



Dutch National Contact Point for the  
European Migration Network (EMN)

# Annual Policy Report 2010

May 2011

# Developments in Dutch Migration and Asylum Policy



Immigratie- en Naturalisatiedienst  
Ministerie van Binnenlandse Zaken en  
Koninkrijksrelaties



The objective of the European Migration Network (EMN) is to meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with information on these subjects.

The EMN has been established by Council Decision 2008/381/EC and is financially supported by the European Commission. The network is composed of the European Commission and National Contact Points (NCP) designated by the Member States. Each NCP maintains a national network.

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Immigration and Naturalisation Service (IND)

Staff Directorate for Implementation and Policy (SUB)

IND Information and Analysis Centre (INDIAC)

National Contact Point for the European Migration Network (EMN)



# Executive Summary

The Annual Policy Report 2010 provides an overview of the developments in Dutch migration and asylum policy from 1 January 2010 to 31 December 2010. On the basis of this report and similar reports issued by the other EU Member States, the European Migration Network (EMN) will draw up a comparative 'European' report.

The developments in legislation and regulations and in the administrative practice in the Netherlands are discussed first, including the associated political and public debates.

In October 2010, amendments were implemented in the general structure of the political and legal system in the Netherlands as a result of the constitutional developments in the Caribbean part of the Kingdom on the one hand, and the reorganisation of the Ministries on the other hand.

The most significant political development in 2010 was the fact that a new government took office after elections to the Lower House of Parliament had been called due to a Cabinet crisis. The new coalition agreement and Parliamentary support agreement entered into by the new Cabinet caused a rather fundamental debate on migration and asylum. The debate concerned the feasibility of the intended strict measurements in the area of immigration, integration, and asylum, also in connection with European legislation.

Other discussions in 2010 furthermore related to subjects including detention, charges and integration requirements for Turks, removals to Somalia and Iraq, the costs of immigration, and emergency reception and accommodation for illegal children.

Just like last year, this Annual Policy Report also serves as a progress report for the purpose of the annual debate of the European Council about the progress of migration and asylum policy. Under the European Pact on Immigration and Asylum adopted in October 2008, the Member States of the EU are obliged to provide annual information about their progress in this field to the European Commission for discussion in the European Council. In addition, the Member States are obliged to report on the commitments entered into for the purpose of the Stockholm Programme adopted on 11 December 2009. In December 2010, the drafters of this present report submitted a summary to the European Commission containing information on all Dutch legislative amendments and policy changes, concrete measurements, and government plans in connection with these commitments. That partial report has been included in this Annual Policy Report as Annex I. This Annex also serves as a guideline for the descriptions of the developments as seen from an EU perspective that are contained in Chapter 4 up to and including Chapter 9.

This Annual Policy Report naturally also provides an overview of the developments in the area of legal immigration and integration, illegal immigration and return, border control, asylum, unaccompanied minors, and the global approach to migration, also in the national perspective.

Chapter 4 (Legal Immigration and Integration), for instance, provides information on the Bill on Modern Migration Policy, and the reason why the Act did not enter into force on 1 January 2011. The judgment of the European Court of Justice in the Chakroun case is also discussed in this Chapter. As a result of this judgment, the policy-related distinction between family formation and family reunification was sent back to the drawing board again. Attention is furthermore paid to the trial project named 'Au Pair Laboratory', and the broadening of the integration issue from the traditionally largest non-Western population groups on the one hand, to labour migrants from Eastern Europe on the other hand.

Chapter 5 (Illegal Immigration and Return) gives a picture of the extensive attention paid in 2010 to the prevention of fraud and abuse in the admission procedure. Attention was also paid to the plans of the Cabinet to make illegality punishable, to achieve an accelerated and more effective disposal in expulsion cases, and to realise a tightening of public order policy aimed at the termination of residence of aliens who have committed serious crimes or who may be considered habitual offenders. In July 2010, the The

Wall Programme was launched. This programme is specifically targeted at fighting organised crime committed by Chinese residents, with a focus on trafficking in human beings/smuggling of migrants. A policy framework has been introduced for victims of domestic violence who are staying in the Netherlands illegally, and for victims of trafficking in human beings who are staying illegally here and who cannot or do not want to cooperate in the criminal proceedings.

As explained in Chapter 6, all developments in the area of border control took place within the scope of the Border Control Renewal Programme (*Vernieuwing Grensmanagement*), which consists of the PARDEX, API, No-Q, and RT projects. All the developments in 2010 contributed to the fulfilment of the Dutch commitments under the Pact and the Stockholm Programme. In this context one could consider such examples as the initiatives for joint border controls by the Customs and the Royal Netherlands Marechaussee, and the deployment of the Royal Netherlands Marechaussee and the Seaport Police to provide temporary support to border control in Greece, among other developments.

Chapter 7 (Asylum) provides a detailed discussion of the Improved Asylum Procedure that entered into force on 1 July 2010. This procedure is intended to ensure a faster and more careful handling of asylum applications. In addition, it is expected that the number of applications will decrease. Chapter 7 also provides an overview of all the high-risk groups, vulnerable minority groups, and specific groups identified as such in Dutch asylum policy in 2010. The present Cabinet has endorsed the intention expressed by the previous Cabinet to abolish the policy of protection for certain categories, but it still did not implement this measure in 2010. The Cabinet also intends to transfer the procedure for family members of refugees who want to travel to the Netherlands later on to join the refugee(s) staying here, from the category of asylum policy to that of non-asylum policy. In 2010, the elaboration of the Spekman motion resulted in an increase in the reception capacity for asylum seekers who have exhausted all legal remedies and who have submitted an application on medical grounds and who are entitled to a residence permit in the Netherlands. From an EU perspective it is worth mentioning that the Netherlands is involved in the Temporary Desk on Iraq, located in Brussels. The experiences gained in this project will be used for the establishment of the European Asylum Support Office (EASO), which will open its doors in Valletta (Malta) in 2011.

Chapter 8 includes information about the fact that the Improved Asylum Procedure also applies to unaccompanied minors. One of the possibilities is to apply a longer period of rest and preparation, while secure reception is continued. The previous Cabinet intended to abolish the permit for unaccompanied minors. In 2010, the present Minister for Immigration and Asylum Policy has not yet stated his position on this issue.

All developments in the area of the global approach to migration (Chapter 9) occurred for the purpose of fulfilling the commitments entered into by the Netherlands under the Pact and the Stockholm Programme. Consider, for instance, the examples of a study conducted in 2010 into the number of aliens staying in the Netherlands illegally, the attention for the effectiveness of return policy, and the Dutch participation in operations coordinated by Frontex.

Chapter 10 presents a review of the implementation of EU legislation in the area of migration and asylum. The subjects discussed include the legal consequences of the failure to implement the Return Directive on time and the position of the present Cabinet on the various Directives.

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# 1 Introduction: Purpose and Methodology Followed

This report provides an overview of the developments in Dutch migration and asylum policy in 2010. It was commissioned by the European Migration Network (EMN). The EMN, which has been established on the initiative of the European Commission, gathers and analyses information on migration and asylum (including information on social debates, scientific research, statistical data, policy, and case law). Each National Contact Point (NCP) of the EMN is to draw up a national annual report of the developments in migration and asylum policy. As the National Contact Point for the EMN in the Netherlands, the Information and Analysis Centre (INDIAC) of the Implementation Policy Department of the Immigration and Naturalisation Service (IND) is responsible for the Dutch report. On the basis of this report and the reports issued by the other EU Member States, the EMN will draw up a comparative 'European' Annual Report 2010.

## 1.1 Purpose

This Annual Policy Report provides an overview of the most significant developments in the area of migration and asylum in the Netherlands. In addition, this report serves as a progress report for the purpose of the European Pact on Immigration and Asylum and the Stockholm Programme.

### **Overview of Developments in the Area of Migration and Asylum**

As it is, this Annual Policy Report also provides an overview of the most significant developments in the area of migration and asylum in the Netherlands. In this context, the developments in legislation and regulations and in the administrative practice are discussed, including the associated political and public debates. The Annual Policy Report 2010 also takes a detailed look at the implementation of EU legislation in the area of migration and asylum.

First of all, the Annual Policy Report will focus on important political and institutional developments. This will be followed by the most significant developments in the area of legislation and regulations, and the associated political and public debates in the area of migration and asylum will be addressed. Subsequently, a more detailed discussion will be given of the developments from a national and European perspective in the following sub-areas:

- Economic migration;
- Family reunification;
- Other forms of legal migration;
- Integration;
- Citizenship and naturalisation;
- Illegal immigration;
- Return;
- Measures to combat trafficking in human beings;
- External border control
- Cooperation with respect to border control;
- Asylum;
- Unaccompanied minors (and other vulnerable groups);
- Global approach to migration.

This structure is also used in Annex 1 on the fulfilment of the Dutch commitments under the European Pact on Immigration and Asylum.

### **Progress in commitments made in the Pact and in the Stockholm Programme**

Under the European Pact on Immigration and Asylum adopted in October 2008 by the European Council, the Member States of the EU are obliged to provide annual information about the progress in

these areas to the European Commission for discussion in the European Council. In addition, the Member States are obliged to report on the commitments entered into for the purpose of the Stockholm Programme adopted on 11 December 2009.

Under the Pact, the European Council entered into the following five commitments:

- To organise legal immigration;
- To control illegal immigration;
- To make border controls more effective;
- To establish a Europe of asylum;
- To create a comprehensive partnership with the countries of origin and of transit.

The commitments were developed further in the Stockholm Programme. In this Stockholm Programme, the Member States laid down the starting points of the EU in the area of freedom of citizens, security, justice, asylum, and migration for a period of five years.

A version of Annex 1 to this Annual Policy Report was submitted to the Commission in December 2010, and serves as a factual report on the progress made in the Netherlands with respect to the commitments entered into in the Pact and the Stockholm Programme. By way of partial report, this Annex contains a brief summary of all Dutch legislative amendments and policy changes, concrete measurements, and government plans in connection with these commitments. This Annual Policy Report 2010 provides the framework for the partial report.

Finally, this Annual Policy Report provides an overview of the developments in the implementation of European legislation in 2010.

This report aims at giving the most complete overview possible of the amendments or proposed amendment to legislation and regulations in the different policy areas. This report also provides a complete overview of developments in the implementation of European legislation in the area of migration and asylum. This report does not aim for completeness with respect to the political and social debates and developments: rather the level of attention devoted to these areas in Parliament and the media is the determining factor. More information about the selection criteria can be found in the following section on methodology.

## 1.2 Methodology Followed

This Annual Policy Report 2010 is the result of desk research. On behalf of the National Contact Point for the EMN in the Netherlands, the report was drawn up by A.C. van der Helm and D. Diepenhorst, both policy officers at INDIAC. In drawing up this report, the policy officers were grateful to be able to use the expert knowledge of the Implementation Policy Department (AUB) of the IND. The Directorate for Migration Policy (DMB) of the Ministry of the Interior and Kingdom Relations also rendered its cooperation in this report. In the area of the commitments entered into by the Netherlands under the Pact and the Stockholm Programme, the assistance and expert knowledge of other departments and cooperating organisations proved to be invaluable. Essential contributions to the realisation of this report have been made *inter alia* by the Repatriation and Departure Service (DT&V), the Royal Netherlands Marechaussee (*Koninklijke Marechaussee, KMar*), and the Ministry of Social Affairs and Employment.

Information about the development of legislation and regulations and about parliamentary debates originate from official sources. For this purpose, the following types of documents were consulted: Parliamentary Papers of the Lower House of Parliament and the Senate; Proceedings of the Lower House of Parliament and the Senate; Official publications of legislation and regulations in the *Treaty Series*, the Dutch Bulletin of Acts and Decrees, and the Dutch Government Gazette.

All these documents can be found in the database of official publications on the government website at [www.overheid.nl](http://www.overheid.nl). This website is maintained by the Ministry of the Interior and Kingdom Relations.

Statistical data have been derived from Eurostat and the IND Information System INDIS.

In order to obtain information on organisations and their views, the websites of the relevant organisations were consulted. Publications of the various organisations on migration and asylum were also mostly obtained from the relevant websites. In addition, the websites of political parties were visited to gather information about their respective views on migration and asylum.

The Internet was also used as the main source to obtain an understanding of the public debate. The websites of large national newspapers and of news and current affairs programmes on national television (both public and commercial broadcasting stations) were used to investigate which migration and asylum-related topics received much attention in the media. An important source of information on the social debates was the website 'Nieuwsberichten Migratierecht.nl', a digital publication of Sdu Uitgevers that publishes weekly news items.<sup>1</sup> In addition to a general stock-taking of migration and asylum-related topics, the media coverage of specific topics that were addressed in parliamentary debate was also consulted.

The objective of the Annual Policy Report 2010 is to provide an overview of all significant developments in the area of migration and asylum. To achieve this objective, several criteria were used to define the term 'significant developments'. In this context, a distinction was made between amendments to legislation and regulations on the one hand and political and social debates on the other hand.

#### **Criteria for the Significance of Amendments to Legislation and Regulations**

This report aims at giving the most complete overview possible of the amendments or proposed amendment to legislation and regulations in the different policy areas. All amendments or proposed amendments that actually imply a substantive modification of these legislation and regulations have been included in the report. Only minimal amendments have been left out (e.g. the annual increase in certain income requirements).

#### **Criteria for the Significance of Political and Social Debates**

The report does not aim at completeness with respect to political and social debates and developments. The purpose of the Annual Policy Report is to give an impression of the major issues of discussion in the area of migration and asylum in the Netherlands. The following criteria were used to make a selection. To be included in the Annual Policy Report, a political and social debate must meet at least the following cumulative requirements:

- The topic has been raised in Parliament.
- The issue has been 'in the news' for an extended period of time.
- Several news media organisations must have covered the issue.

#### **Implementation of European Legislation**

The Annual Policy Report provides a complete overview of the developments in the implementation of European legislation in the area of migration and asylum. For this reason, all developments in this area have been included in this report.

## **1.3 Terms and Definitions**

In this report, the terms used correspond to the terms as defined in the EMN Glossary.<sup>2</sup> The purpose of the terms and definitions in the glossary developed by the EMN is *inter alia* to improve comparability of the information exchanged among the EU Member States.

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<sup>1</sup>Available through the non-public website [www.migratierechtonline.rijksweb.nl](http://www.migratierechtonline.rijksweb.nl).

<sup>2</sup>EMN (2010). Available at <http://emn.intrasoft-intl.com/Glossary/viewTerm.do?startingWith=A&id=8>.



