats in May 2002).

#### *New Government - tough on migration & asylum*

The new government, in particular the LPF Ministers, soon began to launch initiatives for new policies concerning and/or affecting migrants. In 2000, the former "purple" government had already introduced a new law<sup>2</sup> reforming the legal position of migrants and introducing a stricter and shortened procedure for asylum-seekers: the Aliens Act 2000. The new LPF-policy makers announced an even stricter enforcement of this Act (in August 2002, the rejection of 80% of asylum applications was suggested as a target), the removal and repatriation of illegal aliens from the territory, and promised to introduce a compulsory integration programme. Furthermore, "*Volgmigratie*" ("pursued migration"), in particular family creation and reunification, was identified as the major cause of the influx of migrants. Plans were made to introduce new obligatory (and substantial) deposits before new immigrants be allowed to enrol in the integration programme, together with new requirements regarding age and income (see Chapter 4, debates on the integration of foreigners).

However, due to internal arguments, struggle for power, and differences in opinion, the newly formed CDA-LPF-VVD coalition only lasted 86 days. Consequently, many ideas and plans were not, or not completely, carried out. Prime Minister Balkenende gave the government's resignation to the Queen on 16 October. Despite their short time in power, the "Pim" people and the LPF parliamentarians were able to put security issues, restraints on immigration, the influx of asylum-seekers, and stricter integration on top of the agenda. These topics still dominate the political debate today.

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<sup>2</sup> For the integral text of the 2000 Aliens Act and the explanatory memorandum, see [http://www.ministerievanjustitie.nl:8080/a\\_beleid/thema/vreemd/vreemd.htm](http://www.ministerievanjustitie.nl:8080/a_beleid/thema/vreemd/vreemd.htm) (English) <http://www.justitie.nl/publicaties/dossiers/vreemdelingenwet.asp> (Dutch)

### *The January 2003 general elections*

New elections took place on 22 January 2003 and showed a remarkable restoration of the position of the Labour Party (from 23 seats back to 42) at the expense of the LPF (which dropped from 26 seats to 8). The Christian Democratic Appeal (CDA) consolidated its position as largest party (44 seats), enabling Prime Minister Balkenende to remain in office.

Currently, negotiations between PvdA and CDA to form a new coalition government are still ongoing.

### **1.3. Control, security and restriction vs. immigration management**

The Dutch immigration law and policy are characterised by control, security and restriction, rather than migration management and the assessment of needs. This has been the case for years, and an even stricter approach was introduced with the new Aliens Act 2000. The act regulating the issuance of work permits for migrants and their relatives under the Employment Act is a minor exception to this rule. The Foreign Nationals Employment Act (*Wet Arbeid Vreemdelingen*) shows signs of an approach towards migration management and assessment of needs.

Under the strong influence of the 11 September attacks and the outcome of the 2002 general elections, the policy debates on migration radicalised. The debate on the plans of the new government regarding migration was, to a large extent, cut short after 86 days when the coalition broke apart and the government gave its resignation. During the period before the following general elections, a substantial number of plans were brought forward in parliament, where the former coalition partners still had the majority. It should be noted that normally, a government that has given its resignation and is waiting for new elections, should only deal with ongoing affairs, and is not in a position to start any new plans, let alone any far-reaching and controversial plans. This particular government did not follow this parliamentary custom and initiated a number of plans with measures to increase security, to speed up integration and to introduce a far-reaching Identification Act.

For the moment we do not know whether these restrictive bills will make it through the newly elected Parliament. Additionally, it is not clear yet which general policy the two political parties currently negotiating the formation of a new government will agree upon, and what implications this will have.

### **1.4. Different terms for different types of migrants**

Immigrants who want to be admitted to the Netherlands in order to work generally need to apply for a residence permit. Dutch employers, on the other hand, need to apply for the immigrants' work permit. Employers are responsible for following the correct procedures, and are liable should employees be found working for them without a work permit.

The Immigration authorities (Embassy, IND, Visa Service) issue residence permits. The Ministry of Social Affairs and Employment is responsible for giving or denying access to the Dutch labour market. Its agency, the Centre for Work and Income or CWI (*Centrum voor Werk en Inkomens*), is in charge of issuing work permits. Both procedures are closely interconnected: should an application for a work permit fail, it is highly unlikely that the corresponding residence permit will be issued (and vice versa).

versa). Conversely, if a work permit is granted or simply not necessary, it is likely that the residence permit will follow without any major difficulty (except for the category of self-employed persons).

*Special policy: companies involved in more than 10 procedures a year*

If a company acts as a 'referent', i.e. is involved in more than ten visa procedures a year, the employer may receive preferential treatment, which means that work permit applications may be examined more rapidly than they would be in the regular procedure. This type of preferential treatment is developed in Chapter 3.

*Special policies: qualifications*

The main difference between the terms of admittance for low-qualified and highly qualified migrants (or migrants with special skills) lies in the exceptions to the obligation to obtain a work permit (see also Chapter 3). There are special policies and exceptions for:

- Key personnel of international companies (expatriates) earning more than € 50,000 gross a year. Their stay must be temporary and the exception only applies to high positions or management positions. The transfer of the employee to the Netherlands should take place in the context of the promotion of business contacts<sup>3</sup>;
- Personnel of companies located in another EU/EEA country providing services in the Netherlands;
- Scientific personnel, university guest lecturers, highly qualified researchers<sup>4</sup>;
- Students may work in the Netherlands to a limited extent (10 hours a week, or full-time work in June, July and August)<sup>5</sup>;
- Musicians and artists (tour in the Netherlands should not exceed four weeks)<sup>6</sup>;
- Stagiaires/Interns (extra requirements apply: internship contract with employer, guarantee that the student has already followed relevant vocational training in his/her country, maximum duration of 1 year)<sup>7</sup>;
- Employees in the sport sector; highest divisions in the sports involved (for example professional football players); extra requirements- apply<sup>8</sup>;
- Specific employees working in the catering industry; highly qualified and/or specialised cooks. Also, see below for the sectorial exception concerning the Chinese-Indonesian restaurant sector.
- Health care sector: doctors, general practitioners, dentists and socio-medical practitioners. Also, see below for the sectorial exception concerning the healthcare sector.

*Implementation decrees*

Other differences can be found in implementation decrees, i.e. instructions (most of the time temporary) containing policy changes from the Ministry of Social Affairs and Employment directed to the CWI on how the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen, Wav*) should be implemented. Under the influence of the labour shortage over the last couple of years, policy changes made the criteria for issuing work permits more flexible.

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3 Point 21 Uitvoeringsregels Wet arbeid vreemdelingen (implementation regulations Foreign Nationals Employment Act).

4 Point 27 and 28 Uitvoeringsregels Wet arbeid vreemdelingen.

5 Point 26 Uitvoeringsregels Wet arbeid vreemdelingen.

6 Point 29 Uitvoeringsregels Wet arbeid vreemdelingen.

7 Point 24 and 25 Uitvoeringsregels Wav.

8 Point 13 Uitvoeringsregels Wav.

For nine types of jobs<sup>9</sup> requiring at least Higher Vocational Education (*Hoger Beroepsonderwijs* - H.B.O.) and related to the ICT industry, an exemption was made from the registration duty of employers. This obligation normally requires a registration of vacancies with the CWI for at least five weeks before allowing a search for applicants outside the EU/EEA area. For a period of six months, employers were spared that duty (from 1 July, 2002 to 1 January, 2003). The same procedure was applied for highly qualified employees earning a minimum gross salary of € 3.630,00 a month<sup>10</sup>, however, in this case the exemption lasted six months more (until 1 July, 2003)<sup>11</sup>.

### *Sectorial exceptions*

Due to the pressure on the labour market and the resulting shortage of employees, the CWI received instructions that went beyond the Wav legal basis. These exceptions concerned specific sectors (covenants between employers' organisations and the Ministry of Social Affairs and Employment), such as Chinese and Indonesian catering, or the healthcare sector, and allowed employers to apply for work permits for (future) employees from outside the EEA/EU. A covenant for seasonal labour is currently under negotiation.

Recently a bill has been put forward in Parliament to create a legal basis for these sectorial exceptions<sup>12</sup>. The recent debate on sectorial exceptions and their legal basis is at the moment heavily influenced by the rising unemployment. Politicians now hesitate to develop a long-term policy with permanent possibilities for employers to hire employees who cannot be found in the EEA/EU, and are tempted to choose a short-term view. This restrictive reaction is a logical consequence of the rising unemployment due to the deteriorating economic climate.

These covenants contain more flexible rules for particular branches. One should note that this does not mean that the rules are less strict; most of the time the words 'specialised' or 'more flexible' rules imply in practice different rules or other grounds on which the work permit application can be refused.

Since these covenants are agreements between employers and the government, the legal position of migrant workers employed under these covenants is sometimes less favourable to that obtained through work permits issued under the regular Foreign Nationals Employment Act (Wav). Thus, provisions in the Wav allow migrant workers to have free access to the labour market after three years<sup>13</sup>, whereas the covenant

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<sup>9</sup> Developers and designers of: (1) electronic systems, (2) integrated circuits, (3) systems integration, (4) telecommunication systems, and for (5) analyst / programmers, (6) data specialists, (7) IT managers, (8) network specialists and (9) software designers.

<sup>10</sup> Implementation decree of the CWI, number 2002/006-1, published in the Staatscourant of 25 July 2002, nr 140 / page 27.

<sup>11</sup> Implementation decree of the CWI, number 2003/002, published in the Staatscourant of 28 January 2003, nr. 19 / page 15.

<sup>12</sup> Document of the Tweede Kamer (Second Chamber of the Houses of Parliament), dossier nr 28 442 nrs 1-2 (bill) nr 3. (explanatory memorandum) nr 4 (report of deliberations); *Wijziging van de Wet arbeid vreemdelingen in verband met de werving van arbeidsaanbod uit landen van buiten de Europese Economische Ruimte op een bij convenant overeengekomen wijze*; See also the section called 'Who is entitled to work in the Netherlands without a work permit' in Chapter 3 (mission for Economic Purposes).

<sup>13</sup> See also the policy of 'endorsements' on page 24-25 in the section '*who is entitled to work in the Netherlands without a work permit?*'

for the health care sector, on the contrary, provides for the return of migrant nurses in their country of origin after four to five years<sup>14</sup>.

### **1.5. Immigration and discussions about social and economic policies for the future**

Immigration is linked to, and embedded in larger discussions about social and economic policies for the future. The debate between the parliament and the government on whether migration can be a solution for the decline in population growth and ageing within the population is still ongoing. This discussion is fuelled by reports (discussed in more detail below) which are mostly drafted in a long-term perspective by ministries, councils, trade unions and NGOs.

### **1.6. The link between demographic issues, labour market imbalances, and migration**

Various studies have been carried out, focusing on demographic issues and linking the labour market and migration. The following reports were drafted by two large government institutions, generally considered as the most influential ones, the SER and the WRR.

The Socio-economic Council (Sociaal Economische Raad - SER), which is the main advisory body of the Dutch government on national and international social and economic policies, published on 15 January 2001 a report<sup>15</sup> entitled “2002/02 E: Ageing population and the EU” followed, one day later, by another report<sup>16</sup>: “2001/04 E: Labour mobility in the European Union”.

The report on *Ageing population and the EU* argues that in the Netherlands, the rise in expenditures related to the ageing within the population will exceed the EU average. However, it also argues that the budgetary impact of ageing will remain manageable. Furthermore, the report gives a list of available instruments recommended by the Council.

Regarding immigration as one of the possible remedies for the decline and greying of the population, the SER concludes that, regarding these issues, it is necessary to structurally increase the employment rate. The Council has declared that migration is generally not a solution to the problem of ageing. In accordance with the resolution adopted by the European Council in Tampere, the Council believes that it is important to harmonise to some extent the requirements established for the admission and residence of labour migrants within the EU.

The scope of the *Labour Mobility* report of the Socio-economic Council includes the position of third-country nationals residing within the EU, and the position of nationals

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<sup>14</sup> Besluit tot vaststelling van de beleidsregels van de Centrale organisatie werk en inkomen inzake de uitvoering van de Wet arbeid vreemdelingen (implementation regulations of the executive agency 'Centre for Work and Income') CWI 2002/006 article 8.3 (zorgsector) under 12; in this article of the healthcare covenant, the percentage of migrant nurses working in hospitals and other institutes are limited, and this percentage decreases each year (2001 3%; 2002 2.5%; 2003 2%; 2004 1.5%).

<sup>15</sup> SER Advies nummer 02/02 “EU en vergrijzing”.

(English summary: [http://www.ser.nl/publicaties/default.asp?desc=2002\\_02](http://www.ser.nl/publicaties/default.asp?desc=2002_02) )

<sup>16</sup> SER Advies nummer 01/04 “Arbeidsmobiliteit in de EU”

(English summary: [http://www.ser.nl/publicaties/default.asp?desc=2001\\_04](http://www.ser.nl/publicaties/default.asp?desc=2001_04) )

currently living in one of the accession states. 'Within the context of the accession negotiations, the SER does not believe it necessary for present Member States to request long transitional periods in order to liberalise the free movement of workers. With the movement of workers from Central and Eastern Europe due to be liberalised in the future, it would be possible to gain experience in this area by considering the supply of labour from these countries as a priority source of labour from non-EU countries within the context of the Foreign Nationals Employment Act (*Wet Arbeid Vreemdelingen, Wav*).'

The SER also observed 'a number of defects in the existing European legislation governing the free movement of workers and the way in which the legislation is implemented. These defects, which impede labour mobility, are related to the right of employees on short-term contracts and job-seekers to reside in another Member State, the exclusion of non-EU nationals from the free movement of workers, access to certain occupations owing to problems with the mutual recognition of qualifications, the provision of information on labour supply and demand in the EU, and, finally, the co-ordination of supplementary pension schemes in Europe.' Furthermore, the SER does not believe it is fair to exclude non-EU nationals from the free movement of workers. Non-EU nationals who have resided legally in the EU for many years should be given the same rights as EU nationals.

From the SER report, the conclusion may be drawn that a successful increase in the (temporary or long-term) mobility among workers legally residing within the EU and the accession states, could take care of some of the labour market imbalances.

In 2002, the Netherlands Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid – WRR) published a report entitled "*The Netherlands as immigration society*"<sup>17</sup>. This scientific advisory body, like the SER, has a legal basis and occupies an independent (and therefore prominent) position within the constellation of government bodies that it is supposed to advise.