## 2 General Structure of the Political and Legal System in the Netherlands

This Chapter will outline the political and institutional context of the policy in the area of migration, asylum, and integration in the Netherlands. More comprehensive and detailed information on this subject may be found in the EMN report 'Organisation of Asylum and Migration Policy in the Netherlands'.<sup>3</sup>

### 2.1 General Structure of the Political and the Institutional Context

The Netherlands is a constitutional monarchy of which Her Majesty Queen Beatrix is the head of state. The Ministers have political responsibility for the actions of the Queen; she is inviolable. The Netherlands has a parliamentary system. The ultimate right to decide about the policy to be pursued is vested in Parliament. This implies that the Ministers drafting and implementing this policy require the confidence of Parliament. The Parliament consists of two Houses, the Senate (*Eerste Kamer*) and the Lower House of Parliament (*Tweede Kamer*); jointly referred to as the States General (*Staten Generaal*). The Lower House of Parliament is co-legislator with the government and supervises the government. The Senate also supervises the government, but its co-legislative tasks are more limited. The Senate, for instance, does not have the power to amend legislative proposals, nor does it have the right to submit its own legislative proposals.

The government consists of the Queen and the Ministers. The Cabinet consists of the Ministers and State Secretaries, led by the Prime Minister. The government is the executive and it also has legislative powers. Each Minister is politically responsible for a specific policy area and may be assisted by State Secretaries, who in turn are allocated specific policy areas. The Prime Minister is chairperson of the Cabinet and coordinates government policy in this capacity. The Ministers and State Secretaries are accountable to Parliament for the policy pursued and to be pursued. If it becomes apparent that the Lower House of Parliament has lost its confidence in a Minister and/or State Secretary (and possibly the entire Cabinet), this person (or possibly the entire Cabinet) must resign.

Until 10 October 2010, the Netherlands, together with Aruba and the former Netherlands Antilles (islands in the Caribbean), constituted the Kingdom of the Netherlands. Since 10 October 2010, the Netherlands Antilles have ceased to exist. As from this date, Curaçao and Saint Martin have become independent countries within the Kingdom of the Netherlands, just like Aruba. Bonaire, Saba, and Saint Eustatius have become special municipalities of the Netherlands. Each of the four (formerly three) countries in the Kingdom has its own government and Parliament. The Charter for the Kingdom of the Netherlands lists a limited number of subjects in which the bodies of the individual countries do not have a say, but in respect of which the powers are vested in the bodies of the Kingdom. These include, for instance, defence, foreign relations, and the regulations pertaining to Dutch nationality. Citizens of the four (formerly three) countries have Dutch nationality.

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<sup>3</sup> INDIAC – NL EMN NCP (2009). See <http://emn.intrasoft-intl.com/Glossary/viewTerm.do?startingWith=A&id=8>. The information in this report is partly out of date due to the reorganisation of the ministries. An update of this report is expected to be issued in the second half of 2011.

## 2.2 General Structure of the Legal System

### Migration and Asylum

The current Cabinet, which was sworn in on 14 October 2010, has placed the responsibility for aliens affairs (including the Netherlands Nationality Act [*Rijkswet op het Nederlanderschap, RWN*]) and integration under the Minister of the Interior and Kingdom Relations. The tasks involved have been divided between the Minister of the Interior and Kingdom Relations and the Minister for Immigration and Asylum Policy. The latter does not have his own department; his staff are part of the Ministry of the Interior and Kingdom Relations. The Minister for Immigration and Asylum Policy is responsible for the tasks in the area of aliens and asylum policy and the agencies implementing these policies, including the Immigration and Naturalisation Service (IND), the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan Opvang Asielzoekers, COA*) the Repatriation and Departure Service (*Dienst Terugkeer & Vertrek, DT&V*), border control in the context of aliens affairs, and the Movement of Persons Kingdom Act (*Rijkswet op het personenverkeer*). The responsibility for the Netherlands Nationality Act rests with the Minister of the Interior and Kingdom Relations.<sup>4</sup>

Until the fall of the Balkenende IV Cabinet in the night of 19 to 20 February 2010, the following allocation of tasks applied between the ministers and state secretaries for migration and asylum. Within the limits of the policy laid down by the Minister, the State Secretary for Justice was among other things charged with aliens and asylum policy.<sup>5</sup> The tasks associated with the Netherlands Nationality Act (naturalisation) and with respect to border control belonged to the portfolio of the Minister of Justice. In the period after the Cabinet had tendered its resignation until the swearing-in of the current Cabinet, the tasks of the State Secretary were taken care of by the Minister of Justice.

The Minister of Foreign Affairs was and is responsible for the policy on visa. The Minister of Foreign Affairs is also responsible for drafting the official country reports, which describe the situation in the most important countries of origin of asylum seekers and which are used to verify facts presented by an asylum seeker or to verify documents on accuracy and authenticity.<sup>6</sup> Not all aliens who come to the Netherlands are permitted to work in the Netherlands. The Minister of Social Affairs and Employment was and is responsible for the admission of aliens to the Dutch labour market.

A large number of organisations play a role in the implementation of the policy in the area of migration and asylum. The following is an overview of the most important organisations involved in this policy:

- The Immigration and Naturalisation Service (IND) is responsible for the implementation of the Aliens Act (*Vreemdelingenwet*) and the Netherlands Nationality Act. Until the swearing-in of the current Cabinet on 14 October 2010, the IND was an agency of the Ministry of Justice, since said date it has been an agency of the Ministry of the Interior and Kingdom Relations. This agency is charged with assessing all applications of aliens who want to come and stay – or remain in residence – in the Netherlands, or who want to become Dutch citizens. On behalf of the Minister of Foreign Affairs, the IND also plays a role in assessing applications for short-stay visa. The IND is furthermore responsible for assessing all applications for provisional residence permits on behalf of the Minister of Foreign Affairs.
- The Repatriation & Departure Service (*Dienst Terugkeer & Vertrek, DT&V*) is responsible for promoting the repatriation of aliens who must leave the Netherlands in a humane and professional manner. This agency was also transferred from the Ministry of Justice to the Ministry of the Interior and Kingdom Relations on 14 October 2010.
- The responsibilities of the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen, DJI*), an agency of the Ministry of Justice (since 14 October 2010 named the Ministry of Security and Justice), include enforcing custodial orders for the purpose of removing aliens from the Netherlands, including detention.

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<sup>4</sup> The press release with the complete list of the allocation of the portfolios may be found at:

[http://www.kabinetsformatie2010.nl/Actueel/Pers\\_en\\_nieuwsberichten/2010/oktober/Portefeuilles\\_kabinet](http://www.kabinetsformatie2010.nl/Actueel/Pers_en_nieuwsberichten/2010/oktober/Portefeuilles_kabinet).

<sup>5</sup> See INDIAC – NL EMN NCP (2010).

<sup>6</sup> See INDIAC – NL EMN NCP (2010).

- The Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan Opvang Asielzoekers, COA*) is a non-departmental public body that was financed by the Ministry of Justice until 14 October 2010. Since said date it has been financed by the Ministry of the Interior and Kingdom Relations. The COA is responsible for the reception of asylum seekers.
- UWVWERKbedrijf (the work placement branch of the Employee Insurance Agency) is a non-departmental public body (NDPB) that operates on the instructions of the Ministry of Social Affairs and Employment. The Ministry has charged UWVWERKbedrijf, among other things, with the issue of work permits to aliens who want to work in the Netherlands.
- The Legal Aid Council (*Raad voor de Rechtsbijstand*) is a non-departmental public body that is fully financed by the Ministry of Security and Justice. The Council supervises and manages the organisation providing state-funded legal aid through the Legal Aid and Advice Centre (*Juridisch Loket*), mediators, and lawyers. This organisation is also responsible for organising the provision of legal aid in asylum cases.
- The Royal Netherlands Marechaussee (*KMar*), which is part of the Ministry of Defence, and the regional police forces play a role in border control and the supervision of aliens.
- The municipalities are responsible for providing accommodation to holders of asylum residence permits and they also play a role in processing applications for naturalisation.

In addition, several non-governmental organisations are active in the area of asylum and migration. The most important of these non-governmental organisations are the following:

- The International Organisation for Migration (IOM), which plays a role in voluntary repatriation and/or onward migration of aliens.
- The Dutch Council for Refugees, which provides practical support to asylum seekers;
- The NIDOS Foundation, which is a guardianship agency that operates at the national level, specifically intended for unaccompanied minor refugees and asylum seekers.

### **The Judiciary**

Within the judiciary, the following authorities are engaged in the administration of justice with respect to aliens policy:

- The Aliens Division comes under the administrative law section of the District Court in The Hague and exclusively deals with disputes under aliens law. Officially, only the District Court in The Hague deals with disputes under aliens law. The hearings are, however, not only held in The Hague, but also in subsidiary places of session. All nineteen Districts Court in the Netherlands have Aliens Divisions. The Aliens Division deals with appeals in aliens cases.<sup>7</sup>
- The Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State, AbRvS*) is the highest General Administrative Court in the Netherlands. This is also where appeals in aliens cases are decided.

### **Integration**

In the current Cabinet, the Minister of the Interior and Kingdom Relations is charged with the tasks in the area of integration.

Until the fall of the Balkenende IV Cabinet, the Programme Minister for Housing, Communities and Integration was responsible for integration policy. Programme Ministers are responsible for policy areas that are covered by several Ministries.<sup>8</sup> The budgets and departments of the different Ministries involved in integration policy had been incorporated in the Housing, Communities and Integration Programme and came under the direct responsibility of the Minister for Housing, Communities and Integration. This Programme came under the Ministry of Housing, Spatial Planning and the Environment. In the period after the Cabinet had tendered its resignation until 14 October 2010, the Minister of Defence managed the Housing, Communities and Integration portfolio.

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<sup>7</sup>Book 8, Section 7(2), of the General Administrative Law Act (Algemene wet bestuursrecht, Awb); Section 71 of the Aliens Act 2000); Kuijer (2005).

<sup>8</sup>See INDIAC – NL EMN NCP (2010).





## 3 General Developments Relevant to Asylum and Migration

This chapter looks at the main debates and political developments in the area of migration, integration, and asylum. Where possible, the position and role of the main political parties and the civil society organisations will be discussed. Please refer to the previous edition of this report for the legal context in which these developments took place.

### 3.1 General Political Developments

In 2010, several important general political developments took place. In addition to municipal elections, there were also elections to the Lower House of Parliament. Several political relations changed as well.

#### **Municipal Elections**

The municipal elections were held on 3 March 2010. Compared to the municipal elections of 2006, which brought gains for, in particular, the Dutch Labour Party (Partij van de Arbeid, PvdA) and the Socialist Party (*Socialistische Partij, SP*) and losses for the former government parties – the Christian Democratic Appeal (CDA (*Christen Democratisch Appel, CDA*)), the People's Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie, VVD*), and Democrats 66 (*Democraten 66, D66*), in 2010 most seats were won by D66, the VVD, and the local parties. D66 nearly quadrupled, and the local parties increased their number of municipal council seats by several hundreds.<sup>9</sup> The VVD also achieved a considerable gain in seats (more than 200 seats). The Party for Freedom (*Partij Voor de Vrijheid, PVV*), which only participated in two municipalities - namely Almere and The Hague – became the largest party in Almere and ended as the second largest party after the PvdA in The Hague.

#### **Cabinet Crisis**

The Netherlands was governed from 22 February 2007 to 20 February 2010 by the fourth Cabinet that was led by Prime Minister Jan-Peter Balkenende (the Balkenende IV Cabinet). This Cabinet consisted of three parties: the CDA, the PvdA, and the Christian Union (*ChristenUnie, CU*). In the early morning of 20 February 2010, the Balkenende IV Cabinet was not able to reach consensus on a possible continuation of the Dutch military activities in the Afghan province of Uruzgan. The PvdA Ministers then announced their resignations. The CDA and CU Ministers saw cause in this to hand in their resignations as well. The two Christian parties remained in office as the outgoing Cabinet to prepare the elections to the Lower House of Parliament.<sup>10</sup>

#### **Elections to the Lower House of Parliament**

The elections to the Lower House of Parliament were held on 9 June 2010. The turnout at the elections was 75.3%. The VVD won the elections by only a slight margin. The VVD obtained 20.5% of the votes, which brought them 31 seats. The PvdA ended up at 19.6 % of the votes, which brought them 30 seats. The largest loser was the CDA, which had to surrender 20 seats. The CDA obtained 21 seats in the new Lower House of Parliament. With respect to gain in seats, the PVV was the largest winner of the elections. They captured 15 seats more than in 2006. With 15.5% of the votes, they arrived at a total of 24 seats.

Other winners besides the VVD and the PVV were D66 (6.9%) and Green Left (*GroenLinks*) (6.7%). In addition to the CDA, the SP also lost considerably (9.8%, a reduction of 10 seats). The CU also lost slightly (3.3%), as a result of which the party went from 6 to 5 seats. Both the Dutch Reformed Party (*Staatkundig*

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<sup>9</sup> NRC Handelsblad, 4 March 2010, CDA PvdA en SP verliezen fors bij raadsverkiezingen (Dramatic Losses for CDA, PvdA, and SP at municipal elections)

[http://vorige.nrc.nl/nieuwsthema/raadsverkiezingen2010/article2496577.ece/CDA, PvdA en SP verliezen fors bij raadsverkiezingen](http://vorige.nrc.nl/nieuwsthema/raadsverkiezingen2010/article2496577.ece/CDA,_PvdA_en_SP_verliezen_fors_bij_raadsverkiezingen).

<sup>10</sup> Parliamentary Documentation Centre (2010): Kabinet Balkenende IV (2007-2010) (Balkenende IV Cabinet (2007-2010)). Derived from [www.parlement.com](http://www.parlement.com) on 20 January 2011.

*Gereformeerde Partij, SGP*) and the Party for the Animals (*Partij voor de Dieren, PvdD*) kept their two seats.

### **Formation of a New Cabinet**

After a number of formation attempts had failed during the summer of 2010, *informateur* Yvo Opstelten, who was charged with the task to investigate on behalf of the Crown whether the proposed Cabinet formation would succeed, issued his final report on 30 September 2010. In this report he concluded that it was possible to form a minority Cabinet of VVD and CDA, with the parliamentary support of the PVV. Simultaneously, the coalition agreement of the VVD and the CDA, and the parliamentary support agreement of the VVD, the PVV, and the CDA were published, together with the annexes to the report. On 7 October 2010, the Queen appointed Mr Mark Rutte, party leader of the VVD, as *formateur*. As *formateur*, he was instructed to form a new Cabinet with Ministers and State Secretaries of the VVD and the CDA. On 14 October 2010, *formateur* Rutte submitted his report to the Queen. That same day, the Rutte Cabinet was sworn in.<sup>11</sup> This meant that – for the first time in Dutch parliamentary history – a minority Cabinet was sworn in. The PVV did not supply any Ministers or State Secretaries.

This was the second time – since the extra-parliamentary Den Uyl Cabinet (1973) – that a Cabinet was sworn in that could not count on unconditional support from the Lower House of Parliament. The VVD and the CDA in the Lower House support the coalition agreement. Part of the agreement – the parliamentary support agreement including themes of immigration, integration and asylum, security and improved care for the elderly – is supported by the PVV in the Lower House of Parliament (see also Chapter 3.3). The new Cabinet considers its major tasks to include sorting out public expenses and combating the consequences of the economic crisis, as well as reducing migration, increasing security, and reducing the size of the national government apparatus. The Cabinet's motto is: 'Freedom and Responsibility.'

The new Cabinet also decided to implement a number of institutional changes. The IND, for instance, has been incorporated into the Ministry of the Interior and Kingdom Relations, and comes under the substantive responsibility of the Minister for Immigration and Asylum. Naturalisation is, however, part of the portfolio of the Minister of the Interior and Kingdom Relations.<sup>12</sup>

### **New Political Designations within the Kingdom**

As explained in Section 2.1 above, since 10 October 2010 the Kingdom of the Netherlands consists of four countries: the Netherlands, Aruba, Curaçao, and Saint Martin. Bonaire, Saba, and Saint Eustatius, which formed the Netherlands Antilles together with Curaçao and Saint Martin until that date, currently belong to the Netherlands as 'special municipalities'.

These political renewals also have an influence on the implementation of aliens policy. In this context, an agreement among Curaçao, Saint Martin, and the Netherlands was published on 8 March 2010 regulating matters in the areas including admission, supervision and return, and the Netherlands Nationality Act.<sup>13</sup>

## **3.2 Main Policy and/or Legislative Debates**

In 2010 as well, many debates related to immigration, integration and asylum. Below, a brief description of several of the most significant social debates, to start with the rather fundamental debate in response to the coalition agreement and parliamentary support agreement discussed in the previous section. The debate concerned the feasibility of the intended strict measurements in the area of immigration, integration, and asylum.

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<sup>11</sup>[http://www.kabinetsformatie2010.nl/Eerdere\\_formaties/Kabinetsformatie\\_2010](http://www.kabinetsformatie2010.nl/Eerdere_formaties/Kabinetsformatie_2010).

<sup>12</sup> Source: press release placed at [www.ind.nl](http://www.ind.nl) on 20 October 2010, last update on 28 October 2010.

<sup>13</sup> An agreement among Curaçao, Saint Martin, and the Netherlands as referred to in Article 38(1) of the Charter for the Kingdom of the Netherlands regulating the cooperation among the countries in the area of the immigration process. Dutch Government Gazette No. 3443.

For the purpose of this report, it would be going too far to provide an overview of all debates held. Debates that will not be dealt with in this report, but which are worth mentioning are debates on the following issues: adoption of children from China and from earthquake-hit Haiti; the brief commotion about Roma in the Netherlands caused by the French expulsions of Roma to Rumania; double nationalities; fraudulent use of the Highly Skilled Migrants Scheme; the question whether the Dutch criteria for family reunification are too strict. Other debates concerned the financial costs of immigration to Dutch society; the amount of charges to be paid by Turkish immigrants; and the integration requirement for immigrants of Turkish nationality.

### **Coalition Agreement and Parliamentary Support Agreement**

As explained in the previous section, the coalition agreement and parliamentary support agreement of the current Cabinet advocates strict asylum and migration policy. This resulted in a number of critical reactions from civil society organisations including Amnesty International and the Foundation for Refugee Students UAE. As expressed in a letter of 22 October 2010 to the Lower House of Parliament, the Dutch Council for Refugees as well as very critical of the approach adopted by the Cabinet, which, according to the Dutch Council for Refugees, 'conveys a pervasive atmosphere of distrust, and is characterised by the exclusion of refugees, the setting of unreasonable requirements, and measures that deprive people of their rights.'<sup>14</sup> In addition, Cabinet plans led to extensive debates on the feasibility of the intended measures in the media and the research world. These debates took place, in particular, in connection with international agreements, such as the EU Directives and the European Convention for the Protection of Human Rights, that were said to be in conflict with the Dutch plans for a more restrictive policy. In his oration on the occasion of his appointment as Professor of Immigration Law at Leiden University on 3 September 2010, Prof. mr. Rodrigues, for instance, argued that the Dutch scope in immigration law is limited.<sup>15</sup> According to Rodrigues, the Netherlands no longer has the power to set the limit autonomously. He pointed to the fact that with the entry into force of the Lisbon Treaty on 1 December 2009, the provisions of the Charter of Fundamental Rights of the European Union<sup>16</sup> also became binding to the Netherlands. Human rights have thus become part of Community Law. According to him, the only way for the Netherlands to withdraw from these obligations arising from immigration law is by terminating its membership of the EU. Van Kalmthout, emeritus professor of aliens law, also proved sceptical in *Nederlands Dagblad* about the feasibility of the Cabinet plans.<sup>17</sup> According to him, amending the EU Directives is problematic, for this could only be realised if the Netherlands succeeded in getting the other EU Member States to go along with this plan. He is of the opinion that few other EU Member States will be inclined to amend legislation that has been implemented not so very long ago. As will be explained in section 3.3, the Cabinet has published a 'road map' setting out the efforts it will make at the European level with regard to the chapter on 'Immigration' as described in the coalition agreement. The purpose of this 'road map' is to find and create support within the European Union to make it possible to amend European legislation.

### **Criticism on Detention**

On 13 January 2010, the standing committee for the Ministry of Justice held general consultations with the State Secretary for Justice at the time about the application of detention.<sup>18</sup> All committee members emphasised that application of detention was an ultimate remedy, and in that context they requested increased attention to be given to alternatives for detention. The application of border detention was also given extensive consideration. Detention continued to draw much attention in 2010 outside parliament as well.

On 5 November 2010, Amnesty International presented its report *Vreemdelingendetentie: in strijd met de mensenrechten* (The Netherlands: Detention of Irregular Migrants and Asylum Seekers in Conflict with

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<sup>14</sup> Retrievable from [www.vluchtweb.nl](http://www.vluchtweb.nl).

<sup>15</sup> See <http://media.leidenuniv.nl/legacy/oratie-peter-rodrigues.pdf>.

<sup>16</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_nl.pdf](http://www.europarl.europa.eu/charter/pdf/text_nl.pdf).

<sup>17</sup> <http://www.nd.nl/artikelen/2010/oktober/01/-ideeen-over-immigratie-zijn-niet-realiseerbaar->.

<sup>18</sup> Report adopted on 5 March 2011: *Parliamentary Papers II 2008/09*, 19 637, no. 1331 (Report).

Human Rights).<sup>19</sup> The report is an update of the report *The Netherlands: The detention of Irregular Migrants and Asylum Seekers* that was published on 27 June 2008. Amnesty International concluded that, despite a few improvements, Dutch practices of detention had not materially improved since the publication of its report in 2008. According to Amnesty, the Dutch situation is still in conflict with international human rights. The director of the Dutch Section of Amnesty International stated that the most significant recommendations from 2008, such as the use of alternatives for detention, including the obligation to report periodically or the option of demanding a monetary deposit, had not been followed.

The Dutch Section of the International Commission of Jurists (NJCM) was also of the opinion that the Dutch situation concerning the application and enforcement of detention of aliens were inconsistent with international legislation and regulations.<sup>20</sup> According to NJCM, this applies, in particular, to the frequent use of detention, the limited use of alternatives for detention, the detention of vulnerable people – including in particular also minors – the long period of detention, the repeated detention of aliens, and the sober conditions in which aliens must serve their detention.

UNICEF and Defence for Children also expressed their criticism.<sup>21</sup> In their Annual Report on Children's Rights 2010 (*Jaarbericht Kinderrechten 2010*), these organisations reported that in 2009, three hundred unaccompanied minors had been deprived of their freedom in correctional institutions for young offenders. This is nearly a doubling compared to 2008. Unicef and Defence for Children stated that this is in conflict with various articles from the UN Children's Rights Convention. These concerns had also been expressed by the Committee on the Rights of the Child and the Council of Europe Commissioner of Human Rights.

Critical attention to detention was also received from the churches. In its research report *Humaniteit in vreemdelingenbewaring* (Humanity in the Detention of Illegal Migrants and Asylum Seekers) the ecclesiastical organisation Justitia et Pax concluded that elements of current detention are unacceptable. According to Justitia et Pax, people who are often not suspected or convicted of an offence may be detained for months, under conditions which are much more severe than in ordinary prisons.<sup>22</sup>

Despite all criticism, the policy pursued does have the support of the majority of votes in the Lower House of Parliament (in addition to the coalition parties at the time - PvdA, CDA, and CU – this policy was also supported by the VVD, PVV, and SGP.

### **Removals to Somalia and Iraq**

During the second half of 2010, removals and planned removals of Iraqi aliens and Somali asylum seekers – who had exhausted all legal remedies – to Iraq and Mogadishu, respectively, had resulted in critical reactions from, in particular, the Dutch Council for Refugees and the Dutch Association of Asylum Lawyers (VAJN).<sup>23</sup> This issue also resulted in many Parliamentary questions.

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[http://www.amnesty.nl/documenten/rapporten/rapport%20vreemdelingendetentie.pdf?bcsi\\_scan\\_B0A38A178AE5B708=0&bcsi\\_scan\\_filename=rapport%20vreemdelingendetentie.pdf](http://www.amnesty.nl/documenten/rapporten/rapport%20vreemdelingendetentie.pdf?bcsi_scan_B0A38A178AE5B708=0&bcsi_scan_filename=rapport%20vreemdelingendetentie.pdf).

<sup>20</sup> <http://www.njcm.nl/site/uploads/download/398>.

<sup>21</sup> <http://www.defenceforchildren.nl/p/z/20/1185.jpg/Persbericht%20Jaarbericht%20Kinderrechten%202010/lgnl>.

<sup>22</sup> <http://www.justitiaetpax.nl/userfiles/file/Humaniteit%20in%20vreemdelingenbewaring.pdf>.

<sup>23</sup> See, for instance, an article on this subject in NRC Handelsblad of 9 July 2010:

[http://vorige.nrc.nl/binnenland/article2578848.ece/Justitie\\_begint\\_met\\_uitzetting\\_Somaliers](http://vorige.nrc.nl/binnenland/article2578848.ece/Justitie_begint_met_uitzetting_Somaliers).

### **Emergency Reception of Illegal Children**

By decision of 20 October 2009, the European Committee of Social Rights (ECSR) stated that the Netherlands was violating the European Social Charter by turning families who were seeking asylum, but who had exhausted all legal remedies, out into the street.<sup>24</sup> The European Committee of Social Rights (ECSR) is a committee of experts in the area of social issues, which – in this case – had handled a complaint from Defence for Children International against the Netherlands. This decision, which was published on 28 February 2010, resulted in a series of Parliamentary questions and social debates.

The Minister of Justice at the time adopted the position that the decision of the ECSR was legally not binding.<sup>25</sup> Minors constitute a vulnerable group, and illegal stay must be prevented as much as possible. But the government cannot assume unlimited responsibility for the reception of asylum seekers who have exhausted all legal remedies and who do not comply with the obligation to leave the Netherlands, 'also not if children are involved'.

Defence for Children was surprised by the fact that the Dutch government proved to be so indifferent to the violations of human rights that had been established. In a press release of 26 March 2010, Defence for Children stated that the ECSR had, however, not considered the fact of whether or not the parents had cooperated in their return or what the nature of the procedures followed by the children had been. 'It is simply about the protection of children.'

After the Council of Europe had subsequently also demanded that the Netherlands prevent children from being turned out into the street, the Minister of Justice decided, in response to an interlocutory decision of the Hague Court of Appeal of 27 July 2010 in the matter of the reception of an Angolan female asylum seeker and her minor children, that, for now, no termination would take place regarding the reception of rejected asylum-seeking families with minor children who were staying in reception centres and in respect of whom the departure from the Netherlands could not be enforced immediately. He also stated that accommodation would continue to be provided to such families with children who were preparing for departure in the Freedom-Restricting Location.<sup>26</sup> In its interlocutory decision of 27 July 2010, the Court of Appeal requested a solution which would at least provide reception to the children of the family.

In such cases, the Child Protection Board should investigate whether it was possible to dismiss the parent from parental authority in these circumstances. According to the Minister, placing a child under supervision could be in the interests of the children and society.

## **3.3 Broader Developments in Asylum and Migration**

In 2010, a number of significant developments took place both in the area of asylum and in the area of migration. On 1 July 2010, for instance, the improved Asylum Procedure entered into force. The most important changes resulting from this new procedure will be discussed in Chapter 7 and have been set out in Annex 1 to this report.

On 5 July 2010, the Bill on Modern Migration Policy introduced by the Minister of Justice in office at that time was adopted by Parliament.<sup>27</sup> Modern Migration Policy relates, in particular, to legal purposes of stay, such as work, study, and family reunification. The new Act was expected to enter into force on 1 January 2011. This date was not achieved. The reason for this was the introduction of a new computer system at the IND, which was delayed. This new computer system is a prerequisite for the implementation of the Modern Migration Policy. At the moment of drafting this report, a new date for the entry into force of the Act was not yet known.<sup>28</sup>

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<sup>24</sup> <http://www.unhcr.org/refworld/category,LEGAL,COEECSR,,4b9e37ea2,0.html>.

<sup>25</sup> Appendix to the Proceedings II 2009/10, no. 2035.

<sup>26</sup> Appendix to the Proceedings II 2009/10, no. 3037.

<sup>27</sup> See the Dutch Bulletin of Acts and Decrees 2010, no. 290.

<sup>28</sup> *Parliamentary Papers II 2010/11*, 30,573, no. 57 (Letter).

Until the date of entry into force, the preparations for the Modern Migration Policy continue as planned. The trial projects, or 'laboratories', which have been set up to gain knowledge of and experience with the Modern Migration Policy, will be continued and, where possible, expanded (see Chapter 4).

The formation of the coalition agreement and the parliamentary support agreement may not be left out of the discussion, of course. The agreements of the new Rutte Cabinet, which describe the policies to be pursued in broad outline, will be discussed below.

### **Coalition Agreement and Parliamentary Support Agreement**

The coalition agreement of the VVD and the CDA titled 'Freedom and Responsibility' states that - in the light of current social problems - immigration needs to be urgently restructured, controlled and reduced. Achieving this is one of the government's main policy objectives.

In implementing this policy the government will also introduce initiatives to amend EU directives and possibly, if there prove to be no alternatives for important measures and in consultation with other member states, to amend treaties and conventions. Implementation of the whole package of measures on asylum and migration will result in a very substantial fall in the influx of immigrants.

The Parliamentary support agreement among VVD, CDA, and PVV includes agreements on the implementation of budget cuts, and agreements on immigration, integration and asylum, security and improved care for the elderly, in respect of which it is clear that PVV's willingness to support the budget cuts is linked to the nature of the agreements to be made on immigration, integration and asylum, public safety, and care for the elderly.<sup>29</sup> The sections below contain a summary of the most important intentions in the area of asylum, immigration, and integration.

#### *Asylum*

In its coalition agreement and Parliamentary support agreement, the Cabinet expressed its preference for the reception of asylum seekers to take place in their country or region of origin. Furthermore, the Cabinet strives for an effective implementation of the Dublin Convention, the Dublin Regulation and the associated regulations, which require that applications for asylum are dealt with by the member state responsible for them. The policy of protection for certain categories will be discontinued, including the legislation underpinning such policy. Family members joining asylum seekers later will no longer automatically receive asylum status, but will fall under the regular policy for family migration, meaning that they will not have to meet any requirements for income or integration abroad.