The WRR report focuses more closely on the migrant population residing in the Netherlands and makes recommendations in an economic situation which is different from the one prevailing in the previously mentioned SER-reports. The WRR report states in very clear terms that migration is neither a desirable solution to labour market shortages, nor a remedy to the economic consequences of the greying of the population. From the perspective of the immigration society, even family reunification is undesirable, especially when it concerns refugees granted a temporary stay. Exceptions are made for highly qualified migrants and for some temporary migrant workers, thus enabling a modern type of seasonal labour.

### **1.7. Use of the studies in the migration debate**

The studies carried out by the SER and the WRR are almost always elaborately discussed in parliament and formally responded to by the government, especially when the reports are drafted following a request by the parliament or (sometimes) the government.

The government generally adopts the same point of view as SER and relates even closer to the point of view of the WRR; labour migration (with the exception of intra EU migration, and highly qualified migrants) cannot provide a solution to the

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<sup>17</sup> WRR Report "Nederland als immigratiesamenleving"  
(English summary: <http://www.wrr.nl/HTML-NL/BasisPU-NL.html>)

consequences of the greying of the population<sup>18</sup>. The SER and the government's positions rely on elaborate calculations based on migration data for the last fifty years<sup>19</sup>. The amount of influx necessary combined with the necessary 'quality' is extremely difficult to obtain, especially if one considers the current high unemployment rate among non-western migrants, the expenditure on social security benefits, and the generally low level of education of migrants.

As stated before, the debate in parliament is still ongoing.

The issue of labour migration is also discussed within the society, through debates in newspapers and other media. Contrary to the government's point of view, the employers' organisation VNO-NCW requires more workers from outside the EU. In the view of VNO-NCW, more flexible rules of admittance for labour migrants are the answer to the upcoming greying of the population and the diminishing intake of students for vocational training in the Netherlands. The organisation feels that this problem cannot be solved by intra-EU labour migration; therefore, more workers from outside the EU are needed to uphold the competitive position of the Dutch economy. The FNV, the largest labour organisation, is of the opinion that the country should deal with the Dutch population first (i.e. the population residing in the Netherlands). Employers have the possibility to improve working conditions in order to reduce the outflow of personnel. Measures can also be taken to employ the surplus labour.

Many NGOs also have a position on this issue. For example, the position of FORUM is almost the same as that of the FNV. During the Migrants' Week organised by the Churches' Committee and other organisations three years in a row (2000, 2001, 2002), the ratification by the Dutch government of the UN Convention for labour migrants and their family members was sought. They also gave particular attention to the position of migrants in their workplace<sup>20</sup>.

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<sup>18</sup> Document of the Tweede Kamer (Second Chamber of the Houses of Parliament) of 2 September 2002, dossier nr 28 507 nr 1 (Vergrijzingsproblematiek / problems concerning the greying within the population). see also; Document of the Tweede Kamer (Second Chamber of the Houses of Parliament) of 28 September 2001 Dossier nr 28 026 nr 1 (Knelpunten op de arbeidsmarkt en arbeidsmigratie / Bottlenecks on the labour market and labour migration).

<sup>19</sup> C. Huisman & L. Heering, Rekenexercitie wijst uit: halve eeuw migratie had zeer geringe invloed op vergrijzingsproces, DEMOS, Jaargang 17, July/August 2001.

<sup>20</sup> Tanja van den Berge, Sociale partners herwaarderen illegale arbeid, uit: Rechtshulp 2003-4, p. 10 e.v. Reader Workshop 'Relation between migration and labour market, FORUM 30 November 2000.

## Chapter 2: The stakeholders

### 2.1. The governmental actors contributing to policy discussions and to the implementation of policies

#### 2.1.1. The Ministry of Justice and related executive agencies

The main source of migration policy in the Netherlands is the Ministry of Justice. Following the negotiations on the formation of a new government after the general elections of May 2002, it was decided to reinforce this field of policy by creating a new ministerial position combining immigration and integration affairs. Before then, integration policy belonged to the Ministry of the Interior and Kingdom Relations, while immigration policy was - and still is - the responsibility of the Ministry of Justice.

The Immigration Policy Department of the Ministry of Justice<sup>21</sup> deals with a wide range of migration-related topics. The department also co-ordinates the input and/or feedback provided by executive governmental agencies, such as the Immigration and Naturalisation Service<sup>22</sup> (*Immigratie en Naturalisatiedienst* - IND) and the Central Agency for the Reception of Asylum-seekers<sup>23</sup> (*Centraal Orgaan opvang Asielzoekers* - COA), both under the responsibility of the Ministry of Justice.

#### 2.1.2. Other ministries and their executive agencies

There is, however, a number of other ministries involved, or at least influencing the migration debate. This is particularly the case when executive agencies which feedback may influence the migration policy debate are organised under ministries other than the Ministry of Justice, or when a particular ministry is responsible for the implementation of an Act overlapping the migration policy field.

For example, the *Vreemdelingendienst*, i.e. the Immigration Service, is part of the police force, and is, therefore, under the responsibility of the Ministry of the Interior and Kingdom Relations, although it implements the policy drafted by the Ministry of Justice. In addition to supervision, the Immigration Police carries out the substantial administrative task of processing residence permits. This is due to change temporarily in April: for one year (April 2003-2004) this task is handed over to the IND, thus enabling the *Vreemdelingendienst* to intensify supervision, achieve greater results in combating illegal immigration, and accelerate the repatriation of illegal migrants<sup>24</sup>. The Ministry of the Interior and Kingdom Relations also influences migration matters in the framework of its security policy. The new Identification Bill<sup>25</sup>,

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<sup>21</sup> [http://www.ministerievanjustitie.nl:8080/b\\_organ/organisa/b1\\_3/b1\\_3.htm](http://www.ministerievanjustitie.nl:8080/b_organ/organisa/b1_3/b1_3.htm) (English)

<sup>22</sup> <http://www.ind.nl/Home.asp?LangID=1> (English)

<sup>23</sup> This organisation mainly deals with housing; web site <http://www.coa.nl> (Dutch only)

<sup>24</sup> Document of the Tweede Kamer (Second Chamber of the Houses of Parliament) of 20 December 2002, dossier nr 19 637 nr 707 (Vluchtelingenbeleid; stand van zaken mvv aanvraagprocedure)

<sup>25</sup> The bill has not been submitted to the Parliament yet. It is possible that the ID-Bill in its present form will not reach the Parliament at all, considering the recent statement made by the Dutch Data Protection Authority, which concludes that eventually, the Bill is very likely to constitute a violation of article 8 ECHR [http://www.cbppweb.nl/documenten/adv\\_z2002-1486.htm](http://www.cbppweb.nl/documenten/adv_z2002-1486.htm) (Dutch only)



for example, is supposed to help fight juvenile crime in general, but it is feared that it will mainly focus on the migrant population.

The Visa Service (*Visa Dienst*) has a rather complex position. It operates under the responsibility of the Ministry of Foreign Affairs, although it works in close co-operation with the Immigration and Naturalisation Service (IND) of the Ministry of Justice.

The issuance of visas is generally the responsibility of the Ministry of Foreign Affairs. Consequently, visa for short stays and for business purposes are commonly dealt with by this Ministry, by consulates abroad and by the Visa Department of the Ministry of Foreign Affairs in The Hague (*Directie Personenverkeer Migratie en Vreemdelingenzaken, Afdeling Vreemdelingen- en Visumzaken* - DPV/VV). Applications for visas for the purpose of family visits and for long stays are generally transferred to the Visa Service. The Minister of Foreign Affairs has given a mandate to the Minister of Justice to decide upon these applications. Therefore, the decisions made by the Visa Service are regarded as taken under the responsibility of the Minister of Justice and the Minister of Foreign Affairs acting together.

The Ministry of Foreign Affairs also houses the *Directie Personenverkeer Migratie en Vreemdelingenzaken, Afdeling Asiel- en Migratiezaken* (DPV/IAM)<sup>26</sup> which deals with objections regarding the procedure of verification of documents. The Ministry also maintains relations with the Dutch embassies and consulates abroad, where most of the applications for (long-term) visas must be submitted.

The Ministry of Social Affairs and Employment controls the access to the Dutch Labour market via the Foreign Nationals Employment Act (*Wav - Wet arbeid vreemdelingen*). The national job centre, the Centre for Work and Income (*Centrum voor Werk en Inkomen* - CWI) carries out the implementation of this Act. Furthermore, compliance with the Wav is enforced by the Health and Safety Inspectorate (*Arbeidsinspectie*), in co-operation with the Immigration Police, the Inland Revenue Service (*Belastingdienst*), and the Social Security Agency (*Uitvoeringsinstituut werknemersverzekeringen* - UWV).

There is a recent tendency to centralise migration matters within the Immigration and Naturalisation Service (IND). Since 1 January 2003, the various services within the CWI job centres have been centralised. The same has taken place in the IND offices, making it easier to apply for residence and work permits by having the two procedures handled in parallel<sup>27</sup>. One should note that applications for work permits have to be made first, and that applications for residence permits are linked to them (see Chapter 3, "Admission for economic purposes").

The Ministry of Finance is also involved in the policy-making process as far as taxes are concerned. The Ministry of Housing, Space Planning and Environment works in close co-operation with the Central Agency for the Reception of Asylum-Seekers (COA) when dealing with housing problems.

Finally, the Marechaussee (military police in charge of border controls and of the expulsion of illegal aliens) is under the responsibility of the Ministry of Defence.

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<sup>26</sup> [http://www.minbuza.nl/default.asp?CMS\\_ITEM=MBZ425689](http://www.minbuza.nl/default.asp?CMS_ITEM=MBZ425689) (Dutch only)

<sup>27</sup> Letter from the Minister of Social Affairs and Employment to the Tweede Kamer (Second Chamber of the Houses of Parliament) of 30 January 2003 Ref.: SZW0300058 nr 707 (Vluchtelingenbeleid; stand van zaken mvv aanvraagprocedure).

The Ministry of Justice has a co-ordinating role, carried out through the Inter-departmental Steering Group on Immigration<sup>28</sup>, within the Immigration Policy Department of the Ministry of Justice. This steering group advises the Council of Ministers, in which ongoing affairs and governmental positions are discussed before being debated in the parliament.

### 2.1.3. The Parliament<sup>29</sup>

The Netherlands has a bicameral system; therefore, the Dutch Parliament consists of a First Chamber (Eerste Kamer or Upper House) and a Second Chamber (Tweede Kamer or Lower House). The Houses of Parliament are located in The Hague.

When looking at European migration policy matters, the quality and quantity of information provided by the government to the parliament is, to a large extent, based on the agreement reached when the bill for the ratification of the Schengen Treaty, the Maastricht Treaty, and later the Amsterdam Treaty, was approved. According to this agreement, the parliament receives the agenda of the Justice and Home Affairs Council and the corresponding documents 14 days in advance. In practice, however, not all documents are produced in time. Documents are regularly not available at all, or only available in English or French while the government should provide them in Dutch, and two weeks is too short to study all the documents properly.

Furthermore, there is a striking difference between MPs with regard to their level of 'European knowledge'. In the Second Chamber (Tweede Kamer)<sup>30</sup>, political parties all make efforts to deal with the flow of information from Brussels. The First Chamber<sup>31</sup> used to be very poorly informed on European matters. In order to change this a European Office was established in 2001, to provide information on European developments to MPs, in particular regarding Justice and Home Affairs. The European Office of the First Chamber (EBEK – Europees Bureau Eerste Kamer) launched a very impressive web site on current JHA Affairs in mid-2002. On the web site, the agenda and documents regarding upcoming JHA Councils can be found. The points of the agenda are described and briefly commented on by EBK. Comments made by NGOs are sometimes also mentioned. At first, access to this source of information was restricted to the First Chamber. Recently, the site<sup>32</sup> was made available to the public; however it does not display all the documents: access to certain documents remains a privilege of the Members of Parliament.

The scientific offices<sup>33</sup> of the various political parties may also affect the debate on migration policy in the parliament. Their influence is, however, hard to assess. It

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<sup>28</sup> Interdepartementale stuurgroep immigratie; for further description in Dutch, see “Instructiedossier C” .

pages 47-49; <http://www.justitie.nl/organisatie/bewindslieden/index.asp>

<sup>29</sup> [www.parlement.nl](http://www.parlement.nl)

<sup>30</sup> <http://www.tweedekamer.nl/organisatie/communicatie/internationaal/index.jsp> (Various languages)

<sup>31</sup> <http://www.eerstekamer.nl/cgiin/pdcsns.cgi?dir=/9202000/g/%26filename=/9202000/h1.sns%26via=1pdi%26v01=english> (English)

<sup>32</sup> <http://www.europapoort.nl> (Dutch only)

<sup>33</sup> Scientific Bureau's of the:

CDA

[http://www.cda.nl/domains/cda/pages/subsitehomepage.asp?content=804\\_2\\_1947&navid=724\\_84](http://www.cda.nl/domains/cda/pages/subsitehomepage.asp?content=804_2_1947&navid=724_84) (Dutch only)

seems that the offices only produce very few documents concerning migration issues. Part of their work is also performed confidentially.

#### **2.1.4. The Judiciary**

##### **2.1.4.1. The National Co-ordination Office of the of the District Court - Aliens Sections & the Immigration Chain**

In the Netherlands, legal actions against undesired decisions in asylum and migration cases may exclusively be filed at the District Court in The Hague – Aliens Section (Arrondissementsrechtbank Den Haag - Vreemdelingenkamer). Considering the large caseload and the exclusive competence of the Court in The Hague, additional branch offices of this court were installed throughout the country. A national co-ordinating office of the District Court, Aliens Sections (LSVK - Landelijk Stafbureau Vreemdelingenkamers), should ensure that uniformity in the administration of justice is maintained.

The co-ordinating office also participates in periodical meetings with the Ministry of Justice. These institutionalised talks are known as the administrative co-ordination of the “Immigration chain” project (PCV - Project Coördinatie Vreemdelingenketen) of the Ministry of Justice. This temporary project aims at evaluating the 2000 Aliens Act. Other participants include the Ministry of Foreign Affairs, the Marechaussee, the Immigration Police, the Immigration and Naturalisation Service, and the Council of State. Periodical evaluation reports on this chain of immigration organisations are sent to the parliament.