In the case of unaccompanied minors, every effort will be made to effect their return, under the condition that reception is available for them locally. It is therefore important that funds from the development budget are used to invest in extra local reception facilities, including orphanages.

#### *Family migration*

The Cabinet intends to impose stricter requirements on family formation and family reunification, including a level of educational qualification that guarantees successful integration. To this end, the government will also make efforts to have the European Family Reunification Directive modified. The Cabinet proposals include an increase in the age requirement for partners to 24 and an increase in the income requirement to at least 120% of the minimum wage.

#### *Labour migration*

The Cabinet will investigate whether and to what extent it is possible and desirable to tighten up policy on labour migration. The government will ensure that these measures do not obstruct the development of the knowledge economy. The Highly Skilled Migrant Scheme is of great importance, but the government will investigate whether it is being abused. If necessary, further educational requirements may be imposed.

#### *Immigration in general*

The Cabinet will take measures to limit the admission of immigrants without prospects, promote integration and combat fraud and abuse, including tightening up residence permit requirements,

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<sup>29</sup> <http://www.government.nl/Government>.

intensifying return policy and tackling illegality. The Cabinet intends to make illegality a criminal offence.

#### *Integration*

The Cabinet emphasises that qualifications are the key to successful participation and integration. The Cabinet therefore considers it important to impose stricter language and educational requirements on those who wish to be admitted to and settle in our country. Migrants and asylum seekers are themselves responsible for their integration into Dutch society. For those who do not have sufficient resources of their own, the government will introduce a system of loans, which will have to be repaid. The basic principle for the government is that failure to pass the civic integration examination, unless there are exceptional circumstances, will result in the participant's temporary regular residence permit being revoked. The government will abolish the diversity/affirmative action policy on the basis of gender and ethnic origin.

#### **'Road Map' for the Cabinet's efforts for European Support for Migration Policy 30**

By letter of 22 December 2010, the Minister for Immigration and Asylum Policy announced the 'Road Map' setting out the efforts the Cabinet will make at the European level with regard to the chapter on 'Immigration' as described in the coalition agreement. The Road Map covers the topics of legal migration, asylum, illegal migration & return, and integration. The last topic falls under the policy area of the Minister of the Interior and Kingdom Relations, on whose behalf this letter had been sent as well. The Road Map deals exclusively with topics of the coalition agreement that require efforts at the European level.

Various measures advocated by this Cabinet to control undesired migration and to promote the resulting integration in the Netherlands affect the European and international context to which the Netherlands is bound. The Minister pointed out that it is essential for the Netherlands to find and create support within the European Union to make it possible to amend European legislation. The Road Map provides a description of the efforts and results of the Cabinet in the area of migration policy and the measures to be taken in the next period.

### 3.4 Institutional Developments

All relevant institutional developments in 2010 have been discussed above. Section 2.1, for instance, contains a description of the new political situation of the former Netherlands Antilles as of 10 October 2010, and Section 3.1 provides an overview of the reorganisation of the Ministries and the taking office of a Minister for Immigration and Asylum Policy.

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<sup>30</sup>*Parliamentary Papers II 2010/11*, 30,573, no. 61 (Letter).





## 4 Legal Immigration and Integration

This chapter describes the most significant developments in the area of economic migration, family reunification, and other legal migration. Other developments that will be discussed are integration, citizenship, and naturalisation. The chapter will, however, first describe a number of general topics that are related to legal migration.

### **Modern Migration Policy**

On 16 February 2010, the Lower House of Parliament adopted the Bill on Modern Migration Policy. The Senate subsequently adopted the Bill on Modern Migration Policy proposed by the former Minister of Justice, Hirsch Ballin, on Monday 5 July 2010. The Modern Migration Policy relates, in particular, to legal purposes of stay, such as work, study, and family reunification.

In the future, sponsors and foreign nationals will be able to use the Admission and Residence Procedure (TEV). They will then no longer have to submit two separate applications – one for a regular provisional residence permit (a D-category Schengen visa) and one for a residence permit. After the regular provisional residence permit has been issued, the IND will grant the residence permit *ex officio*.

A sponsor procedure will be implemented for aliens who are not obliged to apply for a regular provisional residence permit. The sponsor can submit an application for a residence permit on behalf of the alien while the person concerned is still abroad

In the Modern Migration Policy sponsors will be given a more important role in migration policy. The sponsor is the person or organisation (for example a company or educational institution) with an interest in the migration of an alien. Sponsors may submit residency applications on behalf of the alien. They can also lodge objections and appeals.

Legal entities and enterprises can have themselves authorised. Authorised sponsors will receive specific benefits. In some cases (educational institutions, au pair agencies, employers of highly skilled migrants), authorisation is obligatory. Sponsors who bring family members to the Netherlands cannot be authorised. They are natural persons, and that makes authorisation impossible. All sponsors have legal obligations. The IND will have more possibilities to act against sponsors and aliens who do not fulfil their legal obligations.

According to the Cabinet, the Netherlands will become, thanks to this Act, more attractive for those migrants that are badly needed to strengthen the economy, culture and science. The point of departure of the Modern Migration Policy is selectivity. This means that the policy is inviting to migrants for whom there is an economic need, and restrictive for others. As a result of this the Netherlands must become more attractive as a place of business for international companies and highly skilled migrants, which can contribute to the strengthening of the Dutch economy.

One of the purposes of the new Act is a simplification of the system of regular residence permits. In addition, it is supposed to result in more efficient procedures. According to the Cabinet, the simplification of the system of residence permits and more efficient residence permit procedures will result in more effective enforcement, such as in the combating of fraud in cases of family migration. The Act is furthermore meant to result in a substantial reduction in administrative burden for companies and citizens.<sup>31</sup>

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<sup>31</sup> Source: Press release placed at [www.ind.nl](http://www.ind.nl) on 20 October 2010, last update on 7 July 2010.

The new Act was expected to enter into force on 1 January 2011.<sup>32</sup> On 12 November 2010, however, the Minister for Immigration and Asylum Policy, Gerd Leers, informed the Lower House of Parliament by letter that the Modern Migration Policy Act could not enter into force on 1 January 2011. The reason for this is the fact that the introduction of a new computer system of the Immigration and Naturalisation Service (IND) has been delayed. This new computer system is a precondition for the implementation of the Modern Migration Policy Act. At the moment of drafting this report, a new date for the entry into force of the Act was not yet known; this depends on the progress in the implementation of the new computer system.

Until the date of entry into force, the preparations for the Modern Migration Policy Act continue as planned. The trial projects, called 'laboratories', which have been set up to gain knowledge of and experience with the Modern Migration Policy Act, will be continued and, where possible, expanded.<sup>33</sup>

### **Reduced Regulatory Burden for Aliens**

In addition to the intended implementation of the Modern Migration Policy Act, the former Minister of Justice requested the Advisory Commission on Aliens Affairs (ACVZ) by letter of 30 September 2009 to make recommendations on the possibilities to reduce the regulatory burden for aliens and their sponsors.<sup>34</sup> Legal aliens are, for instance, migrants who want to come to the Netherlands for the purpose of work, study or family reunification. It does not, therefore, concern asylum seekers in this context. Sponsors may, for instance, be employers, universities, and citizens who want to have a foreign partner migrate to the Netherlands.

By its advisory report of 18 May 2010, '*Fewer Regulations for Migrants*', the ACVZ complied with this request.<sup>35</sup> The survey conducted by the advisory commission revealed that the aliens really experienced the regulations on admission and employment of migrants as unnecessarily burdensome and complex. Among the respondents who stated to experience this regulatory burden were universities and companies that want highly skilled migrants to migrate to the Netherlands.

According to the ACVZ, an important cause of the regulatory burden is caused by the different levels of regulations in aliens law. The ACVZ consequently recommended to reduce the number of levels by taking out one level, and to incorporate the most significant rights and conditions for admission and residence into the Aliens Act 2000 (*Vreemdelingenwet 2000*). This will improve the accessibility of the regulations.

The ACVZ also concluded that the manner in which the different implementing organisations apply and implement the regulations are a source of unnecessary regulatory burden. The advice commission recommended setting up migration desks to serve as 'front offices' for the institutions with which aliens (and their sponsors) have contact in the Netherlands. This will result in improved co-operation among the institutions concerned. It will also be clearer to the aliens and sponsors which actions they have to take.

The implementation of the Modern Migration Policy is used to simplify the wording of the Aliens Act Implementation Guidelines 2000. The policy rules will be formulated recognizably and clearly within the scope offered by the general binding regulations. It is expected that with the new wording of the Aliens Act Implementation Guidelines 2010 a reduction of excessive regulation and an improvement of the service will be achieved. By drafting the policy rules in the Aliens Act Implementation Guidelines 2000 in this manner, the recommendations of the ACVZ are taken account of<sup>36</sup>.

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<sup>32</sup> See for instance the news report on this subject of the Central Government:

<http://www.rijksoverheid.nl/nieuws/2010/07/06/selectief-migratiebeleid-maakt-nederland-aantrekkelijker-voor-kennismigranten.html> (Selective migration policy makes the Netherlands more attractive for highly skilled migrants)

<sup>33</sup> Source: Press release placed at [www.ind.nl](http://www.ind.nl) on 15 November 2010, last update on 16 November 2010.

<sup>34</sup> Included as Annex in ACVZ (2010a), p. 43 et seq.

<sup>35</sup> ACVZ 2010a. Advisory report and press release may be found at [www.acvz.org](http://www.acvz.org).

<sup>36</sup> See *Parliamentary Papers I 2009/10*, 32 052, F

### **Influx of Legal Aliens<sup>37</sup>**

The total number of applications for regular residence permits amounted to approximately 24,540 in the first six months of 2010. Compared to the same period in 2009 (approximately 25,900 applications for residence permits), the number decreased by 6% in the first six months of 2010. Compared to the preceding year, a similar decrease could also be seen in 2009. This decrease mainly related to the number of applications that was submitted for the purpose of stay of 'Family Formation / Family Reunification' and 'Employment'. Despite the decrease of 4% in the number of applications for 'Family Formation / Family Reunification' in the first six months of 2010, this category of applications still represented the largest proportion of applications for regular residence permits in this period, namely 42%. It concerned more than 10,190 applications. Compared to the same period in 2009, the number of applications submitted for the purpose of stay as 'Highly Skilled Migrant' increased by 7%.

Compared to the same period in 2009, the number of applications for extensions of regular residence permits to change the purpose of stay (restriction) or for permanent regular residence permit decreased in the first six months of 2010 by 29%. In the first six months of 2009, this number was still approximately 51,720 compared to 36,500 in the first six months of 2010. As far as the decrease in the number of permanent regular residence permits is concerned, it is likely that there is a connection with the increase in the fees as of 1 November 2009 and the implementation of the integration requirement as of 1 January 2010.

The number of applications for regular provisional residence permits amounted to approximately 24,200 in the first six months of 2010. Compared to the first six months of 2009, when approximately 21,960 applications for regular provisional residence permits had been submitted, the total number of regular provisional residence permits increased by 10% in this reporting period. Just as it was in 2009 when compared to 2008, the increase may be attributed to the number of applications submitted for the purpose of stay of 'Family Formation / Family Reunification' or stay as a 'Foster Child'. This increase relates, in particular, to applications for residence permits for family members and foster children of asylum seekers with Somali nationalities who wish to join them later on.<sup>38</sup> Once the regular provisional residence permits have been granted, these family members who have joined the asylum seekers later on often submit applications for asylum after arrival in the Netherlands.

In the first six months of 2010, the number of applications for regular provisional residence permits submitted for the purpose of stay of 'Employment' decreased again, in comparison to the same period in the preceding year. This is a continuation of the decrease that started in the first six months of 2008. The fact that the demand for labour migrants has declined seems to be connected with the economic crisis and the general declining demand for labour and increasing unemployment, and with the availability of labour from the Central and East European (CEE) countries which joined the EU in 2004 and 2007.

A comparison between the first six months of 2010 and those of 2009 revealed that the number of applications for regular provisional residence permits for the purpose of stay of 'Study' remained nearly the same, and that the number of applications for the purpose of stay as 'Highly Skilled Migrant' increased by 4%. This increase could be related to the fact that the economy was picking up, as a result of which the demand for, in particular, highly skilled migrants also increased.

## **4.1 Economic Migration**

### **4.1.1 Specific context**

As indicated in the introduction to Chapter 4, the decrease in the number of applications for regular provisional residence permits for employment-related purposes of stay continued since the beginning of 2008, with the exception of highly skilled migrants. Contrary to this, the number of applications for regular provisional residence permits for the purpose of stay as 'Highly Skilled Migrant' increased.

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<sup>37</sup> Source: Ministry of Justice (2010), p. 30 et seq.

<sup>38</sup> Ministry of Justice (2010), p. 30.

## 4.1.2 Developments within the national perspective

In the area of economic migration, developments within the national perspective cannot be dissociated from developments from the EU perspective.

## 4.1.3 Developments from the EU perspective

See below Section 1 of Annex 1, which presents a review of a large number of developments. The developments include the consequences of the delay in the implementation of the Modern Migration Policy Act, the preparations for the implementation of policy concerning the European Blue Card (Directive 2009/51/EC), the various Expat Centres, the Circular Migration Pilot, and the manner in which skills recognition and labour matching are part of Dutch labour policy.

# 4.2 Family Reunification

## 4.2.1 Specific context

Traditionally, family reunification has been an important reason for immigrants to migrate to the Netherlands.

During the last few years, the policy on family reunification has been tightened with respect to several elements of the policy. The Judgment of the European Court of Justice of 4 March 2010 in the Chakroun case implied, however, that the Netherlands had to reverse several of the stricter demands regarding the income requirements.

## 4.2.2 Developments within the national perspective

### **Chakroun**

By judgment of 4 March 2010 (Chakroun case), the European Court of Justice considered the distinction drawn by the Netherlands between family formation (in which case the family relationship arose when principal person had his or her main residence in the Netherlands) and family reunification (in which case the family relationship arose outside the Netherlands when the principal person as well did not have his or her main residence in the Netherlands) to be in conflict with Directive 2003/86EC (Family Reunification Directive). This had consequences for the income requirement and the age requirement upon entry as a family member (see also Annex I).

## 4.2.3 Developments from the EU perspective

See below, Section 2 of Annex 1, which presents a discussion of, among other things, the Civic Integration Abroad Act (*Wet inburgering buitenland*).

# 4.3 Other Legal Migration

## 4.3.1 Specific context

In addition to the policy on economic migration and the policy on family reunification, Dutch policy on legal migration includes several other components, such as admission for a stay on religious or medical grounds or for study purposes. A number of conditions for admission essentially apply to all forms of legal residence. This section gives a description of the developments in 2010 regarding the purposes of stay that do not come under economic migration or family reunification.