##### **2.1.4.2. The Council of State<sup>34</sup>**

Since the entry into force of the 2000 Aliens Act, the majority of appeals have been lodged with the Judicial Division of the Council of State. Before then, the Judicial Division only handled other administrative procedures (e.g. on housing and environmental matters). The Council of State was initially established to advise the government on the merits of draft legislation, and still performs this duty alongside the administration of justice. This combination became the target of criticism when the Council of State started assuming its new function regarding immigration issues. Following the criticism, expressed in particular by Prof. Th. Spijkerboer, questions were raised in the parliament concerning the impartiality and non-political position of the Judicial Division<sup>35</sup>.

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VVD (Telders stichting)

<http://www.vvd.nl/index2.asp?ParentItemID=3&ItemID=30&SelectedItemID=205> (Dutch only)

PvdA (Wiarda Beckman Stichting) <http://www.wbst.nl/> (Dutch only)

SP (Wetenschappelijk Bureau) <http://www.sp.nl/onderzoek/>

Groenlinks (Wetenschappelijk Bureau) <http://www.groenlinks.nl/partij/wb.html> (Dutch only)

D'66 (Kenniscentrum) <http://www.d66.nl/documenten/swb/> (Dutch only)

ChristenUnie (Wetenschappelijk Instituut) <http://wi.christenunie.nl/> (Dutch only)

SGP (Guido de Brès stichting) <http://www.sgp.nl/index.html?3> (Dutch only)

<sup>34</sup> <http://www.raadvanstate.nl/rvs.asp?pag=221> (English summary)

<sup>35</sup> Tweede Kamer (Second Chamber) question by MP De Wit: answered on 18 February 2003 (document number 766 – Dutch only), and question by MP Halsema: answered on 15 January 2003 (document number 586 - Dutch only).

As mentioned above, the Council of State also participates in the assessment meetings of the Aliens Act 2000: the above-mentioned immigration chain project of the Ministry of Justice.

### **2.1.5. The National Ombudsman**

The appointment of Prof R. Fernhout<sup>36</sup>, Professor in European Migration Law at the Catholic University of Nijmegen, as National Ombudsman in 1999, has had a strong influence on the determination of priorities of the “Nationale Ombudsman”<sup>37</sup>. Soon after he took office, a series of reports was published expressing severe criticism on Dutch practices regarding asylum and immigration procedures. In 2001, the Ministry of Justice topped the list of complaints against government departments with 2,031 complaints, i.e. 51% of the total number of complaints. Out of these, 1,563 complaints concerned the Immigration and Naturalisation Service<sup>38</sup>. The governmental organisations involved, i.e. the Immigration and Naturalisation Service (IND), the Visa Service (Visa Dienst), the Immigration Police (Vreemdelingenpolitie) and the Ministries of Justice and Foreign Affairs, became the target of such criticism that at last, the impartial position of Fernhout was questioned. To sum up, the National Ombudsman plays a significant role in the migration policy process. Unlawful or unacceptable practices regarding asylum and immigration procedures have been exposed, most of the time forcing the organisations concerned to adjust their policy.

### **2.1.6. Governmental advisory boards and councils**

#### **2.1.6.1. The Advisory Committee on Alien Affairs**

Before the entry into force of the 2000 Alien Act, the Advisory Committee on Alien Affairs<sup>39</sup> (ACVZ – Adviescommissie voor Vreemdelingenzaken) advised the Government, in particular the Minister of Justice, as well as the parliament, in very complex individual cases and on general immigration policy. With the 2000 Alien Act, the main task of the ACVZ is now to give advice on the general migration policy. The independent position of the Advisory Committee ACVZ is ensured by law.

#### **2.1.6.2. The Netherlands Scientific Council for Government Policy (WRR)**

The Scientific Council (Wetenschappelijke Raad voor het Regeringsbeleid<sup>40</sup> - WRR), already mentioned in the discussion regarding the reports<sup>41</sup> on labour market shortages in Chapter one, is the governments’ advisory organ with the widest range of interests. The WRR is not particularly focused on migration policy, but concentrates on developments that will affect society in the long term. It can deal with any subject of government policy, provided it is concerned with the future, it is supra

<sup>36</sup> <http://www.nationaleombudsman.nl/brochure/fernhoutcv.html> (CV – Dutch only)

<sup>37</sup> [http://www.ombudsman.nl/brochureframe\\_uk.html](http://www.ombudsman.nl/brochureframe_uk.html) (English)

<sup>38</sup> [http://www.ombudsman.nl/jaarverslag\\_uk/some-statistics01.html](http://www.ombudsman.nl/jaarverslag_uk/some-statistics01.html) (Statistical overview - English summary)

<sup>39</sup> [www.acvz.com](http://www.acvz.com) (Dutch only)

<sup>40</sup> <http://www.wrr.nl> (English/Dutch web site)

<sup>41</sup> WRR Report “*Nederland als immigratiesamenleving*” (“The Netherlands as immigration society” - English summary <http://www.wrr.nl/HTML-NL/BasisPU-NL.html>)

sectorial in nature, and it involves major social and political issues calling for remedies over a number of years. Despite the fact that the Scientific Council has to inform the Prime Minister of its intentions, the decision on what to investigate is usually made by the WRR alone. Recently, the Scientific Council has announced that it would start analysing the role of the government, civil society and trade and industry in the policy- and decision-making process.

### 2.1.6.3. The Socio-economic Council<sup>42</sup> (SER)

The SER is the main advisory body of the Dutch government on national and international social and economic policies. When looking at migration in relation to the labour market, the advisory reports of the Socio-economic Council most of the time play an implicit, but very important role.

In its advisory function, the SER issued reports<sup>43</sup> on the greying of the working population, its effect on pension schemes and healthcare, and it took a stand on migration. It also focused on European integration, EU enlargement, the European Convention<sup>44</sup> and its expected effects on the labour market in the Netherlands.

## 2.2. Non-governmental actors

In the Netherlands, there is a wide range of non-governmental organisations actively involved in the migration policy field. In theory, NGOs may be categorised and narrowed down into four categories: asylum, immigration, anti-discrimination, and organisations which focus on a particular minority group. In practice, fields of expertise often overlap, boundaries are blur, and experts sometimes work for more than one organisation.

### 2.2.1. FORUM & NCB

The main non-governmental actor in the field of immigration policy is FORUM, the Institute for Multicultural Development (*Instituut voor Multiculturele Ontwikkeling*)<sup>45</sup>. This institute focuses on problems relating to the Dutch multicultural society in general, and to the integration of migrants in particular. Seven years ago, the Ministry of Public Health, Welfare and Sports decided that organisations and interest groups should combine forces and merge into one research and expertise centre. Consequently, a large number of interest groups (Turks, Moroccans, etc.) came together to create the Institute for Multicultural Development. A group of lawyers, who formerly worked for the Netherlands Centre for Foreigners<sup>46</sup> (Nederlands Centrum Buitenlanders - NCB) also gathered to form the relatively small Legal Department

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<sup>42</sup> [www.ser.nl](http://www.ser.nl) & [http://www.ser.nl/default.asp?desc=en\\_index](http://www.ser.nl/default.asp?desc=en_index) (Introduction in English). For a list of comparable institutes and councils in Europe, see [http://www.ser.nl/overdeser/default.asp?desc=en\\_links\\_europa](http://www.ser.nl/overdeser/default.asp?desc=en_links_europa) and [http://www.ser.nl/overdeser/default.asp?desc=en\\_links\\_inter](http://www.ser.nl/overdeser/default.asp?desc=en_links_inter)

<sup>43</sup> See further in Chapter one, where the “Ageing population & the EU” and the “Labour mobility” reports are discussed.

<sup>44</sup> Published on 12 February 2003: General analysis of the Convention (not particularly focused on migration). <http://www.ser.nl/publicaties/default.asp?desc=b21338> (Dutch text only)

<sup>45</sup> <http://www.forum.nl> see also: <http://www.forum.nl/engels/index.html> (English summary)

<sup>46</sup> <http://www.ncbnet.nl> (Dutch only)

Forum. Outside of the Forum context, the NCB continued working on migration issues and remained an important publisher of books on immigration law. FORUM follows and participates in the debate on immigration policy.

### **2.2.2. The Standing Committee of Experts on International Immigration, Refugee and Criminal Law**

The Standing Committee of Experts on International Immigration, Refugee and Criminal Law deals almost exclusively with European developments in the field of immigration and criminal affairs, including Schengen and SIS/Eurodac developments, questions of privacy, anti-discrimination legislation, institutional changes, democracy in the EU and the position of the ECHR. The Standing Committee, or "Meijers" Committee, was established in 1990 by five NGOs: the Dutch Bar Association, the Refugee Council, the Dutch section of the International Commission of Jurists, the Netherlands Centre for Foreigners/FORUM and the National Office against Racism (LBR). The Meijers Committee is independent and most of its members are lawyers, academics and professors working at law faculties in the Netherlands or in Belgium. They are experts in one of the three fields mentioned in the Committee's name. The Standing Committee monitors developments in the area of Justice and Home Affairs and presents its opinion to the Dutch parliament, the European Parliament, parliaments in other Member States (e.g. the House of Lords), the Dutch government, the European Commission and other public authorities and NGOs.

### **2.2.3. Lawyers' Organisations: the Dutch Bar Association & Legal Aid**

All Dutch lawyers are members of the Nederlandse Orde van Advocaten<sup>47</sup>. The Advisory Committee on Immigration Law (Adviescommissie vreemdelingenrecht) makes recommendations to the government on the legal protection of immigrants. The "Orde" tried to influence government policy recently, when the regulation on financial compensation for lawyers providing legal aid was threatened by governmental budget cuts. Despite the fact that the compensation has remained at a normal level, the number of lawyers providing such aid is decreasing rapidly, due to the effects of the 2000 Aliens Act. This Act introduced stricter procedures, to be carried out by the Council of State. Consequently, the number of people seeking asylum in the Netherlands is dropping. At the same time, the cases which reach the Council of State in appeal face a strict enforcement of the law, to the disappointment of the lawyers providing legal aid.

### **2.2.4. Human Rights: NJCM & SIM**

The Dutch section of the International Commission of Jurists<sup>48</sup> (Nederlands Juristen Comité voor de Mensenrechten - NJCM) is one of the country's most important organisations in the field of human rights. It influences the migration policy debate, as well as the debate on the future of the European Union, and on legal protection in the EU, mainly through its participation in the Meijers Committee.

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<sup>47</sup> <http://www.advocatenorde.nl> (Dutch only)

<sup>48</sup> <http://www.njcm.nl> (Dutch only)

### **2.2.5. Universities: Centrum voor Migratierecht - Katholieke Universiteit Nijmegen (KUN), Instituut voor Immigratierecht - Universiteit Leiden (UL), IMES - Universiteit van Amsterdam (UvA) & ERCOMER - University of Utrecht (UU)**

The research facilities of the above-mentioned universities are the most important ones on the issue of national immigration law. Their publications play an important role in the debate on migration policy and inside the courtrooms.

### **2.2.6. Fighting racism and discrimination: the Anne Frank House, LBR & the Equal Treatment Commission.**

More than just a museum, the Anne Frank House (and the Anne Frank Foundation) in Amsterdam<sup>49</sup> monitors extreme right-wing statements in the Netherlands, Europe and the United States. The activities of the Anne Frank House include collecting material on right-wing extremism, publishing information on this topic, advising individuals and organisations, taking legal steps against revisionist statements in the Netherlands, and monitoring the diffusion of extreme right-wing material on the internet.

The National Office against Racial Discrimination<sup>50</sup> (Landelijk bureau ter Bestrijding van Rassendiscriminatie - LBR) is involved in legal matters and proceedings concerning the fight against discrimination in a very large sense. Their views and publications influence the migration policy debate, e.g. on the new Identification Bill, or very recently on the topic of integration of migrants.

The Commission for Equal Treatment<sup>51</sup> (Commissie Gelijke Behandeling) is a kind of arbitration board. In the Netherlands, Article 1 of the Constitution prohibits discrimination. The 1994 Dutch Equal Treatment Act (Algemene Wet Gelijke Behandeling - AWGB) elaborates on this norm. The AWGB prohibits discrimination in specific fields (employment, education and the provision of goods and services) on a limited number of grounds (religion, belief, political orientation, race, sex, nationality, sexual preference, marital status, working hours or temporary contract). The Commission for Equal Treatment was set up to promote and monitor the compliance with this Act, together with other specific anti-discrimination and equal treatment legislation in the Netherlands. This commission deals with a wide range of disputes, often with an integration or religious component. The decisions of this board regularly have an important impact on government policy, often regarding integration matters, sometimes on immigration issues.

### **2.2.7. Repatriation: Nederlands Migratie Instituut & IOM**

While the International Organisation for Migration<sup>52</sup> (IOM) assists in the repatriation of asylum-seekers and refugees, the Dutch Migration Institute<sup>53</sup> (Nederlands Migratie Instituut) does the same for immigrants. The Migration Institute regularly exchanges

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<sup>49</sup> <http://www.annefrank.nl/eng/afs/framesafs/onderkantAFS5a.html> (English version)

<sup>50</sup> <http://www.lbr.nl/euroinfo/english/index.html> (English version)

<sup>51</sup> <http://www.cgb.nl/english/default.asp> (English version)

<sup>52</sup> <http://www.iom-nederland.nl/engels/frame1/frame.html> (English version)

<sup>53</sup> <http://www.nmigratie.nl> (Dutch only)

views with Members of Parliament and the Ministries of Justice and Social Affairs (e.g. concerning the transfer of social benefit & pension schemes abroad).

### **2.2.8. Women's rights organisations: the Clara Wichman Institute & E-Quality**

The Clara Wichman Instituut<sup>54</sup> strives to improve the legal position of women regarding emancipation, anti-discrimination, and equal rights, and to stimulate and influence the political, legal and social discussions about gender issues. The institute describes how legislation works out in practice for women. Where necessary, it exposes the mechanisms of exclusion and discrimination in law and legal practice. The activities of the Clara Wichman Institute sometimes deal with criminal law and immigration law, as is the case with the legislation on human trafficking, and forced prostitution.

The organisation E-Quality<sup>55</sup> carries out research on gender issues and the position of women, in combination with their ethnical background. The organisation analyses developments regarding women's emancipation in a multicultural society and advises the government and the parliament accordingly.