### 4.3.2 Developments within the national perspective

#### **Au Pair Laboratory**

The trial project called 'Au Pair Laboratory' was launched in July 2008, within the context of the preparation for the Modern Migration Policy. The Au Pair Laboratory is a joint venture between the IND and au pair agencies.

On the one hand the Laboratory aims to gain insight into the au pair sector and on the other, to introduce the au pair sector to the principles of the Modern Migration Policy in phases (including the duty to provide information and the duty of care). If an au pair agency is admitted to the Au Pair Laboratory, it commits itself to these principles. In addition the au pair agency, just like the host family and the au pair, must observe aliens legislation and regulations, the proceedings under immigration law, and if applicable, the adherence to the arrangements made in the Au Pair Laboratory and provisions from the covenant tailored to the Modern Migration Policy.

The laboratory has been divided into three phases in which, on the basis of the cooperating relationship developed with the au pair agencies, new developments are implemented all the time. The first phase is aimed at mutual introduction. In this phase the cooperation does not have an independent legal meaning yet.

The theme of the second phase, the covenant phase, is to strengthen the cooperation and confidence built up in the first phase. In this phase, the agencies will also gain experience with several elements of the Modern Migration Policy, such as the Admission and Residence Procedure (TEV). Au pair agencies will be admitted to the second phase after concluding a covenant with the IND. The third phase will start when the Modern Migration Act becomes effective.

#### **Abolition of the restriction 'Stay in the case of a medical emergency'**

On 7 October 2009, the former State Secretary for Justice informed the President of the Lower House of Parliament in a letter of his intention to simplify the diversity in types of admission in connection with medical conditions.<sup>39</sup> In this context, the restriction 'Stay in the case of a medical emergency' was abolished as of 1 July 2010. Aliens who fail to meet all conditions for a residence permit on the restriction 'medical treatment' (e.g. because they do not have a valid regular provisional residence permit or because financing the treatment has not been arranged adequately)<sup>40</sup> but who cannot return to their country of origin in connection with a medical emergency, will not be granted a residence permit from now on. From now on they will be granted a postponement of departure for the duration of the obstacle to travel for at most one year, pursuant to Section 64 of the Aliens Act. If it becomes apparent after that year that the medical emergency still exists, a residence permit may be granted for the purpose of medical treatment with exemption from a number of the applicable conditions (Regular Provisional Residence Permit requirement and the conditions of sound financing of the medical treatment and the independent availability of sufficient and permanent means of subsistence).<sup>41</sup>

#### **Pilot on 'Stay on religious grounds'**

In anticipation of the implementation of the Modern Migration Policy Act, a pilot project on the 'stay on religious grounds' has been set up, to work up to the future situation in close cooperation with UWV WERKbedrijf. The pilot provides the opportunity to gain further experience with religious and ideological organisations and their role as sponsors as envisaged under the Modern Migration Policy Act. In addition, the pilot provides the opportunity to decide on the concrete details of the implementation rules of the Aliens Employment Act (*Wet Arbeid Vreemdelingen*) with regard to people who apply for

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<sup>39</sup> *Parliamentary Papers II 2009/10*, 19 637, no. 1305 (Letter).

<sup>40</sup> For a brief explanation of the conditions for a residence permit in connection with a medical treatment or the 'medical emergency' that has been abolished by now, see INDIAC - NL EMN NCP (2010a), p. in the period 2005-2009.

<sup>41</sup> By WBV 2010/10, published in the Dutch Government Gazette on 30 June 2010, policy items including applications for temporary residence permits on the restriction of 'medical treatment' were amended and the current application of Section 64 of the Aliens Act was expanded. The subsections A4/7, B8, B11, and B16 in the WBV have been amended for this purpose.

admission for religious purposes. In this context, it concerns, in particular, finding an answer to the question regarding in which cases verification of payment of at least the statutory minimum wage for applications for work permits may be dispensed with, and in which cases the compulsory vacancy listing and the labour market test may be dispensed with. On the basis of the experiences gained in the pilot, it will be possible to decide on the concrete details of the conditions for religious sponsors. On 9 April 2010, the decree on the pilot entered into force.<sup>42</sup>

### **Residence permit after loss of Dutch citizenship**

New in the Netherlands Nationality Act is the provision that persons who have held a residence permit and have had their main residence in the Kingdom since the age of 4 years old and who wish to opt for Dutch citizenship on the basis of Section 6(1) opening words and under (e) of said Act, have been obliged since 1 October 2010 to renounce their original nationality after the option confirmation (see also Chapter 4.5.2). Out of this group of persons choosing for this option, Dutch citizenship may also be withdrawn again if a person has failed to make every effort to renounce his/her original nationality after acquisition of Dutch citizenship. As this group does not differ from the group of persons who have been granted Dutch citizenship through naturalisation, except for the manner in which Dutch citizenship is acquired, it is only reasonable that they as well will be granted permanent or temporary residence permits on flexible conditions. For many years, after all, the Aliens Act Implementation Guidelines 2000 have included a policy for the category of people who had opted for naturalisation but who had lost Dutch citizenship due to the same reason (the failure to renounce the original nationality)<sup>43</sup> (WBV 2010/14). This renunciation requirement applies to optants who have completed an option statement before or after 1 October 2010.

It has furthermore been clarified that the permanent residence permit is not only reserved for former Dutch citizens who had lost their Dutch citizenships by withdrawal, but also for those who did not await withdrawal but renounced Dutch citizenship themselves because it would otherwise be withdrawn.<sup>44</sup>

### **Honour-related violence**

With regard to aliens who threaten to become the victim of honour-related violence and who do not qualify (or who no longer qualify) for a residence permit under current policy, it was decided to create a policy framework for admission. The policy framework gives a definition of honour-related violence and sets the conditions on which the residence permit may be granted. If the alien is migrating to the Netherlands to escape a threat of honour-related violence, the asylum procedure is the obvious procedure which will be assessed in the usual manner. If the alien is not confronted with a threat of honour-related violence in the Netherlands until after his or her entry into the Netherlands, the non-asylum procedure is the obvious procedure. Finally, for an alien to qualify for an extension of a residence permit in the context of this policy framework, the threat must not only be present in the Netherlands but also in the country of origin. In that case, it is after all likely that the person concerned cannot evade the threat in the Netherlands by settling in the country of origin. Now that victims of honour-related violence will be granted a residence permit under specific circumstances, it is likely that application for minor children staying with this parent will follow. It is fair to assume that these children will be granted a residence permit and that the validity of the child's residence permit will harmonised with the validity of the residence permit of the principal person. Until a new restriction is included in the Aliens Decree 2000 (*Vreemdelingenbesluit* 2000), the residence permit will be granted pursuant to Section 3.4(3) of the Aliens Decree 2000 'in conformity with the decision of the Minister'.<sup>45</sup>

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<sup>42</sup>Decree of the Minister of Justice of 9 April 2010, no. WBV 2010/7 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010, no. 5842.

<sup>43</sup>Decree of the Minister of Justice of 13 September 2010, no. WBV 2010/14 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010, no. 15141.

<sup>44</sup>Decree of the Minister of Justice of 13 September 2010, no. WBV 2010/14 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010 no. 15141.

<sup>45</sup>Decree of the State Secretary for Justice of 19 February 2010, no. 2010/2 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* no. 3114.

### 4.3.3 Developments from the EU perspective

See below, Section 3 of Annex I, which not only discusses the Dutch activities for EMN, IGC, and GDISC, but also the Dutch immigration portal [www.newtoHolland.nl](http://www.newtoHolland.nl).

## 4.4 Integration

### 4.4.1 Specific context

Persons from Turkish, Moroccan, Surinam, or Antillean origin have traditionally formed the largest non-Western population groups. But slowly the integration issue has expanded to other groups of immigrants, such as the more recent influx of refugees from, for instance, Afghanistan and Somalia, and labour migrants from Eastern Europe.<sup>46</sup>

### 4.4.2 Developments within the national perspective

#### **Linking integration and residence**

The link between the Civic Integration Act and permanent right of residence has taken effect<sup>47</sup> as of 1 January 2010. This means that the aliens who want to settle permanently in the Netherlands must prove with effect from 1 January 2010 that they meet the civic integration requirement or that they have been exempted from it

This applies to the aliens who are applying for a regular residence permit for continued residence (after three years of residence with a person with a non-temporary right of residence, for example 'residence with Dutch spouse') or who want to qualify for a permanent regular residence permit or asylum.

The rationale behind this link is that it may be expected from aliens who want to settle permanently in the Netherlands that they have sufficient knowledge of the Dutch language and Dutch society.

#### **Integration on the shop floor**

In 2010, employers were encouraged to organise integration for employees on the shop floor. The former Minister for Housing, Employment and Integration made a total amount of seven million euros available for this purpose. The scheme is part of the Delta Plan for Civic Integration (*Deltaplan Inburgering*). The Cabinet considers learning the Dutch language essential to be able to participate in society.

The temporary scheme is to encourage employers to increase proficiency of the Dutch language among employees. According to the Minister, this is advantageous to aspects including contacts with colleagues, but also to the employee, who will then have more chance of continuing to be employed, with perspectives for further career opportunities. The target group is employed in lines of business including the cleaning industry, agriculture and horticulture, and at painting businesses and production companies.

The subsidy is a contribution towards the costs of supporting activities performed by the employer to make integration possible. It is meant for employees who will follow an integration course, or for a provision to promote the language in combination with a senior secondary vocational education course. It may be used for equipping a class room on the shop floor, for the use or purchase of teaching computers, or for providing the employee the opportunity to learn the language during working hours. The contribution is 1,000 euros for each participant, with a maximum of 25,000 euros for each employer.

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<sup>46</sup> Statistics Netherlands (2010) *Annual Report on Integration 2010*. The Hague: Statistics Netherlands

<sup>47</sup> Decision of the State Secretary for Justice of 16 December 2009, no. 2009/30, amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2009, 20192.

In addition to the promotional scheme, the Ministry will link employers and municipalities *and* assist them in setting up language courses on the shop floor.<sup>48</sup>

#### 4.4.3 Developments from the EU perspective

See below, Section 4 of Annex I, where attention is given to, among other things, the importance of the civic integration examination with a view to participation of newcomers in Dutch society, the establishment of the House for Democracy and the Rule of Law, the different forms of information exchange about best practices in reception and integration, and the Dutch efforts to achieve its integration objectives through general policy.

### 4.5 Citizenship and Naturalisation

In this Section, attention is paid to the amendments to the Netherlands Nationality Act. The amendments relate to, among other things, a tightening of the rules regarding the renouncement of one's nationality in the country of origin. A person acquiring Dutch citizenship must, in principle, renounce his or her original nationality. This obligation to renounce one's nationality will also apply to second-generation migrants. The rules regarding the loss of nationality will be supplemented as well.

#### 4.5.1 Specific context

The Netherlands Nationality Act is a Kingdom Act that determines who is a Dutch citizen, on which conditions Dutch citizenship may be acquired, and how Dutch citizenship is lost.

#### 4.5.2 Developments within the national perspective

##### **Amendments to the Netherlands Nationality Act**

Several parts of the Netherlands Nationality Act have been amended.<sup>49</sup> As stated above, the rules regarding the renouncement of one's nationality in the country of origin will be tightened. The exception of the obligation to renounce the original nationality upon naturalisation for applicants who have had their main residence in the Netherlands, the Netherlands Antilles, or Aruba prior to coming of age for an uninterrupted period of five years has been cancelled. The obligation to renounce one's nationality consequently applies in full for this group of people for applications submitted on or after 1 October 2010.

Persons who have held residence permits and have had their main residence in the Netherlands since the age of 4 years old and who wish to opt for Dutch citizenship on the basis of Section 6(1) opening words and under (e) of the Netherlands Nationality Act, have been obliged to renounce their original nationality after the option confirmation since 1 October 2010.

The rules for acquiring Dutch citizenship by children born to a Dutch mother and a non-Dutch father before 1 January 1985 – the 'potential Dutch citizens' – have also been amended. This category may still acquire Dutch citizenship through the 'option procedure'.

The rules regarding the loss of nationality were supplemented as well. A subsection that aims to contribute towards combating international terrorism has been supplemented to Section 14. Pursuant to Section 14(2) of the Netherlands Nationality Act, the Minister of Security and Justice may decide to withdraw Dutch citizenship on the basis of crimes which are directed against the essential interests of the Kingdom and which have been committed after the implementation of the amendment. In principle,

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<sup>48</sup> Scheme of the Minister for Housing, Employment and Integration of 30 March 2010, no. BJZ2010008985, Administrative and Legal Affairs Department, containing the promotion of integration on the shop floor, Dutch *Government Gazette* 2010 no. 5470.

<sup>49</sup> Kingdom Act of 17 June 2010 amending the Netherlands Nationality Act with respect to multiple nationalities and other matters under national law. Dutch *Government Gazette* 2010, no. 242.



re-acquisition of Dutch nationality is not possible after the withdrawal decision, except in the case of very special circumstances (Section (3) of the Netherlands Nationality Act). The above-mentioned amendments entered into force on 1 October 2010.

The Dutch language was also implemented as the compulsory language of integration for applicants for naturalisation in Aruba, Curaçao, Saint-Martin and the public entities Bonaire, Saint Eustatius or Saba. This part of the Netherlands Nationality Act entered into force on 1 January 2011 (Dutch Government Gazette 2010, 292).

#### 4.5.3 Developments from the EU perspective

No particulars.



# 5 Illegal Immigration and Return

## 5.1 Illegal Immigration

### 5.1.1 Specific context

Aliens supervision and return policy are part of the aliens policy pursued by the government. The return of aliens is often the final stage of aliens supervision in the Netherlands.

### 5.1.2 Developments within the national perspective

#### **The report 'Young and Illegal in the Netherlands'**

On 5 October 2010, the Minister of Justice presented the report 'Young and Illegally in the Netherlands' (*Jong en Illegaal in Nederland*) to the Lower House of Parliament.<sup>50</sup> The report relates to the backgrounds and living conditions of unaccompanied minors (and former unaccompanied minors who have come of age by now) who have resided, or who have been residing, in the Netherlands illegally. The study was conducted by Erasmus University Rotterdam on the instruction of the Research and Documentation Centre (WODC) of the Ministry of Justice. The report revealed that the living conditions of these unaccompanied minors (and former unaccompanied minors) are alarming. As soon as unaccompanied minors (and former unaccompanied minors) end up in illegality, they are excluded from any facilities. This situation may cause a high level of dependency and with that an increased risk of exploitation, which is not conducive to a balanced development of the young adults concerned.

According to the Minister, the findings support the policy efforts to prevent illegal residence of unaccompanied minors (and former unaccompanied minors) where possible and to combat abuse of their vulnerable position.

The Minister furthermore stated that he will ensure that the relevant findings from this WODC report regarding the necessity of furthering permanent return will be incorporated into the further developments of existing projects for permanent return. Family members who can be traced may be involved in the preparations for the minor's return at an earlier stage. In the event that these minors return, they will in any case receive guidance in their reintegration until adulthood. The Minister furthermore stated that the projects will also aim at providing information to local communities to prevent prospectless young people from travelling to Europe, whether or not with the support of the family.

#### **Making illegality an offence**

The Rutte Cabinet intends to make illegality an offence, but providing assistance to illegal aliens will not be prohibited. A majority in the Lower House of Parliament is against the prosecution of, for instance, churches that provide assistance to asylum seekers who have exhausted all legal remedies. This became evident during a debate with the Minister for Immigration and Asylum Policy on 30 November 2010. The opposition expressed its concerns that churches, hospitals, and other organisations that provide accommodation or medical assistance to illegal aliens would also be punishable.<sup>51</sup>

#### **Prevention of abuse and fraud in admission procedures**

By letter of 7 July 2010, the former Minister of Justice informed the Lower House of Parliament of the nature and scope of fraud and abuse in admission procedures, including false reports of trafficking in human beings, persons pretending to be unaccompanied minors, asylum applications without identification documents, the mutilation of finger tips to prevent identification, marriages of convenience, and the Europe Route.<sup>52</sup>

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<sup>50</sup> *Parliamentary Papers II 2010/11*, 27 062, no. 66 (Letter).

<sup>51</sup> *Proceedings II 2010/2011*, no. 28, pp. 28-56, no. 29, pp. 19-38.

<sup>52</sup> *Parliamentary Papers II 2009/10*, 19 637, no. 135 (Letter).

The Minister pointed out that – in the past few years – much attention had been paid to combating fraud and abuse and the enforcement of the rules, both in drafting new policy (the important enforcement component of the Bill on Modern Migration Policy) and in monitoring existing policy (e.g. the abolition of the policy of protection of a specific category in respect of Somalia, which decision had been dictated by the increase in fraud and abuse).

Combating fraud and abuse in the admission procedure is a major task of the IND, both at the stage of the registration of refugees and at the stage of granting residence permits.

At the IND application centres for asylum seekers, the IND investigates the credibility of the asylum seeker's story about his identity, nationality, and escape route. Testing for abuse is a regular part of testing the credibility of the story. It is difficult to indicate the precise scope of abuse in asylum applications, as an application is often rejected on multiple grounds and the IND does not register each ground for refusal separately. It is clear that a large part of the applications is rejected (more than 50%), and that abuse is among the grounds resulting in refusal.

With regard to non-asylum applications for residence permits, enforcement is also a major duty of the IND. The prevention of fraud and careful application of the law is of great importance in this regard. The IND aims at systematic enforcement (e.g. by means of processing and personal profiles).

Abuse and improper use must not only be prevented during the application procedure, but also during the alien's stay in the Netherlands. In the event of abuse, it may be decided to revoke a residence permit, to refuse to extend a residence permit, or to refuse naturalisation. Finally, a third component should be part of this system, namely preventive enforcement aimed at aliens even before they submit their applications. This may be realised, for instance, by announcing that identities will be checked. One of the purposes of such a measure is the prevention of fraud.

The IND not only checks whether a case concerns fraud, identity fraud or otherwise, after an application for the issuance, expansion or change of a residence permit has been received, but also checks these possibilities if the IND has received a recommendation to terminate a residence permit on the basis of the Aliens in the Criminal Justice System Protocol (*Vreemdelingen in de Strafrechtsketen*, VRIS) or to impose an exclusion order. In order to improve the VRIS Protocol, the VRIS Task Force was established on 26 January 2010.

The IND is furthermore engaged in digitalising the reception of information. IND's new information system – INDiGO – will be working with enforcement profiles as an element of the compliance monitoring. Compliance monitoring implies that after issuance of the residence permit, the IND may check actively whether the requirements for a residence permit are still being complied with, for instance by retrieving data on public order from the Criminal Records Office. The IND may also take action in response to update notifications – passive, unrequested or otherwise – sent to the IND by cooperating organisations (such as changes in address or family composition). In this way, it is possible to respond quickly and adequately to signals that may be relevant to the right of residence.

### **Recommendations from the Advisory Commission on Aliens Affairs about identity and documentation fraud**

By letter of 11 September 2009, the former State Secretary of Justice requested the Advisory Commission on Aliens Affairs (ACVZ) to make recommendations on the possibilities to combat identity and document fraud in the immigration process.<sup>53</sup>

The ACVZ presented its advisory report 'The Tip of the Iceberg?' (*Het topje van de ijsberg?*) on 28 April 2010.<sup>54</sup>

The report describes the results of a study conducted by the ACVZ into identity and document fraud among aliens, and the measures which have been taken to combat fraud. The Commission established that a number of bottlenecks were frustrating the actions against fraud. The largest problem was that

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<sup>53</sup> Included as Annex in ACVZ (2010c). Retrievable from [www.acvz.org](http://www.acvz.org).

<sup>54</sup> ACVZ (2010c). Retrievable from [www.acvz.org](http://www.acvz.org).

initiatives to combat fraud were not coordinated centrally. In order to improve the actions against fraud in the immigration process, the Commission recommended appointing one coordinator with a strong political mandate. This coordinator is to give direction to the actions against fraud envisaged by all organisations concerned, and is to be responsible for the manner in which identities will be recorded and used. In addition, the Netherlands should initiate efforts at the European level, and together with the countries of origin, to improve the population records in those countries.

By the aforementioned letter to the Lower House of Parliament of 7 July 2010, the former Minister of Justice conveyed the Cabinet's reaction to the recommendations of the ACVZ.<sup>55</sup> The Minister discussed, among other things, ACVZ's conclusion that the actions against identity and document fraud required central coordination. The Minister pointed to the fact that since May 2008, this coordination had been carried out in a joint project, named 'Strengthening the Organisations in the Identity Process in the Public Sector' (*Versterking Identiteitsketen Publieke Sector*, VIPS). The Minister promised to specify this recommendation in this context in more detail to achieve a more unambiguous coordination of the organisations in the identity process in the public sector.

### 5.1.3 Developments from the EU perspective

See below, Section 5 of Annex I. The Netherlands has contributed to a large variety of international projects. Aspects discussed in Section 5 of Annex I include the Dutch support to the i-Map project on illegal immigration around the Mediterranean Sea, tightened responsibility/sharply increased liability of transport providers in the event of bringing undocumented aliens or aliens who do not have the right documents into Dutch territory, the active network of Dutch liaison officers in the countries of origin and transit, and a capacity building project for the Liberian immigration service. Attention was also paid to stricter measures against exploitation of aliens who were staying in the Netherlands illegally, the tenth anniversary of the National Rapporteur on Trafficking in Human Beings, and the activities of the Expertise Centre for Human Trafficking and Human Smuggling (*Expertisecentrum Mensenhandel en Mensensmokkel*, EMM).

## 5.2 Return

### 5.2.1 Specific context

In the Netherlands, the Repatriation and Departure Service (DT&V) is responsible for the independent and forced departure of aliens who are not permitted to stay in the Netherlands. Independent departure is usually arranged with the assistance of the IOM.

The Repatriation and Departure Service (DT&V) focuses on two target groups:

- illegal aliens who have been apprehended within the framework of domestic (mobile) aliens supervision and aliens to whom entry is denied within the framework of the border control.
- asylum seekers who have exhausted all legal means and must leave the country.

The DT&V applies a personal and multi-disciplinary approach to the departure procedure. The DT&V performs its task in cooperation with other cooperating organisations of the authorities that have a task in the departure procedure, namely: the IND, the Royal Netherlands Marechaussee, the Aliens Police, the Central Agency for the Reception of Asylum Seekers, the Custodial Institutions Agency and network partners such as the IOM.

An alien who is being denied entry to the Netherlands or who is not, or no longer, permitted to stay in the Netherlands may be placed in detention. This measure implies that the alien will be detained in a detention centre until his or her departure or removal is possible. The purpose of detention is that the alien will be available for departure. The use of detention is only permitted when this purpose cannot be achieved by means of less drastic remedies (the principle of 'ultimate remedy').

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<sup>55</sup> *Parliamentary Papers II 2009/10*, 19 637, no. 135 (Letter).

The total number of departures in the first six months of 2010 was approximately 11,020. Compared to the first six months of 2009 – with a total number of registered departures of approximately 11,350 – this is a decrease of 3%. Compared to the second six months of 2009, however, the total number of departures increased slightly.<sup>56</sup>

It is possible to distinguish between two forms of departure, namely demonstrable departure and independent departure without supervision. By letter to the Lower House of Parliament of 1 February 2011, the Minister for Immigration and Asylum Policy reported that – in 2010 – the proportion between demonstrable departure and independent departure without supervision was 54% to 46%, respectively.<sup>57</sup> In 2009, the proportion was 50% and 50%, and in 2008 it was 45% and 55%, respectively. There is consequently a gradual increase in the proportion of demonstrable departure.

## 5.2.2 Developments within the national perspective

### **Power to terminate detention**

On 22 January 2010, the power to terminate detention and to change the detention category was extended to officers of the Repatriation and Departure Service. It appeared to be desirable in practice that, in addition to officers of the Royal Netherlands Marechaussee or the Aliens Police, also officers of the Repatriation and Departure Service were given this power.<sup>58</sup>

The Minister also decided to increase the devices that may be used during the expulsion of aliens. On 29 April 2009, the Minister of Defence, also on behalf of the State Secretary for Justice, informed the Lower House of Parliament about the results of the research conducted by TNO (The Netherlands Organization for Applied Scientific Research) into an adequate reaction to yelling, spitting, and biting by aliens during their expulsion.<sup>59</sup> The Minister of Defence informed the Lower House of Parliament that following on from this research, the transparent facial screen would be taken into use in practice; initially in a pilot project and, if the results are positive, definitively.<sup>60</sup>

### **Annual Report of the Commission for Comprehensive Supervision of Repatriation**

The Commission for Comprehensive Supervision of Repatriation published (CITT) its Annual Report 2009 on 15 April 2010.<sup>61</sup> The CITT was formed to supervise the entire repatriation process.

By letter of 15 April 2010 to the Lower House of Parliament, the former Minister of Justice reacted on the recommendations in aforementioned report.<sup>62</sup> In this letter, the Minister also outlined the general developments in return policy in the last few years. The Minister stated that a number of bottlenecks had been 'tackled effectively'. The cooperation of various countries of origin had increased, because problems with countries of origin are dealt with interministerially. The Minister furthermore stated that the identification investigation had improved and that, since February 2008, placement in the freedom-restricting location was no longer limited to families with minor children. Finally, the possibilities to motivate aliens for voluntary departure had increased. The Minister agreed with the CITT that further European cooperation would have a positive effect on return policy. He followed CITT's recommendation to use the coordinated flights organised by the European agency Frontex more often. 'The Netherlands will consider each Frontex flight for participation possibilities.' CITT took the view that the number of laissez-passers had to increase. The Minister stated that this was exactly the point where the repatriation process is 'complex and stubborn'. He pointed to the fact that the approach to uncooperative countries had been raised 'to a more inter-ministerial level' during the last few years.

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<sup>56</sup> Ministry of Justice (2010), p. 58.

<sup>57</sup> *Parliamentary Papers II 2010/11* 19 637, no. 1395.

<sup>58</sup> Decree of the State Secretary for Justice of 30 December 2009, no. WBV 2009/32 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010 no. 723.

<sup>59</sup> *Parliamentary Papers II 2008/09*, 30176, no 22.

<sup>60</sup> Decree of the Minister of Justice of 1 September 2010, no. WBV 2010/15 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010 no. 15446.

<sup>61</sup> Retrievable from the website of the CITT: [www.commissieterugkeer.nl/](http://www.commissieterugkeer.nl/).

<sup>62</sup> *Parliamentary Papers II 2009/10*, 29344, no. 73.

The Minister gave a detailed explanation of the doubling in the number of cases in which expulsion had been frustrated by verbal or physical violence. In consultation with the CITT, the Minister of Defence decided to use the 'transparent facial screen', a protective device that would be tested during a pilot project this year (see also above). In addition, the Minister stated to examine whether the instrument of an exclusion order could be used to better effect.

#### **Repatriation and Departure Service (DT&V)**

As stated above, the Repatriation and Departure Service (DT&V) is responsible for the voluntary and forced repatriation of aliens who are not permitted to stay in the Netherlands.

In 2010, the DT&V invested in the following:

- Increased cooperation in the area of repatriation with countries of origin and EU countries, in particular for the purpose of obtaining travel documents or replacement documents for repatriation or forced repatriation, and increased practical cooperation at the EU level;
- Increased cooperation with the cooperating organisations concerned in order to work effectively together on the repatriation of aliens;
- Realisation of the maximum number of demonstrable repatriations in priority target groups, including aliens who pose a danger to national security, criminal aliens, aliens causing nuisance, aliens who are suspected of war crimes, and unaccompanied minors.
- Increased cooperation with local authorities and civil society organisations in the area of repatriation.<sup>63</sup>

#### **Tightening of public order policy**

The Cabinet was of the opinion that the policy on public order was insufficiently in keeping with the socially and politically widely supported desire for the facilitation of more effective action against aliens who demonstrate specific criminal behaviour, and in particular against habitual offenders and offenders of very serious offences.

A more detailed study of the effectiveness of the gliding scale conducted by the Institute for Public Expenditure Research prompted the Cabinet to tighten its policy. According to the gliding scale principle, there is a connection between the duration of the punishment imposed and the duration of legal residence in the Netherlands. The longer the alien has resided legally in the Netherlands, the more severe the sentence must be to be able to serve as grounds for terminating the status of legal residence.

Having regard to this, the Cabinet opted for a more selective application of its public order policy, which is aimed at increasing the possibilities to terminate the residence permits of aliens who have committed very serious offences or who may be considered habitual offenders.<sup>64</sup>

According to the Cabinet, a tightening of the public order policy will contribute to the multidisciplinary approach to these groups and it will promote increased cooperation among cooperating organisation in the criminal justice system and the immigration process.

### **5.2.3 Developments from the EU perspective**

See below, Section 6 of Annex I on issues including joint return flights, and various long-term projects to promote voluntary repatriation and to inform other Member States about these developments.

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<sup>63</sup> [www.dienstterugkeerenvertrek.nl/image](http://www.dienstterugkeerenvertrek.nl/image).

<sup>64</sup> Decree of the State Secretary for Justice of 18 June 2010, no. WBV 2010/7 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010, no. 11415.

## 5.3 Actions against Human Trafficking

### 5.3.1 Specific context

The combating of trafficking in human beings and the smuggling of migrants is a priority of the Dutch police services and criminal investigation departments.

#### **Expertise Centre for Human Trafficking and Human Smuggling**

In this context, the National Criminal Intelligence Service, the Social Intelligence and Investigation Service, the Royal Netherlands Marechaussee, and the IND have cooperated in the Expertise Centre for Human Trafficking and Human Smuggling since May 2005. In 2010, this expertise and information centre was expanded with the Aliens Police Support Service, which is part of the Aliens Police.