### **2.2.9. Churches' organisations: Raad van Kerken**

Regardless of the separation between State and Church in the Netherlands, the Dutch Council of Churches<sup>56</sup> regularly ventilates its grievances concerning immigration and asylum policy issues. The Dutch Council of Churches is the widest coalition of Churches in the Netherlands, including the Syrian Orthodox, Reformed Protestant, Evangelical-Lutheran, and Roman Catholic Churches. The *Raad van Kerken* organises the 'Migrantenweek'<sup>57</sup> (Migrants' week) in co-operation with other organisations. During this week, discussions are organised on migration issues such as labour migration, the fight against poverty, differences in cultural and religious backgrounds and how to deal with them, etc.

### **2.2.10. Asylum & Refugee organisations: Vluchtelingenwerk, Amnesty International and VON**

The boundary between immigration and asylum issues is not very clear. Sometimes, there is an overlap between the two and on these occasions, coalitions of refugee organisations are not uncommon.

A large number of asylum and refugee organisations are active in the Netherlands. The largest one is the Dutch Refugee Council<sup>58</sup> (Vluchtelingenwerk Nederland). The Refugee Council is present in all centres for asylum-seekers and has offices in 94% of the cities and municipalities, with close to ten thousand volunteers and employees.

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<sup>54</sup> <http://www.clara-wichmann.nl/en/index.html> (English version)

<sup>55</sup> <http://www.e-quality.nl/e-quality/pagina.asp?paginaam=english&metkey=169> (English version)

<sup>56</sup> <http://www.raadvankerken.nl> (Dutch only)

<sup>57</sup> <http://www.migrantenweek.nl> (Dutch only)

<sup>58</sup> <http://www.vluchtelingenwerk.nl/nl/english> (English)



The refugee section of Amnesty International in Amsterdam<sup>59</sup> is small but very active, and the comments made by AI on policies are taken seriously, particularly by Members of Parliament and Judges. Refugee Organisations Netherlands<sup>60</sup> (Vluchtelingen Organisaties Nederland - VON) is the national umbrella organisation gathering more than two hundred refugee interest groups.

### **2.2.11. Minority Group organisations**

In order to carry out research, FORUM maintains close relations with many organisations focusing on a particular minority group. Each ethnic group present in the Netherlands is represented by at least one organisation. Large ethnic groups, such as the Turkish and Moroccan migrants, sometimes have a couple of dozen organisations and groups representing them. It is, therefore, impossible to give an adequate description of the two thousand organisations representing minority groups, and of their respective influence on the migration debate<sup>61</sup>. Nevertheless, the 'link' page<sup>62</sup> of the FORUM web site may be a good start to study these organisations.

In an attempt to channel the input and structure the dialogue between the government and these organisations, a bill (19 June, 1997) on the National Consultation of Minority Organisations<sup>63</sup> (Landelijk Overleg Minderheden - LOM) was passed. It introduced a periodical meeting chaired by the Minister for Immigration and Integration. The description of the LOM states that it promotes the participation and emancipation of minority groups. The LOM also debates on issues such as access to the labour market and integration.

## **2.3. Mechanisms of influence, assessment of the importance of the various actors, and links between them**

### **2.3.1. Governmental actors & the legislative process**

The importance of governmental actors in the Dutch legislative process is shown by the order of appearance of organisations in the chapter on stakeholders. Proposals of legislation in the field of migration most of the time fall within the portfolio of the Minister for Immigration and Integration<sup>64</sup>. In some cases, the Ministry of Justice may take the lead in the legislative process, with reference to the Ministry of Justice's co-ordinating role in immigration matters (see above). In the development phase of the legislation, the different perspectives and input delivered by executive agencies and governmental advisory boards/councils (SER, WRR) are discussed and brought in line with the proposal.

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<sup>59</sup> <http://www.amnesty.nl> (Dutch only)

<sup>60</sup> <http://www.vluchtelingenorganisaties.nl> (Dutch only)

<sup>61</sup> <http://www.nrc.nl/W2/Lab/Profiel/Allochtonen/organisaties.html> (Newspaper article on migrant organisations – in Dutch)

<sup>62</sup> <http://www.forum.nl/links/index.html> (Dutch only)

<sup>63</sup> <http://www.iot.nl/showcontents.php?topgroupid=3&groupid=26> (a description - in Dutch - of LOM on the web site of a Turkish migrant organisation).

<sup>64</sup> [http://www.ministerievanjustitie.nl:8080/b\\_organ/organisa/min\\_ss/min\\_ss.htm](http://www.ministerievanjustitie.nl:8080/b_organ/organisa/min_ss/min_ss.htm) (English CV)

Before presenting a bill to the Parliament, formal advice by the Council of State is sought. More information on the specific procedures of the First and Second Chambers of Parliament can be found on their web site<sup>65</sup>.

In general, the government strives to avoid discussion in the parliament as much as possible. Counter-arguments from organisations and interest groups regarding legislative proposals are, therefore, preferably warded off by inviting them to react (in writing and/or in person) on a proposal beforehand. However, the complete opposite sometimes occurs when a proposal is so controversial that the Ministry does not expect any compromises to come out of negotiations with other parties. In this case, the Ministry may decide to minimise the access to the legislative process and close the doors for NGOs as much as possible.

### **2.3.2. Governmental actors & JHA Council**

Before every meeting of European ministers for Justice and Home Affairs, a procedure takes place in the parliament to discuss the mandate of the minister involved. The Dutch government must send the (annotated) agenda<sup>66</sup> of the Justice and Home Affairs Council and the corresponding documents to the parliament fourteen days in advance. Non-compliance with this rule, or the fact of delivering the documents in a language other than Dutch, constitutes a formal reason to immediately withhold consent. The recently established European Office of the First Chamber has created a web site<sup>67</sup> in order to speed up the supply of JHA information. However, it seems that two weeks' time is not sufficient to study all the documents available properly.

In the week preceding a JHA Council, two separate committees (one from the Second<sup>68</sup> Chamber and one from the First Chamber<sup>69</sup>) consult the minister(s) involved (i.e. Minister of Justice, Minister for Immigration and Integration and/or Minister of the Interior). JHA Councils usually take place at the end of the week. Consultations by the parliamentary commissions, therefore, are normally held on the previous Tuesday or Wednesday. Political parties discuss the positions they will adopt in meetings generally planned on Tuesday mornings.

### **2.3.3. Non-governmental actors & the legislative process**

Considering the high organisational level of (thousands of) migrant organisations and other NGOs in the Netherlands, it is not surprising to see that the mechanisms influencing government policy also show a relatively high degree of institutionalisation. In consultative bodies such as FORUM, VON and LOM (see above), there is an attempt to combine expertise and/or link interest groups in order to bring the advice offered by these organisations to a high(er) level. Apart from the higher quality of the NGO input, this concentration of migrant organisations and pressure groups also reduces the number of discussion partners for governmental actors and aims to bring it to a workable level. Of course, the disadvantage of this

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<sup>65</sup> <http://www.tweedekamer.nl/organisatie/communicatie/internationaal/index.jsp> (Various languages)

<sup>66</sup> The annotations on the JHA agenda (always in Dutch) show the standpoint of the Dutch government on each item on the agenda.

<sup>67</sup> <http://www.europapoort.nl> (Dutch only)

<sup>68</sup> Vaste Kamercommissie van Justitie

<sup>69</sup> Bijzondere kamercommissie JBZ-Raad

institutionalisation is the fact that smaller organisations which do not wish to participate in these structures experience a dilution of their ability to influence the process.

The best answer to the question on the importance of each NGO is the conclusion that all the NGOs mentioned in the previous chapter are considered relevant to the legislative process, each one in its own field of expertise.

The first opportunity for NGOs to attempt to influence the legislative process is when the drafting process at the Ministry begins. Contacts with civil servants and government officials at an early stage are, therefore, the first method. When NGOs are not invited to participate in (institutionalised) talks between the government and civil society, they have other ways to get the attention of the government: press releases in the media, publications on web sites, public debates, and demonstrations. Publications in legal scientific journals or articles in national newspapers can also sometimes bring results: this is a method frequently used by legal scientists from the Standing Committee of Experts on International Immigration, Refugee and Criminal law, an NGO mentioned earlier in the report.

Should the government turn a blind eye to these messages, NGOs can turn to the parliament. MPs in the Netherlands are relative accessible. Direct phone calls with MPs or meetings at the parliament are quite common. MPs' personal assistants often maintain close relations with large NGOs. It also works the other way around: is not uncommon for assistants or for the secretariat of a political party to approach NGOs with a request to comment on new bills or other developments.

#### **2.3.4. Non-governmental actors & JHA Council**

The key word for influencing the debate in JHA matters is "*speed*". NGOs need to be able to respond very quickly regarding the topics on the agenda of the upcoming JHA Council. FORUM, the Dutch Refugee Council and the Standing Committee of experts all have one or more employees who constantly monitor the European legislative process. As a kind of early warning, the Ministry of Foreign Affairs always sends summaries of legislation in preparation at the European Commission to the Parliament<sup>70</sup>. Then, it is necessary to monitor the register of the European Council very closely, until a proposal surfaces. Unfortunately there is often very little time between the appearance of a proposal on the list of available documents and the JHA Council itself. The conclusion is, therefore, that the majority of documents become available once they have been submitted to the parliament, fourteen days in advance. As a result of the procedure in the national parliament described earlier, the timeframe for reactions by NGOs is extremely limited.

The Dutch government presents the annotated agenda and the related documents fourteen days in advance. Public documents become available on the First Chamber web site<sup>71</sup> on the following working day. JHA Councils are held at the end of the second week (Thursdays and Fridays). Meetings between Ministers and Parliament usually take place on Tuesdays or Wednesdays. As stated before, the internal meeting during which political parties decide on the position they will adopt is generally planned for Tuesday mornings. This puts the deadline for NGOs on

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<sup>70</sup> A summary of the so-called BNC-Fiches: BNC stands for "Beoordelingscommissie voor Nieuwe Commissievoorstellen" (New European Commission Legislative Proposals - appraisal commission).

<sup>71</sup> <http://www.europapoort.nl> (Dutch only)

Monday and leaves them with less than a week to respond to a lengthy list of topics and numerous related documents.

Most of the time, only Amnesty International, The Dutch Refugee Council, the Standing Committee and FORUM, are able to write a quick response. NGOs inform each other of their intention to react on certain proposals. Large coalitions are seldom, although a certain extent of amalgamation takes place in the Standing Committee of experts, considering the fact that this NGO is supported by the NJCM<sup>72</sup>, the Dutch Refugee Council, FORUM, the Dutch Bar Association and the LBR<sup>73</sup>.

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<sup>72</sup> Dutch section of the International Commission of Jurists: <http://www.njcm.nl>

<sup>73</sup> National office against racial discrimination (landelijk Bureau ter bestrijding van rassendiscriminatie - LBR): <http://www.lbr.nl>

## Chapter 3: European legislative proposals

### 3.1. Admission for economic purposes

#### 3.1.1. The current national situation

Currently, in the Netherlands, there is a dual system of residence permits (incl. visa) and work permits. The following describes the Dutch application procedures for visa, residence permits and work permits, first for employees and then for self-employed persons. A comparison is made with the relevant articles of the draft directive. To make this comparison, we used document COM (2001) 386 final of 11.7.2001.

##### *Employees*

When a third-country national wants to stay in the Netherlands for more than three months for the purpose of employment, s/he will in general<sup>74</sup> need a long term visa / a provisional residence permit "mvv" (Machtiging voor Voorlopig Verblijf ) for the purpose of paid employment. It is compulsory to fill the application for an mvv at a Dutch embassy or consulate<sup>75</sup> in the country of origin or in the country of legal residence (bestendig verblijf)<sup>76</sup>. First applications filled by labour migrants in the Netherlands are almost automatically rejected. When applying for an mvv, legal fees are due, and the identity of the applicant must be satisfactorily determined. For the benefit of the (future foreign) employee, the employer may request an mvv in the Netherlands. The application should be sent to the IND – the labour migration counter. The future employee stays outside the Netherlands during this procedure and receives the mvv in his country of origin / legal residence<sup>77</sup>.

However before the IND decides on the application for an mvv, the immigrant must obtain a work permit, or rather, his future employer should already have arranged it in the meantime. The issuance of the residence permit is linked to that of the work permit, and the authorities processing the work permit application have, to a great extent, the lead in the whole procedure.

The 2000 Aliens Act governs the residence of third-country nationals. The Foreign Nationals Employment Act (Wet arbeid vreemdelingen - Wav) on the other hand, governs the conditions under which third-country nationals may work in the Netherlands.

The Foreign Nationals Employment Act is first of all directed at the employer. The employer needs to be in possession of a work permit for the third-country national s/he wants to employ. The duration of a residence permit for employment purposes

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<sup>74</sup> There is no visa application requirement for citizens of the following countries: Australia, Canada, New Zealand, the United States of America or Switzerland. <http://www.ind.nl/pdf/wijziging-mvv-eng.pdf>

<sup>75</sup> In case there is no Dutch representation in the country, the applicant should fill his/her mvv application at the nearest embassy/consulate, in a neighbouring country – it should be noted that this interpretation of the law is disputed. (See the Immigration Law implementation decree 2000 / Vreemdelingencirculaire 2000 -abbreviated Vc 2000- BI/1.1.1.)

<sup>76</sup> "Permanent residence": "*bestendig verblijf*" means legal residence of more than three months (Vc 2000 B I/1.1.1.)

<sup>77</sup> Mvv-procedure bij IND-loket arbeidsmigratie (Mvv procedure, IND labour migration counter), Stc 20 December 2002, nr. 246, p. 26.

depends on the duration of the work contract, and has a maximum duration of three years, after which free access to the labour market is an option.

Regarding legal fees, it is worth mentioning that they have recently increased by 300-1000%. The rise is included in the 2003 budget of the Ministry of Justice. This has been heavily criticised by jurists (Prof. C.A. Groenendijk) and by a coalition of migrant organisations led by FORUM<sup>78</sup>. Currently the increase is on the agenda of the Dutch Council of Ministers.

Most of the time, the so-called "*reference*" procedure<sup>79</sup> is used in applications for the mvv for the purpose of paid employment: the application is forwarded to the IND which requests the Visa Service and the Immigration Police to check the references of the applicant. In the case of a future employee, the existence of the employer will be checked. The Visa Service and Immigration Police advise the IND. After checking if the third-country national meets all other requirements<sup>80</sup> (see below) for residence in the Netherlands, the IND informs the embassy or consulate involved of its decision.

In addition to public order, the main requirement is that the applicant must be in possession of a number of documents. Standard inventory lists are used and the type of documents required varies according to the type of mvv and the applicant's country of origin.

When the referee is a company or an organisation acting as a referee at least ten times a year, a shortened mvv procedure exists<sup>81</sup>. Multinationals and universities often use this shortened procedure.

A migrant worker is allowed to apply for a *residence permit*<sup>82</sup> for the purpose of being employed with a certain employer only after entry in the Netherlands, and only if s/he is in possession of a long-term *visum* mvv. Requirements concerning income, valid passport, the necessary mvv, public order and public health (TBC test) are most of the time automatically met, since they have already been checked in the preceding mvv procedure.

Except for a few exceptions, Dutch policy very rarely resorts to quotas to regulate the amount of migrant workers. The covenant regulating the work of migrant nurses in the healthcare sector, for example, contains a ceiling which establishes a maximum number of foreign nurses corresponding to a percentage of the total amount of employees working in the hospital sector (this percentage is lower each year). The current practice, according to which employers of migrant management personnel earning a certain minimum income (minimum gross salary of €3,630.00 a month) are exempt from the obligation to officially register the vacancy with the national jobcentre (CWI) may also be considered a type of quota. Key personnel of international companies with an income of more than €50,000 gross a year (see special policies in the first part) may be considered as part of a quota. For these employees, there is no need to demonstrate that the job vacancy cannot be filled by a person who has priority of access to the Dutch labour market, and the job vacancy does not have to be advertised.

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<sup>78</sup> For a press statement (Dutch only), see: [http://www.forum.nl/pers/21\\_02\\_03.html](http://www.forum.nl/pers/21_02_03.html)

<sup>79</sup> See Vc 2000 BI/1.1.4

<sup>80</sup> See Vc 2000 BI / 1.1.3

<sup>81</sup> In the shortened procedure, applications may be directly filled at the IND. See Vc 2000 BI/1.1.4. for the implementation regulations and conditions.

<sup>82</sup> See article 3.31 Vreemdelingenbesluit 2000.

### *Self-employed workers*

A third-country national who wishes to establish his/her residence in the Netherlands for the purpose of self-employed economic activity first needs to apply for a provisional residence permit mvv. During the procedure, the application will be submitted to the criteria for admission as defined in the 2000 Aliens Act.

The main criterion is that the economic activity has to be innovative and has to match the essential interests of the country ("economic needs test" and "beneficial effects test"). This criterion is discussed in more detail below.

After obtaining the required mvv, a self-employed alien needs to apply for a residence permit in the Netherlands. This residence permit is valid for one year and can be renewed.

### *Who is entitled to work in the Netherlands without a work permit?*

The Foreign Nationals Employment Act (Wav) prohibits the employment of an alien without a work permit<sup>83</sup>. Generally speaking, third-country nationals need a work permit for paid employment in the Netherlands, but there are many exceptions to that rule.

Work permits are not required when a migrant worker falls under the scope of an international agreement or treaty, which contains a different arrangement. The first arrangement concerned Belgium and Luxembourg nationals. Then, regulation 1612/68 provided EC and EEA nationals with a similar status. The same applies to workers who are not EU citizens but are treated as EU nationals because they are family members of EU citizens. Other nationalities are exempt from the work permit obligation as a consequence of agreements concluded between the EC and other countries<sup>84</sup>. In the case of Switzerland, the agreement<sup>85</sup> concluded with the EC in 1999, which came into force in September 2001, provides for the free movement of persons at the end of 2003. In a separate treaty<sup>86</sup> concluded between the Netherlands and Switzerland in 1878, an exemption from the obligation to obtain a work permit had already been negotiated.

Nationals of a country<sup>87</sup> with which the EU has signed a European agreement, employed by a company from their country which has a branch in the Netherlands, and who are part of what is called 'key personnel' (member of staff or otherwise highly qualified) are not completely exempt from the obligation, but in a situation very near to it. If this is the case a work permit must be issued<sup>88</sup>.

Considering the fact that self-employed third-country nationals do not have any relations with employers all together, the Foreign Nationals Employment Act (Wav) does not apply in their case. A work permit is, therefore, not necessary<sup>89</sup>. A residence permit for the purpose of self-employed economic activity is sufficient.

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<sup>83</sup> See article 2 Wav (Wet Arbeid Vreemdelingen - Foreign Nationals Employment Act).

<sup>84</sup> See article 3 para 1a Wav.

<sup>85</sup> See Treaty Bulletin / Tractatenblad; abbreviated Trb 2000, nr 16,86.

<sup>86</sup> Official Bulletin / Staatsblad - (abbreviated) Stb 1878, nr 137; "Tractaat van vriendschap, vestiging en handel".

<sup>87</sup> Bulgaria, Hungary, Poland, Romania, Slovakia and Czech Republic.

<sup>88</sup> See B5/5.7 j.o. B11/6 Vc.

<sup>89</sup> See article 3 para 1b Wav.

Diplomats, international correspondents and personnel of international military organisations do not need work permits<sup>90</sup>.

Employees with their main residence outside the Netherlands and who occasionally<sup>91</sup> ('incidenteel') work in the Netherlands for less than four weeks do not need a work permit, though only if their work involves:

- The installation or maintenance of machines, tools or equipment, delivered by a supplier/employer with a registered office outside the Netherlands, or the installation and customisation of software delivered by a supplier/employer with a registered office outside the Netherlands, or providing training on how to use that software.
- Business meetings and/or to close agreements with companies and organisations for or on behalf of a company located outside the Netherlands.
- Exhibitions or fairs, for or on behalf of a company located outside the Netherlands.
- The making of films or documentaries, for or on behalf of a mass/publicity medium located outside the Netherlands.
- Working in the household of tourists.
- Participation in a sports competition<sup>92</sup>.
- Giving lectures at universities, advanced/higher educational institutions, research facilities etc.
- It is also the case for international drivers and sailors (with their main residence outside the Netherlands), but the 'occasional labour' criterion does not apply.

Employers of aliens who are already in possession of a residence permit for an indefinite period of time (after 5 years) are exempt from the obligation to apply for work permits<sup>93</sup>. These migrant workers are entitled to an endorsement of the Minister of Justice which states that 'employment is allowed'. Such an endorsement is placed on the residence permit.

The endorsement is also given to third-country nationals who have been legally resident in the Netherlands and have been in possession of a permit (valid for paid and self-employment) for an uninterrupted period of three years<sup>94</sup>.

For other workers who hold a residence permit with the endorsement 'employment allowed', the prohibition to employ third-country nationals without a work permit does not apply. In the 2000 Aliens Circular, certain categories of permits are mentioned on

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<sup>90</sup> By way of secondary legislation: Royal Decree 23 August 1995, Stb. 406 and article 1 Besluit ter uitvoering van de Wav (Implementation Decree for the Foreign Nationals Employment Act). In this article, the group of exempt employees is defined: those who work for a maximum period of four weeks to give lectures, to participate in sports competitions, to install machinery.

<sup>91</sup> There are differences of opinion on how to interpret the term 'occasional labour' (incidentele arbeid); see article 1 Besluit ter uitvoering van de Wet Arbeid Vreemdelingen (Implementation Decree for the Foreign Nationals Employment Act), and the extensive explanatory memorandum within the Vademecum WaV 2002 on page 60.

<sup>92</sup> This differs substantially from article 3 par. 2 and 3 (a) draft directive. There are specific regulations within the framework of the GATT/WTO provisions for professional service providers: accountants, tax advisors, architects, engineers and ICT engineers. This concerns the provision of services for a maximum period of three months.

<sup>93</sup> See article 4 par. 2a Wav.

<sup>94</sup> Article 4 par. 2b Wav. Contrary to article 6 par. 1 (e) of the draft Directive, it is not required that during these years, activities as a paid or self-employed person have been exercised. There is also no article like article 6 par. 1 (f) in the Dutch regulations.



which an endorsement may be placed, i.e. residence permits with the mentions 'continued residence' and 'readmission'<sup>95</sup>.

Other categories of third-country nationals entitled to an endorsement mentioned in governmental decrees<sup>96</sup> are, among others, third-country nationals holding a permit for family reunification with a Dutch national, with an EU citizen or with a third-country national who already has a residence permit with the endorsement 'employment allowed', and aliens who have worked for a period of 7 years on a Dutch vessel or on a drilling rig (or other mining installation) on the Dutch part of the continental shelf<sup>97</sup>. Aliens who have had a residence permit with an endorsement in the past, and still live in the Netherlands, are entitled to a new endorsement<sup>98</sup>.

Aliens whose residence permit with endorsement has expired and who are in the process of applying for a new residence permit combined with an authorisation to stay in the Netherlands, are entitled to employment. Employers do not need work permits for these aliens<sup>99</sup>.

#### *Asylum-seekers and refugees<sup>100</sup>*

Applicants for asylum as well as refugees and holders of an asylum permit of specific duration need a work permit to work in the Netherlands. The condition concerning the supply of CEE/EAA workers to which employers need to give a preferential treatment is not applicable in this case.

In order to obtain such a permit, the following conditions should be met: applicants for asylum need to have been in the procedure for at least 6 months and to be allowed to stay in the Netherlands during the procedure. They are allowed to work 12 weeks per year<sup>101</sup>. This restriction does not apply when the permit is issued for a definite period of time. By making the work permit obligatory, the administration aims at making it clear to the employers that the alien's stay in the Netherlands is temporary. Since the requirement to apply for a permit constitutes an additional obstacle for asylum-seekers and refugees to access the labour market, there is a large amount of criticism on this policy. The government is, therefore, planning to abolish the work permit requirement for this group.

#### *Other groups*

More flexible rules to obtain a work permit (i.e. different but not necessarily less strict, since other and sometimes even additional requirements are set by these rules for these particular groups) apply to scientific personnel, guest lecturers<sup>102</sup>, students<sup>103</sup>, musicians and artists<sup>104</sup>, stagiaires/interns<sup>105</sup>, employees in the sports sector<sup>106</sup>,

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<sup>95</sup> See B8, C2/7 and C2/8 Vc.

<sup>96</sup> See article 2a Besluit ter uitvoering van de Wav (Decree on the implementation of the Wav).

<sup>97</sup> See article 2c Besluit ter uitvoering van de Wav.

<sup>98</sup> See article 2b Besluit ter uitvoering van de Wav.

<sup>99</sup> See article 1b Besluit ter uitvoering van de Wav.

<sup>100</sup> This is very different from article 3 par. 3b of the draft Directive.

<sup>101</sup> Stb. (Official Bulletin) 2002 nr. 311 & Stcr. (Official Journal) 25 June 2002 nr. 118, p. 8.

<sup>102</sup> Uitvoeringsregels (implementation regulations) Wav par. 28.

<sup>103</sup> See B6 Vc.

<sup>104</sup> Beleidsregels (implementation regulations set by CWI) Wav par. 8.1.

<sup>105</sup> Beleidsregels Wav, para 9 and Uivoeringsregels Wav par. 24. (additional requirement: the learning programme must be handed over to the authority involved - CWI)

<sup>106</sup> Uitvoeringsregels Wav par. 13.

employees in healthcare (nurses)<sup>107</sup>, as well as employees in the catering sector, mostly in Chinese and Indian restaurants (the so-called 'speciality cooks')<sup>108</sup>. See the sectorial exceptions and covenants described in Chapter 1.

*Article 3 par. 2 and 3 of the draft Directive compared to Dutch policy*

The Directive establishes a three-month duration criterion to distinguish short-term labour activities from 'third country nationals who genuinely want to enter the EU labour market.' Currently, in the Netherlands, a time limit of four weeks is generally used. More specifically, when third-country nationals want to enter the EU labour market for a short time in order to carry out activities which are auxiliary to the supply of goods or services from third countries to the EU, Dutch policy states that these workers are exempt from the obligation to have a work permit if the work does not exceed a time limit of four weeks, though only in case of 'occasional labour' and provided the worker has its main residence outside the Netherlands.

The additional conditions applicable are the requirement that the total value of the wages of the 'installation' personnel (according to Dutch salary standards) should not exceed the value of the goods delivered, and that the place of production of the goods and the nationality of the personnel should be the same. Finally, the employees should already have been employed with the supplier of the goods for more than year.

The groups of workers which fall into the categories 'intra EU providers of cross-border services', 'temporary asylum', 'family members of EU citizens', and those included in family reunification are not covered by the draft Directive. The Dutch policy regarding the last three categories has been described earlier. The Dutch policy regarding the first category generally follows the decisions<sup>109</sup> of the European Court of Justice in this respect.

*Art. 6 par. 1 draft Directive (who is entitled to the permit) compared to Dutch policy*

Regarding the category of third-country nationals who already enjoy access to the Dutch labour market under existing national legislation, one should take into account the system of 'endorsements' on residence permits described earlier.

Concerning the persons legally present and who have been working in the country for three years, it should be noted that in the Netherlands, this category of workers is not regarded as forming part of the regular labour market since their employment contract may have been interrupted during that period.

*Art. 5 par. 1 and 2 draft Directive (who shall apply for the permit) compared to Dutch policy*

Currently, third-country nationals apply for a long-term visa (mvv) outside the Netherlands, and for a residence permit once they are in the country. The employer should, in the meantime, deal with the application for a work permit. There is a possibility for the employer to apply for an mvv for and on behalf of the third-country national and to apply for a work permit simultaneously (or earlier). During this

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<sup>107</sup> Beleidsregels Wav 2002, par. 8.4. (Additional requirement for nurses: they have to meet the language requirement; i.e. the employer must organise a language course in the country of origin before the nurses start working in the Netherlands).

<sup>108</sup> See B5/9.1.4 Vc.

<sup>109</sup> Judgements of the European Court of Justice, 27 March 1990 (Rush Portuguesa) and 9 August 1994 (VanderElst).

procedure the third-country national must stay in his/her country of origin. This situation differs from the system described in the draft Directive, i.e. the third-country national may apply for a 'residence permit - worker', and the employer is given this opportunity in second instance.