#### **National Rapporteur on Trafficking in Human Beings**

In 2010, the National Rapporteur on Trafficking in Human Beings celebrated the tenth anniversary of the Rapporteur as an independent monitoring mechanism of Dutch efforts to combat trafficking in human beings.<sup>65</sup> In total, the National Rapporteur on Trafficking in Human Beings made 200 recommendations in this period. Many of these recommendations were followed, some lost their relevance, and several recommendations have been repeated with some regularity.

#### **B9 Scheme**

The B9 Scheme (Chapter B9 of the Aliens Act Implementation Guidelines) enables foreign nationals who have been or who may possibly have been victims or witnesses of trafficking in human beings to reside legally in the Netherlands during the period of criminal investigation and prosecution, and to remain available for the police and the Public Prosecution Service in this way.

### 5.3.2 Developments within the national perspective

In the first six months of 2010, there were approximately 40 convictions in cases of trafficking in human beings and approximately 70 convictions in cases of smuggling of migrants.<sup>66</sup>

#### **Ex officio issuance of a residence permit**

As stated above in Section 3.3, a new asylum procedure has been effective since 1 July 2010. New in this procedure is also that a possibility has been created to immediately issue residence permits ex officio to asylum seekers who have reported the trafficking of human beings pending their asylum procedure in the event that the asylum application is refused. This measure should ensure improved streamlining of proceedings on the residence status arising from an asylum application on the one hand and reports of trafficking of human beings on the other hand. No amendments have been made to the conditions that must be complied with for the issuance of a residence permit.

#### **Victims of trafficking in human beings who reside in the Netherlands illegally**

On 2 December 2010, a policy framework was introduced for victims of domestic violence who are staying in the Netherlands illegally and for victims of trafficking in human beings who are staying in this country illegally, and who cannot or do not want to cooperate in the criminal proceedings because of threats or because of their psychological condition.<sup>67</sup> The policy framework for victims of honour-related violence was adjusted.

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<sup>65</sup> National Rapporteur on Trafficking in Human Beings (2010). *Trafficking in Human Beings – Ten Years of Independent Monitoring – Eighth report of the National Rapporteur*. To be retrieved from <http://english.bnrm.nl/reports/eighth/>.

<sup>66</sup> Ministry of Justice (2010), p. 46. These round figures are based on data made available by the Public Prosecution Service. These data do not, however, provide any information about the nationalities of the offenders, nor about the number of victims that were involved in these cases.

<sup>67</sup> Decree of the Minister for Immigration and Asylum Policy of 14 December 2010, no. WBV 2010/20 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010, 20701.



The purpose of the creation of possibilities to obtain a residence permit for those victims of honour-related violence, domestic violence, and trafficking in human beings who are staying in the Netherlands illegally, outside the existing B9 Scheme, is to provide protection in situations of acute violence and threats of violence, irrespective of the residence status of the person concerned. This starting point justifies the issuance of a residence permit, at least for the period that the threat of violence continues.

The three categories mentioned above affect the limited capacity of women's shelters. Shelter and the benefit payments involved are linked to the processing period of the initial application. For that reason it is important to decide quickly on the application without due care suffering from this. A clear framework for assessment is consequently a prerequisite. This policy entered into force on 1 January 2011.

### **The Wall**

In July 2010, the The Wall Programme was launched. This programme is aimed at fighting organised crime committed by Chinese, with a focus on trafficking in human beings/smuggling of migrants. The programme aims at a criminal, administrative and scientific approach to Chinese migration crime in the Netherlands (thus a multidisciplinary approach). The Wall is a cooperation programme of the Social Intelligence and Investigation Service, the Labour Inspection, the IND, the Royal Netherlands Marechaussee, the National Police Services Agency, the Tax and Customs Administration, and the Public Prosecution Service. On 6 July 2010, the parties entered into an agreement to this end.

### 5.3.3 Developments from the EU perspective

See below, Section 7 of Annex I, which provides information about a cooperative agreement with Nigeria for training the police, the immigration service, and an investigation service that is specifically charged with trafficking in human beings and human smuggling.



## 6 Border Control

### 6.1 Control and Surveillance at External Borders

#### 6.1.1 Specific context

Part of the developments in the area of control and surveillance at external borders occurred within the framework of the Management Renewal Programme, which was discussed in detail in the Annual Policy Report 2009.<sup>68</sup> The developments in this Programme in 2010 will be discussed below in the Sections 8 and 9 of Annex I on the fulfilment of the Dutch commitments under the Pact and the Stockholm Programme. These are also the most important developments in this area in 2010.

#### 6.1.2 Developments within the national perspective

See below, Section 8 of Annex I.

#### 6.1.3 Developments from the EU perspective

See below, Section 8 of Annex I on the developments in the Royal Netherlands Marechaussee and the use of modern technological devices for border control within the framework of the Management Renewal Programme.

### 6.2 Cooperation with Respect to Border Control

#### 6.2.1 Specific context

As referred to above in Subsection 6.1.1, part of the developments in the area of control and surveillance at external borders occurred within the framework of the Management Renewal Programme, which was discussed in detail in the Annual Policy Report 2009.<sup>69</sup> The developments in this Programme in 2010 will be discussed below in the Sections 8 and 9 of Annex I on the fulfilment of the Dutch commitments under the Pact and the Stockholm Programme. These are also the most important developments in this area in 2010.

#### 6.2.2 Developments within the national perspective

See below, Section 9 of Annex I.

#### 6.2.3 Developments from the EU perspective

See below, Section 9 of Annex I. The developments discussed include the reasons why the Netherlands has not yet issued any biometric visa, and Dutch solidarity with Member States that are confronted with a disproportionately large influx of migrants, for instance by the deployment of Dutch staff in Greece.

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<sup>68</sup> INDIAC – NL EMN NCP (2010), p. 18 et seq.

<sup>69</sup> INDIAC – NL EMN NCP (2010), p. 18 et seq.



# 7 Asylum

## 7.1 Specific Context

Compared to other EU countries, the Netherlands ranked seven in 2009 in relation to the number of asylum applications. The Dutch share in the total influx in the EU was 6%. In the first three months of 2010, the Netherlands ranked sixth with a share of 7%.<sup>70</sup>

## 7.2 Developments within the National Perspective

In 2010, 13,333 asylum applications were registered in the Netherlands. Compared to 2009 (14,905), this means a decrease of 11%. Just like in 2009, the most important countries of origin for initial asylum applications were Somalia (3,372 applications), Iraq (1,383 applications), and Afghanistan (1,364 applications). Compared to 2009, the number of initial asylum applications from Somalia decreased by 43% (5,889 applications in 2009). The number of initial applications from Iraq has also decreased by 31% (1,991 applications in 2009). The number of applications from Afghanistan has risen slightly by 6% compared to 2009, when the number of initial asylum applications from Afghanistan amounted to 1,281.<sup>71</sup>

### **New asylum procedure**

The new asylum procedure, the 'Improved Asylum Procedure', entered into force on Thursday 1 July 2010.<sup>72</sup> This procedure is meant to ensure a faster and more careful completion of asylum applications. In addition, it is expected that the number of applications will decrease as a result of the amendments to the former asylum procedure. The general asylum procedure in the application centre has been extended to eight days, leaving more room to provide legal aid to asylum seekers. It is expected that it will be possible to complete more applications in the application centre than in the past, as a result of which more asylum seekers will obtain clarity about their asylum applications while they are staying at the application centre. According to expectations the extended asylum procedure, which is the procedure in which asylum applications will only be processed when further investigation is required and a decision cannot be made during the general asylum procedure, will be reduced by approximately eight weeks, because more procedural steps can now be completed while the asylum seeker is staying at the application centre.

Prior to the procedure, the asylum seeker will be given a period of rest and preparation, in which period the medical examination may be performed and the asylum seeker will be identified. Where possible, an examination of the documents to substantiate the story told by the asylum seeker (such as arrest warrants, and judgments) will be initiated. Upon registration at the asylum centre, the asylum seeker's fingerprints will be taken. These fingerprints are compared in the different systems to check whether an alert has been posted for the asylum seeker as an undesired alien, or whether the asylum seeker has already submitted an application in another country. If the latter appears to be the case, a Dublin claim will immediately be submitted to the other country, even during the period of rest and preparation. During the period of rest and preparation, the asylum seeker will be receive information about the asylum procedure from the Dutch Council for Refugees. The lawyer will then prepare the asylum seeker for the asylum procedure. During the entire procedure, the asylum seeker will be assisted by the same lawyer as much as possible.

Any medical aspects will be identified at the earliest possible stage in the asylum procedure, and insofar as possible, be assessed parallel to the asylum procedure. In addition, a provision has been included to

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<sup>70</sup> Ministry of Justice (2010), p. 23.

<sup>71</sup> Figures based on the IND information system (INDIS).

<sup>72</sup> Decree of the Minister of Justice of 24 June 2010, no. WBV 2010/10 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2010, no. 10228.

make it possible for the Court in appeal cases to consider relevant new circumstances and policy changes. In the future, the IND will more often also consider – on its own initiative – any relevant new circumstances brought forward at the appeal stage, and will examine whether these circumstances could result in a different decision. The aim here is to prevent – as much as possible – the submission of second and subsequent applications by asylum seekers. The procedure for second and subsequent applications has consequently been simplified, as a result of which it will be possible to make decisions on second or subsequent applications within a shorter period of time.

After an application submitted at the application centre has been rejected, the asylum seeker is given a departure period of four weeks. In order to prevent rejected asylum seekers from ending up in the street, they will be provided accommodation during this period, from which location the rejected asylum seekers can work on their departure. At the end of the departure period, the rejected asylum seekers may also be placed at a centre with restricted movement for a period of twelve weeks, where they will receive additional guidance in their return. If necessary, on the basis of individual considerations, a decision may be made to transfer an asylum seeker from a freedom-restricting location to a detention centre. In order to prevent evident abuse and improper use of the procedure, it may be decided in certain cases to place an asylum seeker in detention directly after the asylum procedure.<sup>73</sup>

Partly as a result of the lower influx in the first six months of 2010 (a decrease of 15% compared to the first six months of 2009), the waiting list for submitting an asylum application had been reduced to a minimum just before the Improved Asylum Procedure was implemented on 1 July 2010. On the implementation date, the waiting list only included approximately 320 persons, whereas during the preceding year there were still nearly 2,000 people on the waiting list.<sup>74</sup>

#### **Discontinuation of the processing of an asylum application upon departure with unknown destination**

By decree of 13 September 2010, the possibility to discontinue the processing of an asylum application if the asylum seeker has left for an unknown destination during the asylum procedure has been cancelled.<sup>75</sup>

#### **Policy on alternative protection**

By decree of 9 December 2010, the policy on alternative protection was brought into line with Article 8 (on internal protection) of European Directive 2004/83/EC (Qualification Directive)<sup>76</sup> and case law of the European Court of Human Rights (ECHR).<sup>77</sup> More detailed provisions were included, in particular, regarding a protection alternative in the case of threat as a result of an exceptional situation as referred to in Article 15c of the Qualification Directive.<sup>78</sup>

#### **Specific groups**

Section 29(1) of the Aliens Act 2000 provides the grounds on which an asylum seeker may qualify for a temporary asylum residence permit. The purpose of the grounds referred to under (a) and (b) of this Section is to provide the international protection referred to in the Qualification Directive.<sup>79</sup> In addition to these two grounds for asylum to which the Qualification Directive relates, Section 29(1) of the Aliens Act 2000 provides four additional grounds on which an asylum seeker may qualify for a temporary asylum residence permit. These grounds are referred to in Section 29(1) under (c), (d), (e), and (f). These grounds are based on national policy, and consequently provide national protection. The Qualification Directive does not relate to this national protection.

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<sup>73</sup> Press release from the Ministry of Justice, 30 June 2010. See <http://www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2010/06/30/nieuwe-asielprocedure-in-werking.html>.

<sup>74</sup> Ministry of Justice (2010), p. 21.

<sup>75</sup> Decree of the Minister of Justice of 13 September 2010, no. WBV 2010/14 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2010, no. 15141.

<sup>76</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>

<sup>77</sup> See, among other things, the judgment of the ECHR in the case *Salah Sheekh v. the Netherlands*, no. 1984/04, section 263.

<sup>78</sup> This policy has been laid down in Section C4/2.3.2 of the Aliens Act Implementation Guidelines 2000.

<sup>79</sup> Please refer to INDIAAC – NL EMN NCP (2010a) for a complete overview of all forms of protection in the Netherlands.

*Risk groups: the ground referred to under Section 29(1)(a)*

The ground referred to under Section 29(1)(a), which provides that an asylum residence permit may be granted to aliens who are Convention refugees, is based on the Convention of Refugees and provides the protection to which the refugee status of the Qualification Directive relates.

In national asylum policy, population groups may be designated as risk groups.<sup>80</sup> In respect of persons belonging to a risk group, it will be concluded more readily than in respect of other groups that the events experienced by them were serious enough to grant a refugee status. When these persons refer to problems caused by authorities or fellow-citizens and the statements made are credible and individual, the fact that this is a case of well-founded fear of prosecution may be argued convincingly with only very few indications put forward in evidence. It is true that these groups have been designated in Dutch policy, but it actually concerns international protection within the meaning of the Convention of Refugees. The following groups have currently been designated as risk groups:<sup>81</sup>

- Afghanistan: ethnic minorities, religious minorities, and homosexuals;<sup>82</sup>
- Somalia: Reer Hamar (an ethnic minority group);<sup>83</sup>
- Iraq: homosexuals.<sup>84</sup>

*The ground referred to under Section 29(1)(b)*

The ground referred to under Section 29(1)(b) provides that an asylum residence permit may be granted to the alien who has argued convincingly that he or she has well-founded reasons to fear that he or she is running a real risk of being subjected to torture, inhumane or degrading treatment, or punishment in the country of origin or permanent residence after expulsion from the Netherlands. This provision has been derived from Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>85</sup> Expulsion to a country where someone is running a real risk of being subjected to such a treatment is considered a violation of this Article.<sup>86</sup>

*The ground referred to under Section 29(1)(b):15c*

The safety situation in the town of Mogadishu is so bad that it constitutes an exceptional situation as referred to in article 15c of the EC/Directive 2004/83. This means in general that as far as aliens are concerned who can demonstrate that they originate from Mogadishu it holds that they originate from an area in which the degree of arbitrary violence in an armed conflict is so high that a returning citizen runs a real risk of serious damage by his mere presence there.

*The ground referred to under Section 29(1)(b): Groups that are systematically subject to violation of section 3 ECHR*

On the basis of case law of the ECHR (NA vs UK, July 2008) and a judgment of the Council of State in the Cabdulahi case (dated 30 October 2009, 200809056/1) Reer Hamar (Somalia) is designated as a group that is systemically subject to the practice of inhuman treatment. In respect of an alien originating from Somalia, who relies on belonging to this group, the individualisation requirement will be restricted to the

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<sup>80</sup> These risk groups must, however, be distinguished from other groups of aliens who may be designated on the basis of asylum policy and which will be discussed hereafter in this report. It concerns four different types of groups: risk groups (international protection on the ground referred to under Section 29(1)(a)), vulnerable minority groups (international protection on the ground referred to under Section 29(1)(b)), specific groups who qualify for asylum residence permits for other reasons than traumata (national protection on the ground referred to under Section 29(1)(c)), specific groups that qualify for protection for a specific category (national protection on the ground referred to under Section 29(1)(d)).