There is a difference between the current Dutch situation and the description made in the explanatory memorandum of applicants who are already 'legally resident' (holding a residence title, e.g. students) or 'legally present' (e.g. holding a tourist visa, a jobseeker's visa, or a visa to apply for a work permit) in the Member State concerned. The first category is in line with the Dutch policy<sup>110</sup>. The second category is not. The categories of third-country nationals mentioned under 'legally present' are currently not allowed to submit an application in the Netherlands, or this situation simply does not occur given the system of long-term visa (mvv) and the complete check performed when applying for one. For example, tourists who see an opportunity to work in the Netherlands should first return to their country outside the EU and wait for their employer to start the work permit procedure before they can apply for an mvv at a Dutch representation. The application procedure regarding the mvv and the residence permit for the purpose of being employed with a certain employer presupposes the availability of a position. In fact, the jobseeker and the employer should already have found each other. Finally, the visa to apply for a work permit simply does not exist. The employer, and not the future employee, applies for a work permit, hence a visa. The third-country national cannot apply for one in the current Dutch situation.

#### *Art. 7 par. 1 and 2 draft Directive (duration of the permit) compared to Dutch policy*

Currently, in the Netherlands, the duration of a residence permit for the purpose of employment depends on the length of the work contract, with a maximum duration of three years. After three years, most of the time, a work permit is no longer required and access to the labour market is free (see the previous description of the 'endorsement' policy).

#### *Articles 17 and 20 draft Directive (self-employed persons) compared to Dutch policy*

The new element introduced in the draft Directive compared to the Dutch policy on self-employed persons is the assessment of the business plan by 'reputable and internationally active accountancy firms'. Currently, this check is performed by the Ministry of Economic Affairs. In addition to a sound business plan, Dutch policy strictly requires that the business of the self-employed person be innovative.

As described earlier under 'self-employed workers', a self-employed alien needs to apply for a residence permit in the Netherlands after obtaining the required mvv. In the current situation this residence permit is valid for one year and can be renewed.

### **3.1.2. Economic needs tests, beneficial effects tests, horizontal assessments, income thresholds and employers' contributions**

#### *Employees*

In the current Dutch policy, an economic needs test and a beneficial effects test are included in the abundance of regulations and exemptions to the obligation of holding a work permit described in the section "Who is entitled to work in the Netherlands

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<sup>110</sup> See article 17 Aliens Act 2000.

without a work permit?" The criteria formulated in these regulations leave very little room for discussion and limit the discretionary power of the authorities involved. The following is a comparison of the relevant articles of the draft Directive with the Dutch regulations. Where the sentence 'in line with the proposal' appears, it should be read as 'Dutch policy is the same as the proposal on that specific point'.

#### Article 6

A job vacancy cannot be filled in the short term by any of the following categories:

- (a) in line with the proposal;
- (b) in line with the proposal;
- (c) in line with the proposal;
- (d) in line with the proposal;
- (e) in line with the proposal;
- (f) this category does not exist in Dutch regulations.

In the Netherlands, a specific job vacancy must be advertised for a period of at least five weeks (the Commission proposal requires four weeks) or more if the job requirements are difficult to fulfil (this is a highly subjective criterion). Article of 8 par. 2 of the Foreign Nationals Employment Act gives the Minister of Social Affairs and Employment the authority to decide which categories of migrant employees can be employed without the employer having the obligation to register the vacancy beforehand at the CWI jobcentres and without economic needs test.

The rest of the legislation is in line with the proposal.

The paragraph: 'Who is entitled to work without a work permit' in Chapter 1 describes the different regime linked to covenants. Citizens from Central and Eastern Europe have priority of access to the Dutch labour market over third-country nationals, but their position is subordinated to that of Dutch nationals and EU/EER nationals. However, this leads to a situation where employers should advertise job vacancies not only in the Member States (which is relatively easy via the EURES vacancy announcement system) but also in these countries. Therefore, in practice, this semi-priority position is not implemented. The CWI, which deals with applications, does not consider citizens from Central and Eastern Europe as migrants who have priority of access to the Dutch labour market. Exceptions could only take place if a covenant was concluded in the future. For example, if a sector was unable to find employees in the Netherlands or in the EU/EER, a covenant with the CWI could be concluded. Work permits could be granted on that basis<sup>111</sup>.

Income thresholds are used in the Netherlands, though on a very small scale. In the implementation decrees, the authority involved (CWI) earmarks the categories of employees who benefit from certain exemptions when their income is above a certain threshold. The only implementation decree currently in force concerns highly qualified employees earning a minimum gross salary of €3,630.00 a month (in force until 1 July 2003) or €50.000 a year.

Generally speaking, employers do not pay for measures promoting integration; however, some covenants include provisions on vocational training. For example, according to the covenant on healthcare employees, the employer has to provide Dutch lessons in the country of origin (i.e. before the migrant workers move to the Netherlands). However, these lessons are not aimed at the integration of migrants:

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<sup>111</sup> Tweede Kamer, vergaderjaar 2001-2002, Aanhangsel. Vragen van het lid de Wit aan de minister van Sociale Zaken en Werkgelegenheid over het eenvoudig werven van seizoenswerkers, nr. 112. Migrantenrecht 2/03, p. 57.

with these lessons, the employer makes it possible for his/her future personnel to carry out their duties. There is no obligation for employees to learn Dutch. The Integration of Newcomers Act (Wet Inburgering Nieuwkomers, WIN, see Chapter 4) does not apply to them because their stay is seen as temporary.

#### *Article 12 (seasonal workers)*

1. In line with the proposal. The Dutch regulations mention a period of 24 weeks. However, in practice, seasonal workers usually stay for three months (after which their long-term visa expires).
2. A security deposit may be requested (article 3.7 par. 1 Aliens Decree), but the possibility is not used in practice.

#### *Article 13 (transfrontier workers)*

Dutch policy is in line with the proposal.

#### *Article 14 (intra-corporate transferees)*

1. In line with the proposal;
2. In line with the proposal;
3. The maximum period of validity of five years does not exist. However, there are plans to incorporate this provision in the Dutch regulations. Two extra requirements apply for employers to fall under the scope of these rules. In the Dutch regulations, an international concern is a concern with companies located in at least three different countries, and with an annual turnover of at least €50 million<sup>112</sup>.

#### *Article 15 (trainees)*

1. In line with the proposal with only one remark: employers do not have to give trainees the minimum wage. They may be paid less.
2. In line with the proposal.

#### *Article 16 (youth exchange or youth mobility schemes)*

1. In line with the proposal. However, this subject is regulated by the Aliens Act, and not by the Foreign Nationals Employment Act<sup>113</sup>.
2. In line with the proposal.
3. In line with the proposal. However, in practice, this is not done.

#### *Self employed workers*

For the self-employed, the criteria used are less concrete and to a larger extent subject to the discretionary power of the authorities involved. The main criteria are that the intended economic activity must match the essential interests of the country (economic needs test and beneficial effects test), and that the activity must be innovative. This is judged by the Ministry of Economic Affairs after examination of the business plan, etc. The interests which need to be matched are not necessarily purely economic, but may also be cultural, or of another type. Therefore, other ministries may also be involved (Ministry of Education, Culture and Science in case of a specific cultural interest).

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<sup>112</sup> Para 13 Besluit tot vaststelling van de beleidsregel behorend bij Para 21 Uitvoeringsregels Wav behorende bij het Delegatie en uitvoeringsbesluit Wav, Vademecum 2002, p. 102.

<sup>113</sup> Article 3.43 (au-pair), articles 3.44 and 3.45 (youth exchange) Aliens Decree.

Professionals (such as doctors or lawyers) who wish to work in the Netherlands need to prove that they are qualified by Dutch standards, and that there is a demand which cannot be met on the internal market. For many categories of professionals, special policies have been developed.

These categories of professionals are the ones which are usually referred to when speaking of a so-called 'brain drain' in the country of origin. We will elaborate further on this topic in Chapter 4.

#### *Article 18*

1. In line with the proposal;
2. In line with the proposal;
3. In line with the proposal, except for (e) adequate proof of good character: this is not required.
4. In line with the proposal.

#### *Article 19*

1. In the Netherlands, there is one extra condition which has to be fulfilled: the economic activity that the third-country national wants to exercise needs to be innovative. A beneficial effect on employment or on economic development in the Netherlands is not required.
2. There are no provisions as those mentioned in paragraph 2.
3. There are no provisions as those mentioned in paragraph 3.

### **3.2. Family reunification**

#### **3.2.1. Provisions regarding the definition of family members, resource requirements, waiting periods, the duration of residence permits, conditions of residence including access to education and employment, and the granting of autonomous permits**

National rules on family reunification are almost the same for Dutch citizens as for third-country nationals. There is, however, a difference between the position of Dutch nationals and third-country nationals on one side, and EU citizens living and working in the Netherlands on the other. EU citizens benefit from the more favourable conditions laid down in Community regulation 1612/68 on the free movement of persons. The fact that Dutch nationals (and third-country nationals) fall under the scope of the stricter Dutch conditions results in a so-called 'reverse discrimination' between Dutch citizens and EU citizens working and living in the Netherlands. During the negotiations concerning the directive, the Dutch government successfully opposed the initially proposed provision to end this reverse discrimination.

The legal basis for admission on grounds of family reunification is article 15 of the 2000 Aliens Act (Vreemdelingenwet 2000, or Vw 2000). Based on that article, the specific rules for each specific ground (such as marriage, relation, children) can be found in the 2000 Aliens Decree (Vreemdelingenbesluit 2000, or Vb 2000). Other rules and prescriptions are established in the 2000 Aliens Regulation (Vreemdelingenvoorschrift 2000, or Vv 2000). More detailed rules are laid down in the 2000 Aliens Circular (Vreemdelingencirculaire 2000, or Vc 2000). These four sources form a hierarchical order and only the first three consist of laws. The last

source consists of rules of policy implementation and, therefore, has a different legal nature.

The following comparison is based on the Dutch rules on family reunification as in force in April 2003, and on the final text of the amended proposal on the right to family reunification on which the ministers of Justice and Home Affairs reached a political agreement during the JHA Council of 27-28 February 2003 (document 6912/03 28.2.2003).

#### *Article 4.1*

The minor children referred to in this article must be below the age of majority established by the law of the Member State concerned and must not be married. By way of derogation, when a child older than 12 arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether s/he meets the condition for integration provided for by the existing legislation on the date of implementation of this Directive.

*Article 4.1.a:* Unmarried partners have the same right to reunification as married couples. The conditions for admission are the same, except for those concerning the existence of the marriage or of the relationship.

*Article 4.1.b, c:* These two categories of children are entitled to family reunification. Category 4.1.d falls outside the scope of the Dutch regulation. The Dutch regulation states that legal and biological minor children (under 18) are entitled to family reunification with parents living in the Netherlands when the parents have custody of the children, when they have formed a family unit in the country of origin, and, in legal terms, when the *de facto* family ties are not broken. This last condition, as laid down in article 3.14 sub c Vb 2000, has been given a more concrete form in Vc 2000 chapter B2/6. This fairly recent rule (spring 2002) reduces the legal criterion of 'actual family ties' to a period of five years since the child and the parents have been separated. In other cases, the actual ties are considered broken when the child lives on his/her own, is married or is subject to a legal measure of child protection.

When the separation exceeds the 5-year period, family reunification is, as a rule, only possible when an assessment of the situation of the child in the country of origin leads to the conclusion that denying family reunification would lead to an unacceptable situation or to no acceptable future for the child. Determining factors include the age of the child and the availability/lack of family members or relatives in a position to take care of and bring up the child. When the contact between the parents and the child has been made impossible because of circumstances of war, an exception can be made.

The 5-year rule has been motivated in parliament by the government, which argued that when a separation has lasted for 5 years or even longer, the integration of children becomes too difficult and results in a heavy burden for the Dutch society. The rule in Vc 2000 B2/6 states that when the separation exceeds 5 years, reunification with the parents in the Netherlands is in general no longer in the interest of the child.

At the moment, there is no integration test for children coming to the Netherlands, but the predominant line of thinking which stresses the concern of the integration of newcomers in the Dutch society is leading in that direction. It is foreseeable that a test as mentioned in the last sentence of article 4.1 will be introduced in the future.

#### *Article 4.2*

*Article 4.2.a:* A parent is entitled to family reunification when s/he is over 64, single, and in provided there is no other child in the country of origin who can take care of him/her. These conditions must be combined with the fact that nearly all children live in the Netherlands (article 3.25 Vb 2000).

*Article 4.2.b:* Adult unmarried children are entitled to family reunification when there is a moral and financial dependence on the parent(s) (article 3.24 Vb 2000 and Vc 2000 B2/8).

#### *Article 4.3*

Unmarried partners have the same right to reunification as married couples. The conditions for admission are the same, except for those regarding the existence of the marriage or of the relationship. With respect to family reunification, registered partners are treated in the same way as spouses.

#### *Article 4.4*

For polygamous partners and for children born out of such relationships or marriages it is not possible to be reunited in the Netherlands.

#### *Article 4.5*

Such a rule does not exist yet, but it was scheduled in the government plans of the Balkenende administration, which lasted from June 2002 to October 2002. In the current negotiations for a new government, this subject is probably an issue being discussed, since the two parties which are trying to form a government have different views on this rule. The Christian democratic Appeal (CDA) is in favour of it, while the Labour Party (PvdA) is opposed to it.

#### *Article 4.6*

No such provision exists but given the predominant line of thinking it is possible that it will be introduced.

#### *Article 7*

*Article 7.1.a:* The Dutch regulations on family reunification do not contain conditions stating that sufficient housing is required (any longer).

*Article 7.1.b:* It is necessary to have a health insurance to obtain a residence permit on grounds of family reunification (article 3.7 sub 1 sub c Vb 2000 and subsequent chapters in the Vc 2000 relating to the different cases of family reunification).

*Article 7.1.c:* Dutch rules on financial resources for family reunification are rather strict. The availability of resources has to be guaranteed for at least one year, the resources have to be at a sufficient level, and they should be earned by the sponsor. The level required is the minimum income level for families (i.e. the national social welfare level), irrespective of the total number of family members or of the number of family members who are seeking family reunification. The legal basis for the condition concerning resources is found in article 16 sub 1 sub c Vw 2000; further rules and specifications are laid down in the Vb 2000 (articles 3.22, 3.73 and 3.74 sub a, 3.75) and the Vc 2000.

Article 3.22 Vw 2000 provides three exceptions to the condition regarding resources:  
- when the sponsor is older then 57,5;



- when the sponsor is permanently handicapped and unable to work;
- when the sponsor has to take care of a child(ren) under five years old.

When a residence permit is extended (after one year) sufficient resources are also required. However, in this case, the income may be earned not only by the sponsor, but also by the dependent family member(s) (article 3.85 Vb 2000).

The Balkenende administration had planned to raise the required level of resources to 130 % of the national social welfare level (bringing it to a level where no state income support is possible). This plan is not expected to reappear in the current government negotiations, since the necessary level of resources was substantially raised in 2001 (by removing most exceptions) and since one of the two parties in power is the labour party.

*Article 7.2:* Most categories of adult non-EU migrants (including those covered by family reunification) fall under the obligations of the Integration of Newcomers Act (Wet Inburgering Nieuwkomers, see Chapter 4) after receiving a residence permit. This means that they must follow a course in Dutch language and society. Plans exist to oblige the sponsor to pay part of the costs of these courses. These plans are broadly supported by political parties.

#### *Article 8*

As far as family reunification rules are concerned, there is one waiting period: if a sponsor has come to the Netherlands on the basis of family reunification, new family reunification on grounds of marriage (Vc 2000 B2/2.8) or relationship (Vc 2000 B2/4.8) may only take place after three years from the moment of arrival of the sponsor in the Netherlands.

National legislation does not include any restriction based on the reception capacity.

#### *Article 14*

Family members have full access to the rights mentioned in article 14, to the same extent as nationals.

#### *Article 15*

Persons with a dependent right of residence based on family reunification are entitled to an autonomous residence permit after three years, provided there is no separation (article 3.51 Vb 2000). When separation takes place before the three years are over, admission is possible on humanitarian grounds (article 3.52 Vb 2000). Minor children are entitled to an autonomous residence permit after one year of dependent residence (article 3.50 Vb 2000). If the sponsor dies, dependent family members are entitled to further residence (article 3.51 sub 3 Vb 2000).

#### *Article 13*

The duration of the first residence permit granted to married and unmarried partners is of one year (3.57 Vb 2000). The permit is then renewed for five years (3.67 Vb 2000). The duration of the residence permit of minor children is linked to the duration of the permit of the sponsor parent. If the parent has a permit for an indefinite period of time or has Dutch nationality, the residence permit of the minor is valid for five years (3.58 Vb 2000). Minor children are entitled to an autonomous residence permit after one year of dependent residence (article 3.50 Vb 2000). This permit is granted for five years (3.64 Vb 2000).

### **3.2.2. Standstill clause and deadline clause**

The standstill clause does not appear in the version of the Directive on which political agreement has been reached (no. 8628/02 MIGR 39 – COM(2002) 225 final).

At the moment (April 2003) a new government is being formed. No plans have been put forward yet. The chances that the parties PvdA and CDA manage to form a new government appear to be high. It is, therefore, likely that the policies will be less restrictive than those of the centre-right Balkenende government (June-October 2002). However, a further inclusion of the concept of integration in immigration policy is a development which is expected to be supported by any government.

As a conclusion, and taking into account the political developments in the Netherlands, it is possible that the legislative areas mentioned above regarding articles 4.1, 4.5, 4.6, 7.1.c and 7.2 will be affected.

## **3.3 Long-term residence right**

### **3.3.1. The current national situation**

There are differences between the draft Directive and the current situation in the Netherlands concerning the conditions to obtain a long-term residence permit. As a basis for our comparison, we used the most recent proposal available, document 5533/03 MIGR 4 of 3.2.2003. We will describe the differences per article.

Article 4 (former article 5) of the draft Directive - Duration of residence

In the Netherlands, the requirements are not only legal stay and continuous residence, but also to hold a five-year residence permit. The following periods of residence are taken into account: possession of a short-term residence permit (bepaalde tijd asiel en regulier) and legal stay in accordance with the EU-Treaty, the Agreement of the European Economic Area, or Decision 1/80, adopted by the Turkey Association Council. Even a short period of interruption can lead to the denial of a long-term residence permit. An exception has been introduced for adult aliens who were born in the Netherlands, or resided in the country before their 4th birthday and had their principal place of residence in the Netherlands. In their case, the five-year legal residence period does not have to be uninterrupted.

Article 5 (former article 6) draft directive - Conditions for acquiring long-term residence status

In the Netherlands, independent, durable and sufficient resources are required. Resources are considered sufficient if the net income is equivalent to the national social welfare level. There are some exceptions concerning the recourse to the social assistance system and the requirement of resources. For example, in the case of adult aliens who were born in the Netherlands, or resided in the country before their 4th birthday and had their principal place of residence in the Netherlands, the requirement of sufficient resources is not applicable. Resources are considered durable if they are available for at least one year or for half a year. In the latter situation, the alien must have worked regularly for three years before the moment of his/her application. Sickness insurance is not explicitly required by Dutch legislation in order to obtain a long-term residence permit.

At the moment, there are no requirements concerning integration, but the outgoing government had plans to introduce such requirements. It is unclear what the still-to-be-formed government will do.

For adult aliens who were born in the Netherlands, or resided in the country before their 4th birthday and had their principal place of residence in the Netherlands, it is not necessary to have stable and regular resources, nor health insurance.

#### *Dutch policy in short*

In the Netherlands, third-country nationals may obtain a long-term residence permit (verblijfsvergunning voor onbepaalde tijd regulier) after five years of legal and continuous residence in the country with a residence permit. Even a short period of interruption may result in the rejection of an application for a long-term residence permit. Furthermore, the permit may be denied to aliens who<sup>114</sup>:

- a. do not have independent, durable and sufficient resources;
- b. have been convicted for a criminal offence by means of an irrevocable court ruling (with a possibility of at least three years imprisonment), or in case of detention under a hospital order;
- c. have established their principal place of residence outside the Netherlands;
- d. are a threat to national security;
- e. have provided wrongful information or withheld information that would have led to the rejection of the application;
- f. are in possession of a permit with a temporary character (for example, for study purposes or vocational training, au pair).

The first ground for rejection does not apply to aliens who have resided legally and continuously in the Netherlands for a period of ten years<sup>115</sup>. There are additional exceptions to this ground for rejection. This is the case of adult aliens who were born in the Netherlands or resided in the country before their 4th birthday and had their principal place of residence in the Netherlands<sup>116</sup>. There is also an exception for this category regarding the second ground for rejection. This category of persons can only be denied a long-term permit on grounds of public order, e.g. when they are convicted for more than 60 months because of drug trafficking<sup>117</sup>.

Aliens are considered to have established their main place of residence outside the Netherlands in the following cases<sup>118</sup>:

- when they have moved back to their home country according to the Remigration Act;
- when they have resided outside the Netherlands for more than nine months, unless this is due to circumstances beyond their control;
- when they have spent 6 months or more outside the Netherlands, each year, three years in a row, unless the centre of their activities still lies in the Netherlands.

An exception is made in case of residence in a foreign country for more than nine months for reasons of detention and military service.

Long-term residence permits may only be withdrawn for the following reasons<sup>119</sup>:

- the alien has established his/her main place of residence outside the Netherlands;

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<sup>114</sup> See Aliens Act, article 21 (1).

<sup>115</sup> See Aliens Act article 21 (2).

<sup>116</sup> See Aliens Act article 21 (4).

<sup>117</sup> See footnote 118 (mentioned above).

<sup>118</sup> See Vc B1/3.2.4 jo. B1/2.2.8.

<sup>119</sup> See Aliens Act article 22 (1) (a-d) and article 35 (1) (a-d).

- the alien has provided wrongful information or withheld information that would have led to a rejection of the application;
- the alien has been convicted for a criminal offence by an irrevocable court ruling (with a possibility of at least three years imprisonment), or in case of detention under a hospital order;
- the alien is a threat to national security.

### 3.3.2 Withdrawal of status and protection against expulsion

The differences with the current Dutch situation are described below for each article.

Article 9 (former article 10) of the draft Directive - Withdrawal of status

Long-term residence permits may be withdrawn:

- when the alien has provided wrongful information or withheld information that would have led to a rejection of the application for the permit;
- when the alien has established his main place of residence outside the Netherlands;
- when the alien has been convicted for a criminal offence by an irrevocable court ruling (with a possibility of at least three years imprisonment), or in case of detention under a hospital order;
- when the alien is a threat to national security;
- when the alien has established his principle place of residence outside the Netherlands.

Aliens are considered to have established their principle place of residence outside the Netherlands in the following cases<sup>120</sup>:

- when they have moved back to their home country according to the Remigration Act;
- when they have resided outside the Netherlands for more than nine months, unless this is due to circumstances beyond their control;
- when they have spent 6 months or more outside the Netherlands, each year, three years in a row, unless the centre of their activities still lies in the Netherlands.

An exception is made in case of residence in a foreign country for more than nine months for reasons of detention and military service.

*Article 12 (former article 13) of the draft Directive - Protection against expulsion*

1. In line with the proposal;
2. In line with the proposal;
3. Long-term residence permits may be withdrawn when an alien has been convicted for a criminal offence by an irrevocable court ruling (with a possibility of at least three years imprisonment), in case of detention under a hospital order, or when the alien is a threat to national security. When one of these criteria is met, it must be decided according to a particular 'scale' whether the long-term residence permit will actually be withdrawn<sup>121</sup>. This scale establishes a link between the duration of the alien's residence and the punishment inflicted. The basic principle is that when the punishment is high according to the standards of the scale, the permit will be withdrawn and the alien will be declared undesired<sup>122</sup>. Jurisprudence has led the

<sup>120</sup> See Vc B1/3.2.4 jo. B1/2.2.8.

<sup>121</sup> See Vb 3.86.

<sup>122</sup> See Vc B1/3.2.3.

administration to balance all the interests concerned and to take all relevant circumstances into consideration (including personal circumstances).

4. In line with the proposal;
5. In line with the proposal.

#### *Dutch policy in short*

Long-term residence permits may be withdrawn when an alien has been convicted for a criminal offence by an irrevocable court ruling (with a possibility of at least three years imprisonment), or in case of detention under a hospital order, or when the alien is a threat to national security. When one of these criteria is met, it must be decided according to a particular 'scale' whether the long-term residence permit will actually be withdrawn<sup>123</sup>. This scale establishes a link between the duration of the alien's residence and the punishment inflicted. The basic principle is that when the punishment is high according to the standards of the scale, the permit will be withdrawn and the alien will be declared undesired<sup>124</sup>. Jurisprudence has led the administration to balance all the interests concerned and to take all relevant circumstances into consideration (including personal circumstances).

A permit is not withdrawn, and an alien is not declared undesired on grounds of public order, if the decision concerns a minor with a Dutch parent living in the Netherlands. There are also exceptions to the rule for aliens who were born in the Netherlands or immigrated before their tenth birthday, and aliens who resided for more than ten years in the Netherlands.

An alien must leave the country when his/her permit has been withdrawn<sup>125</sup>. If s/he does not leave voluntarily, s/he can be expelled<sup>126</sup>.

### **3.3.3. Equal treatment**

Article 11 (former article 12) of the draft Directive - Equal treatment

1. Long-term residents in the Netherlands enjoy equal treatment with nationals in all the fields mentioned.
2. In line with the proposal.

### **3.3.4. Right of residence in other Member States**

Chapter 3 of the draft Directive - Residence in other Member States

The transposition of Chapter 3 (art. 15-27) would imply a major change in national legislation, as long-term residents in other EU-countries are not allowed to reside in the Netherlands for more than three months. The restrictive admission policy of the Aliens Act applies to this category of people in the same way as it applies to nationals from outside the EU.

According to the Dutch government, it is desirable to create of a similar status for third-country nationals who are long-term residents and for EU-citizens, in order to favour integration.

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<sup>123</sup> See Vb 3.86.

<sup>124</sup> See Vc B1/3.2.3.

<sup>125</sup> See Vw 61.

<sup>126</sup> See Vw 63.

The country is of the opinion that the condition regarding the compliance with integration measures should be added to the conditions for long-term residents to reside in other Member States (article 16).

## **Chapter 4: The Open Co-ordination Method**

The 'communication' from the Commission to the Council and the European Parliament in which the former elaborates on its plan for an 'open method of co-ordination for a Community immigration policy' was published on 11.7.2001 (document COM(2001)387 final ). The following is a comparison of guidelines 4 and 5 of the communication with the current state of affairs in the Netherlands.

### **4.1. Guideline 4**

*"Establishing a coherent and transparent policy and procedures for opening the labour market to third-country nationals within the framework of the European employment strategy."*

Most of the ideas expressed in guideline 4 are dealt with in Chapters 1 and 3. Regarding the existing national procedures for the admission of third-country nationals, we therefore refer to Chapter 3, and for the political setting, to Chapter 1.

#### *Fight against illegitimate work*

The fight against illegitimate work is becoming a priority. For example, in 2001, labour inspections in the Westland (a garden market and greenhouse region in the Netherlands) showed that one out of five gardeners on the market violated of the Foreign Nationals Employment Act by employing foreign workers without the necessary documents. In reaction to this situation, the Minister of Immigration and Integration decided to double the fine for employing clandestine immigrants. It resulted in a fine of €4,500 (maximum) for these employers.

Since May 2002, the largest labour union of the Netherlands, the FNV, has claimed that it would support illegal workers in the exercise of their basic rights, e.g. the right to organise, the right to normal working conditions, and the right to a minimum wage. Better working conditions and wages may make it less tempting for employers to employ illegal foreigners. According to the union, illegal workers need a voice. This position encounters resistance from the government and the employers' organisations VNO-NCW. Employers' organisations want more flexible immigration rules. This would make it easier for employers to hire workers from outside the EU in a legal manner. Although the government has a tough policy against illegal employment, it has a tendency to co-operate with employers. The government carries out research to find out to what extend illegal work fulfils existing needs.

The government's actions against illegal Bulgarians workers are severe. When they are caught by the Immigration Police, they are liable to immediate expulsion (planes have been especially chartered to send Bulgarians back to their country on the very day of mass arrests). The government has so far ignored protests by legal counsellors that adequate legal protection cannot be given in the short time between arrest and expulsion.

### *Position of migrant female workers*

Special attention is given to the situation and needs of women at work. The central government has no special programme that attends to the specific needs of migrant women who want to work in the Netherlands.

*"Integrating migration issues into relations with third countries, in particular with countries of origin."*

The Dutch government does not have an official position on most subjects mentioned in Guideline 5 dealing with migration and development. They are still internally debated<sup>127</sup>. As far as developing countries are concerned, there are two main visions:

- fighting poverty in the South, and
- creating relations between the North and the South.

The position which will eventually be adopted will influence the plans and policies that will be developed. Moreover, the subject of migration and development calls for an interdepartmental discussion, and although the Dutch government needs to form an opinion under the pressure of European developments, the discussion is still ongoing.

In April 2000, a new Remigration Act was passed to enable migrants who want to, to return to their country of origin. For migrants without the sufficient financial means, the Act creates two possibilities: one consists of a one-time refund of travel expenses, and the other is a contribution to the resettlement costs for the first two months.

### *Brain drain*

Although the Dutch government knows that there is a need for highly educated people, it does not want to cause brain drain in countries of origin. Under the pressure of the substantial shortage of employees in some branches, the CWI (in negotiation with the relevant organisations) implemented a sectorial exception policy by concluding covenants. These exceptions concern certain sectors and allow employers to apply for work permits for future employees from outside the EEA/EU. This is e.g. the case for nurses and caretakers from South Africa and Surinam. One of the provisions included in the covenants states that work permits should not be granted to nurses and caretakers if there is a shortage on the labour market of the country of origin<sup>128</sup>. However, this provision does not solve the problem of brain drain. In spite of the covenant, there is no legal basis to deny work permits on the sole ground of shortages in the country of origin (see also Chapter 1).

Regarding the admission of nurses and caretakers from Surinam, this means the following: the Dutch government is of the opinion that Dutch healthcare institutions should not actively recruit nurses and other catering personnel in Surinam because of the shortages in this country. However, the fact that there are shortages in this country does not constitute a legal ground to deny work permits according to the government. A covenant does not change this<sup>129</sup>. In practice, the CWI rejects applications of Surinam nurses on first instance due to the brain drain provision in the covenant<sup>130</sup>.

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<sup>127</sup> Telephone contact with the Ministry of Foreign Affairs, 1 April 2003.

<sup>128</sup> Paragraph 8.3, Besluit tot vaststelling van de beleidsregels van de Centrale organisatie werk en inkomen inzake de uitvoering van de wet arbeid vreemdelingen, published in Staatscourant 2002, 19. These agreements are also published in VADEMECUM Wet arbeid vreemdelingen 2002, zie hiervoor p. 93 e.v.

<sup>129</sup> Tweede Kamer, vergaderjaar 2000-2001, Aanhangsel, 1005.

<sup>130</sup> At FORUM, there are no court judgements known on this specific issue.

A bill has been put forward in Parliament to create a legal basis for the denial of work permits when there is shortage of personnel in countries of origin<sup>131</sup>. This bill is still waiting for the approval of the Parliament.

### *Money transfer*

In the Netherlands, the government does not stimulate the impact of financial transfers from nationals living abroad, although these transfers could help reduce poverty in countries of origin, or could result in better public finances due to the transfer of hard currency.

### *Return of third-country nationals*

Migrants could contribute in a positive way to the development of their country of origin when returning there. The knowledge and experience acquired could be used for that purpose. However, Prof. Ph. Muus doubts this. He claims that Dutch research shows that labour migrants who returned from the Netherlands in the 1970's did not support the development process in their country of origin. If the economic situation in the country of origin has not fundamentally changed, there is little chance to involve the returned migrants in the development process<sup>132</sup>.

### Patterns of mobility between the Netherlands and third country nationals

Reviewing legislation which restricts the possibility for migrants to move freely between their country of residence and their country of origin;

Since the coming into force of the 2000 Aliens Act, applications for the *renewal* of a residence permit can also be rejected if the holder of the permit has established his principal place of residence outside the Netherlands<sup>133</sup>. Before 1 April 2001 (when the 2000 Aliens Act came into force) this was not a requirement.

Encouraging migrants to take an interest in development projects, business and training ventures in their country of origin;

The central government does not have an elaborate policy in this field. However, a large Dutch organisation working in the field of development and co-operation, 'Cordaid', tries to encourage migrants to work on development projects, for example, through co-operation between the Student Refugee Fund (UAF), churches, and the organisation to create possibilities for foreign students to work on a development project in their country of origin.

Financial and other support, including the provision of venture capital, to help returning migrants to re-settle in their country of origin;

The central government has not developed a policy in this field. Migrants who want to start a business to trade with their country of origin usually lack the necessary

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<sup>131</sup> Document of the Tweede Kamer (Second Chamber of the Houses of Parliament) Dossier nr 28 442 nrs 1-2 (bill) nr 3 (explanatory memorandum) nr 4 (report of deliberations); *Wijziging van de Wet arbeid vreemdelingen in verband met de werving van arbeidsaanbod uit landen van buiten de Europese Economische Ruimte op een bij convenant overeengekomen wijze*.

<sup>132</sup> Muus, Ph., *De wereld in beweging; Internationale migratie, mensenrechten en ontwikkeling*, Jan van Arkel, Utrecht 1995. *Migratie: uitwegen in een vastgelopen debat*; Projectgroep 'Migratie en ontwikkeling'.

<sup>133</sup> Article 18 lid 1f Aliens Act 2000.



financial resources and have difficulty getting a loan. A guarantee fund could be created for that purpose. An organisation supported by the government, In'tent, helps migrants from certain countries (Surinam, Morocco, Ghana and Turkey) to set up a business in their country of origin.

#### *Victims of human trafficking or smuggling*

The Aliens Circular (B-9 regulation) includes a regulation concerning victims of human traffickers or smugglers. A victim of THB has three months to report THB. If they do so, they are permitted to stay in the Netherlands during the criminal proceedings of the trafficker or smuggler. During this period, they have a right of residence, and they are entitled to the payment of benefits and medical insurance. The chances for a victim to be permitted to stay after the B-9 procedure are limited. One of the key problems of the regulation is that it gives no prospect in the long term. Although most victims ultimately have to return to their country of origin, the system of the B-9 regulation does not aim at this. Most of the victims stay in a reception centre, and are not prepared for their return. As a result, there is a chance that, due to the lack of future prospects on return to their country of origin, they will be victims of human trafficking again<sup>134</sup>.

#### **4.2. Concluding remarks – Guideline 5**

The government has not yet developed a policy on the subject of development and migration. For Dutch NGOs, this implies that there is a possibility to influence the upcoming policy and the Dutch governmental attitude in the European negotiations. On the other hand, the subject of development and migration is a big issue. It is difficult to change economic and political structures. For NGOs, it is important to put and to keep this subject on the agenda. Launching projects in this field and showing the results to the government is one way of doing this.

#### **Integration of foreigners**

##### *The law: the Integration of Newcomers Act*

The Integration of Newcomers Act (*Wet Inburgering Nieuwkomers* - WIN) became effective at the end of 1998. It is the final stage of a process that began in 1989. As a result of continued immigration, of the ongoing development of integration policy, and of the experience with integration contracts, the decision was taken to reinforce integration policy through legal obligations that would apply to both newcomers and municipalities. With the 1998 Integration of Newcomers Act, all newcomers were obliged to participate in an integration programme.

##### *Aim*

The primary aim of integration policy is to promote the self-sufficiency of newcomers. They should be able to function independently in the Dutch society as soon as possible. They are approached soon after their arrival and prepared for what awaits them in the Netherlands. Early attention focused on newcomers prevents the formation of new groups of underprivileged.

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<sup>134</sup> Trafficking in human beings, First report of the Dutch national rapporteur, NRM, Bureau NRM, The Hague, November 2002.

### *Target Group*

On the whole, the WIN applies in principle to all newcomers (Dutch people and non-Dutch people from outside the EU) aged 16 and over, who settle in the Netherlands for the first time and are not in the country for a temporary reason.

### *Integration in brief*

Newcomers are required to apply for an integration inquiry at the Newcomers Office (which falls under the responsibility of the municipalities) within six weeks after the issuance of their residence permit or after their registration with Citizens Affairs.

An integration inquiry is conducted to determine the need for, and creation of an individual programme. The newcomer's knowledge, education and work experience are taken into account. The inquiry also determines to what extent the newcomer might become an underprivileged.

The educational institution and labour exchange are also involved in the inquiry. In this way, individual perspectives in the Netherlands for follow-up training, or regarding the job market, can already be broadened during the integration programme. At the end of the integration inquiry, the municipality decides which programme the newcomer should follow, and the newcomer is required to enrol within four months with an educational institution with which the municipality has concluded a contract. S/he must sign a training contract with this institution.

The integration programme ends no later than six months after the final test at the educational centre. An important part of the inquiry consists of an interview with the newcomer, a representative of the educational institution and the job centre, during which recommendations for further referral can be made. The municipality then provides suitable follow-up training or help regarding access to the job market. The newcomer receives a certificate of the municipality which specifies the programme that has been followed and the results achieved.

### *Educational programme*

The educational programme consists of Dutch lessons, social orientation, and vocational orientation. On average, six hundred hours are available within the educational programme. In practice, about five hundred hours are devoted to learning Dutch. The course ends with a test taken no later than twelve months after the enrolment at the educational institution. The achievement of the agreed target levels is not required.

### *Problems*

On the whole, newcomers and ex-newcomers are satisfied with the opportunities that the integration policy offers them. However, problems exist:

- 20% of the newcomers drop out of the course. The main reasons for dropping out include dissatisfaction with the contents of the programme, long waiting periods, care obligations, and work;
- the primary goal of self-sufficiency in Dutch society is not achieved by the majority of newcomers;
- suitable follow-up training or access to the job market are not provided;
- the lack of sanctions: although the WIN provides for the imposition of penalties on newcomers who fail to meet their obligations, in practise these sanctions are not inflicted.

Currently the 'task-force inburgering' is working to find solutions to these problems. The necessity to deliver courses that are connected to the wishes of the individuals has been stressed<sup>135</sup>.

#### *The debates on the integration of foreigners*

On 18 January 2002, the Minister of Urban Policy and Integration Policy presented the note "Integration in the perspective of immigration" (Integratie in het perspectief van immigratie) in co-operation with the Minister of Social Affairs and the Minister of Justice.

This policy document specifies the position of the Dutch Government regarding the report "The Netherlands as Immigration Society" by the Netherlands Scientific Council for Government Policy (WRR) published in October 2001. At an earlier stage, the Government agreed with the WRR, which advised not to liberalise the Dutch labour migration policy (see Chapter 1). Another proposal of the WRR was to reintroduce the possibility of dual citizenship. According to the WRR, an immigrant should not have to give up his/her nationality of origin in order to obtain Dutch citizenship. Full participation in the Dutch society does not have to exclude 'simultaneous orientation' towards other transnational or local communities.

The Dutch Government did not agree with this suggestion and did not want to expand the possibilities of dual citizenship. At present, only persons who cannot renounce their citizenship of origin (e.g. Moroccans) are entitled to dual citizenship. The report contained proposals for future changes. Several proposals became campaign issues for the General Election in May 2002. One of the proposals is to tighten conditions for family reunification and family formation. Immigrants who want to bring their family or future partner to the Netherlands must contribute financially towards the costs of the integration course which these people will have to follow. This proposal originated from the Dutch Centre for Foreigners (NCB). The total cost of an integration programme can amount to as much as €6,000 (the report does not specify the level of financial contribution).

The Minister emphasised that this measure, which introduces a financial condition, does not aim at discouraging newcomers, but seeks to enhance integration. At the same time, however, the press release of the Ministry of Interior concerning the presentation of this report mentions another reason.

What seems to worry the Government, is that many members of ethnic minorities, even second generation immigrants, especially Turks (80% of the men and 75% of the women) and Moroccans (75% of the men and 68% of the women) continue to look for a partner in their country of origin.

In 2000, some 16,000 "chain migrants" (family reunification and family formation) were admitted into the Netherlands, including some 9,000 spouses from Morocco and Turkey.

The Government also stressed in the report that it wants to continue and improve the consultation structure which consists of regular meetings with the LOM (National

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<sup>135</sup> Dr. A. Odé en drs. M. Brink, Evaluatie effectiviteit van de Wet Inburgering Nieuwkomers; Verscheidenheid in Integratie, Migrantenrecht 5 2002, p.154 e.v.

Consultative Body on Minorities) in which diverse minority organisations work together<sup>136</sup>.

Many NGOs, like FORUM and IOT (Turkish organisation) responded to this policy document and gave their opinion. Both organisations believe that the tendency to find a partner in the country of origin should be reduced, as it is harmful to the integration process. Therefore, the discussion should be held with the relevant groups. As mentioned before, these issues played an important role in the 2002 elections (for a large part, this can be attributed to Pim Fortuyn). Within the society, the discourse on (non-western) immigrants became more negative. As the elections were won by the Pim Fortuyn List and the CDA (Christian Democratic Appeal) - both right wing on the topic of immigration and integration - it is not surprising that the government agreement is aimed at deterring immigration.

The agreement mentions the following measures:

- income requirements for family reunification and family formation will be stricter;
- immigrants who want to bring their family or future partner to the Netherlands will have to contribute financially to the costs of the integration course that these people will need to follow;
- the minimum age for family formation will go from 18 to 21.
- there will be a maximum age for children covered by family reunification.

All these measures have not been implemented yet, mainly due to the rapid fall of the previous government. Many NGOs and other organisations are opposed to them. Currently, a new government is being formed. Coalition meetings are taking place between the PvdA (labour party) and the CDA. However, there are realistic chances that it may turn out to be impossible to form a PvdA/CDA government, because of their different views.

It is unsure which parties will eventually form the new government. Nonetheless, it is unlikely that these plans will be abandoned, due to the anti-immigrant climate within the society.

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<sup>136</sup> De minister voor Grote Steden en Integratiebeleid, Integratie in het perspectief van Immigratie, Den Haag, 18 January 2002.

**FORUM**, the Institute of Multicultural Development, is a national centre of expertise in the field of multicultural development. FORUM stands for a society in which people from various communities live together as fully recognized citizens.

FORUM is active in diverse fields, including pre-school education, communication, legislation, housing, employment, education, health care, leisure time, sport, political participation, art and culture.

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