<sup>81</sup> Please refer to INDIAC – NL EMN NCP 2009 (*Annual Policy Report 2008*) for further information on the designation of risk groups.

<sup>82</sup> Decree of the Minister of Justice of 3 February 2010, no. WBV 2010/1 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2010, no. 2112.

<sup>83</sup> Decree of the Minister of Immigration and Asylum Policy of 9 December 2010, no. WBV 2010/19 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* no. 20322.

<sup>84</sup> Decree of the State Secretary for Justice of 10 November 2008, no. 2008/28 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2010, 771.

<sup>85</sup> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

<sup>86</sup> On the relationship between Section 29(1)(b) and Article 3 of the ECHR, see C/2, 3.1.1 of the Aliens Act Implementation Guidelines 2000.

alien having to make it plausible that he belongs to this group to arrive at the judgment that he will be subject to treatment in violation of article 3 ECHR upon his return.

*The ground referred to under Section 29(1)(b): : Vulnerable minority groups*

Since 30 July 2007, following a decision of the European Court of Human Rights (ECHR),<sup>87</sup> national asylum policies have designated vulnerable minority groups in respect of which it has been determined that they run a real and individual risk of being treated contrary to Article 3 ECHR has been assumed earlier. In order to qualify for an asylum residence permit on the ground referred to under Section 29(1)(b), the demands made on asylum seekers that belong to such a vulnerable minority group are less high.

In 2010, the following groups had been designated as vulnerable minority groups in their countries of origin:

- Iraq: Christians, Mandaens, Yezidis, Jews, Shabak, and Kaka'I (all of them are religious minority groups), and Palestinians.<sup>88</sup>
- Afghanistan: persons from areas where they belong to an ethnic or religious minority<sup>89</sup> and single women;<sup>90</sup>
- Sudan: the non-Arab population groups from Darfur;<sup>91</sup>
- Democratic Republic of the Congo: Tutsis.<sup>92</sup>

*Specific groups: the ground referred to under Section 29(1)(c)*

On the basis of the ground referred to under Section 29(1)(c) of the Aliens Act, an asylum residence permit may be granted to the alien who may not reasonably be required to return to his or her country of origin on compelling humanitarian grounds related to the reasons for his or her departure from the country of origin.

In this context, the Minister may designate specific groups of asylum seekers of whom it may not be reasonably expected that they return to their countries of origin. In 2010, this policy applied to the following groups:

- single women of Afghan nationality;<sup>93</sup>
- Iranian homosexuals, bisexuals, and transsexuals.<sup>94</sup>

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<sup>87</sup>ECHR, 11 January 2007, no. 1948/04 (Salah Sheekh/Netherlands), please refer to INDIAC – NL EMN NCP 2008 (*Annual Policy Report 2007*) for more information on this case.

<sup>88</sup>Decree of the State Secretary for Justice of 5 November 2007, no. 2007/35 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2007, no. 221, p. 5.

<sup>89</sup>Decree of the State Secretary for Justice of 26 October 2007, no. 2007/33 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2007, no. 216, p. 12.

<sup>90</sup>Decree of the State Secretary for Justice of 26 October 2007, no. 2007/33 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2007, no. 216, p. 12. The policy was extended by Decree of the State Secretary for Justice of 3 February 2010, no. 2010/1 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2010, 2112. The definition of a single woman in Afghanistan initially read: 'women who do not have a husband or other adult male family member travelling with them to Afghanistan or who do not have a husband or other adult male family member in Afghanistan with whom she lived together in a family before departure from Afghanistan and with whom she can live again'. The definition currently reads: 'A woman is considered single if the marriage relationship with the husband with whom she was married at the time of her departure from Afghanistan can be considered broken, or if she is unmarried and the ties with the family to which she belonged at the time of her departure from Afghanistan may be considered broken.'

The aspect of return has been left out and it is no longer essential that other male family members still live in Afghanistan.

<sup>91</sup>Decree of the State Secretary for Justice of 5 November 2007, no. 2007/34 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2007, no. 221, p. 6.

<sup>92</sup>Decree of the State Secretary for Justice of 5 November 2007, no. 2007/35 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2007, no. 221, p. 5.

<sup>93</sup>Decree of the Minister for Aliens Affairs and Integration of 2 June 2006, no. 2006/22 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2006, 119, p. 10. As indicated above, Afghan single women also constitute a vulnerable minority group for which a real and individual risk of a treatment contrary to article 3 ECHR was included earlier.



*Protection for certain categories of asylum seekers: the ground referred to under Section 29(1)(d)*

On the basis of the ground referred to under Section 29(1)(d) of the Aliens Act, the asylum residence permit may be granted to the alien whose return to the country of origin would be particularly harsh considering the general situation in the relevant country. This ground consequently does not provide protection on individual grounds, but group protection or protection for certain categories.

This policy of protection for certain categories means that asylum seekers who originate from such countries or a part thereof and/or who belong to a specific population group are granted temporary asylum residence permits in principle on the basis of the situation in the country of origin. It is still examined first whether the applicant would qualify for an asylum residence permit on individual grounds, for instance, because the foreign national is a refugee within the meaning of the Convention on Refugees.

In 2010, the policy of protection of certain categories applied to the following groups and/or countries:

- asylum seekers from Ivory Coast (until 3 September 2010);<sup>95</sup>
- the non-Arab population groups from the federal states of North, West and South Darfur in Sudan.<sup>96</sup>

**Intention to abolish the policy of protection for certain categories of asylum seekers**

As set out in the Annual Policy Report 2009, the Balkenende Cabinet IV expressed the intention to abolish the policy of protection for certain categories of asylum seekers.<sup>97</sup> After the fall of this Cabinet, the Lower House of Parliament declared this intended abolition of the policy of protection of certain categories of asylum seekers controversial on 11 March 2010.<sup>98</sup> As a result of this, the debates on this issue have not been conducted in the Lower House of Parliament. By letter to the Lower House of Parliament of 15 December 2010, the Minister for Immigration and Asylum Policy did, however, indicate that – in line with the view of the former Cabinet – the current Cabinet will delete the statutory basis of the policy of protection of certain categories of asylum seekers.<sup>99</sup> The Lower House of Parliament will be informed of this in more detail by a bill to this end.

**Actions concerning family members joining asylum seekers later on**

The current Coalition Agreement includes the intention to transfer the procedure for family members joining asylum seekers later on from asylum to non-asylum. In a letter to the Lower House of Parliament of 7 December 2010, the Minister for Immigration and Asylum Policy explained these actions concerning family members joining asylum seekers later on.<sup>100</sup> Family members joining asylum seekers later on will not automatically receive an asylum status, but will fall under the regular policy for family migration. Unlike legal family migration, however, no requirements will be set on income or integration abroad. The application will be submitted from abroad. If the application is granted, the family members joining the asylum seekers later on may enter the Netherlands and will receive a regular residence permit soon after their entry. Where possible, the family members joining the asylum seekers later on will immediately take up residence with the principal person who will often have municipal housing so that it will no longer be necessary for the relevant family members to be initially accommodated in an asylum seekers centre. The Minister stated that the basic principle of the policy for family members joining asylum

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<sup>94</sup>Decree of the Minister for Aliens Affairs and Integration of 17 November 2006, no. 2006/38 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2006, 231. See also Ministry of Justice 2009 (*Rapportage Vreemdelingenketen Periode januari-juni 2009*) (*Immigration Process Report, Period January-June 2009*), Section 2.2.5.

<sup>95</sup>Decree of the Minister for Aliens Affairs and Integration of 29 November 2005, no 2005/58 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2005, 237, p. 21. The policy of protection for certain categories in respect of asylum seekers from Ivory Coast was terminated by Decree of the Minister of Justice of 20 August 2010, number WBV 2010/13, amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* 2010, no. 13554.

<sup>96</sup>Aliens Act Implementation Guidelines 2000 (C) 24 National policy [23] The asylum policy regarding Sudan.

<sup>97</sup>INDIAC – NL EMN NCP (2010), p. 23.

<sup>98</sup>List of controversial issues as established by the Lower House of Parliament on 11 March 2010, *Parliamentary Papers II 2009/2010*, 32 333, no. 14.

<sup>99</sup>*Parliamentary Papers II 2010/11*, 19 637, no 1385 (Letter).

<sup>100</sup>*Parliamentary Papers II 2010/11*, 19 637, no. 1383 (Letter).

seekers later on is – and will continue to be – that it must be possible for the family to be reunited as it was before the principal person's departure from the country of origin.

### **Elaboration of the Spekman motion**

By decree of 2 February 2010, the Cabinet increased the reception capacity for asylum seekers who have exhausted all legal remedies and who have submitted an application on medical grounds, and who are entitled to a residence permit in the Netherlands.<sup>101</sup> The decree was an elaboration of the Spekman motion. See also the Annual Policy Report 2009. An amendment to the Aliens Act Implementation Guidelines 2000 is furthermore intended to increase the goal-oriented impact and efficiency of the facilities provided by the Central Agency for the Reception of Asylum Seekers to aliens to whom Section 64 of the Aliens Act has been applied, including aliens who fall under the scope of the Spekman motion.<sup>102</sup>

### **Georgians**

In response to the unusually high influx of Georgians in the last few months of 2009, with a peak of approximately 180 in March 2010, actions were taken to monitor this influx and, if necessary, to take actions against any improper influx. Given the probable motives of Georgian asylum seekers (the quality of the reception and the possibility to receive financial support upon return to the country of origin) it was decided to place the Georgians, where possible, in detention. The possibility to qualify for financial support upon return was also suspended temporarily. By now, the influx of this group has strongly decreased again and is back at its former level of approximately fifteen asylum seekers a month.<sup>103</sup>

## **7.3 Developments from the EU perspective**

### **Temporary Desk on Iraq**

Since its establishment in May 2009, the Netherlands has been actively involved in the Temporary Desk on Iraq (TDI), located in Brussels. In the TDI, employees of several European immigration services cooperate in a pilot project to explore the possibilities for more practical cooperation in Europe in the area of asylum and resettlement. Iraq had been chosen for the purpose of this project as this country was the most important country of origin of asylum seekers in Europe when the Desk was established in 2009. The TDI has in the meantime been extended until 30 April 2011. In 2010 the case load of TDI was extended to Somalia, Afghanistan and the Russian Federation. In respect of Somalia and Afghanistan the Netherlands is contributing to the products of the TDI. It will be assessed whether and how the experiences and products of the TDI can be transferred to the European Asylum Support Office (EASO).

### **EASO**

On 25 and 26 November 2010, the establishment meeting of the Management Board of the European Asylum Support Office (EASO) was held. All Member States, the Commission, and the UNHCR are represented in this Management Board. The Netherlands is represented by the Director of the IND. During this establishment meeting, the Dutch top-ranking official Rob Visser was appointed executive director of EASO.

### **External Processing**

By letter of 29 September 2009, the former State Secretary for Justice requested the Advisory Commission on Aliens Affairs (ACVZ) to examine whether it is possible to process asylum applications outside the territory of the European Union, this is referred to as 'external processing'.<sup>104</sup> According to the ACVZ external processing primarily offers aliens the possibility of submitting a request for international protection in a safe area outside the EU and of gaining entry into the EU on the granting of such request. The request will in that case be handled by and/or under the responsibility of a (member state of) the

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<sup>101</sup> Regulations of the State Secretary for Justice of 2 February 2010, no. 5640524/10 amending the Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2005, *Dutch Government Gazette* 2010, no. 2088.

<sup>102</sup> Decree of the State Secretary for Justice of 22 February 2010, no. WBV 2010/3 amending the Aliens Act Implementation Guidelines 2000, *Dutch Government Gazette* 2010, no. 3195.

<sup>103</sup> Ministry of Justice (2010), p. 22.

<sup>104</sup> Included as Annex in ACVZ (2010a), p. 53.

EU. As a result it would be possible to reduce the influx and to prevent problems with return. Asylum seekers who would go straight to a location outside Europe, would no longer have to make the often dangerous trip to Europe before being able to apply for asylum. External processing does not yet exist in the EU practice.

On 15 December 2010, the ACVZ concluded in its advisory report 'External Processing' that is not yet feasible to assess asylum applications outside Europe.<sup>105</sup> According to the ACVZ, external processing is precluded by legal and practical obstacles. EU Law, for instance, does not yet include a clear statutory basis for such a procedure. Legal responsibility of the States for the asylum seekers has also not been regulated properly yet. New legislation could be a solution to this problem. It is, however, the question whether the practical conditions for external processing could be met. The cooperation from other non-EU countries is, for instance, required. But it must also be possible to guarantee careful procedures and adequate reception conditions.

The legal and practical requirements for external processing are currently not met. The ACVZ recommended that, if it is decided to develop external processing, this should be done at the EU level. In the first place, however, this requires the harmonisation of asylum policies and asylum legislation between the EU countries.

The ACVZ concludes in an annex that there exist terms related to external processing, such as protected entry procedures (PEP), resettlement, pre-entry clearance, protected transit zones, burden sharing and outsourcing of asylum requests. The ACVZ does not discuss these forms of external processing.

#### **Commitment under the Pact and the Stockholm Programme**

Please refer to Section 10 of Annex I for information on the commitments entered into by the Netherlands under the Pact and the Stockholm Programme. For the purpose of solidarity with Member States whose national asylum systems are under pressure, a brief discussion of Dutch assistance to Greece is provided in the context of the implementation of the Greek action plan regarding migration management.

The Dutch resettlement programme will also be discussed in Section 10 of Annex I.

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<sup>105</sup>ACVZ (2010b). Advisory report and press release may be retrieved from [www.acvz.org](http://www.acvz.org).



# 8 Unaccompanied Minors (and Other Vulnerable Groups)

## 8.1 Specific Context

If an asylum application is rejected, an unaccompanied minor may qualify for a regular temporary residence permit subject to a restriction that relates to residence as an unaccompanied minor.<sup>106</sup> The residence permit for unaccompanied minors may also be granted if an asylum residence permit is withdrawn.<sup>107</sup>

The residence permit for unaccompanied minors may only be granted to aliens who are unaccompanied and who are underage. The unaccompanied minor must furthermore meet the conditions that he or she cannot support himself or herself independently in the country of origin or in another country where he or she could reasonably go to<sup>108</sup> and that adequate reception, by local standards, is absent in the country of origin or another country where he or she could reasonably go to.<sup>109</sup> The passport requirement, which must usually be met for the issuance of a regular residence permit, does not apply to the issuance of the residence permit for unaccompanied minors.<sup>110</sup>

Minority is assessed in accordance with Dutch law.<sup>111</sup> This means that the person concerned has not yet reached the age of 18 years and that he or she is not married or has not been married. A minor does not come of age as a result of a marriage that is not recognised under private Dutch or international law. Such a marriage may, however, be of importance to the assessment of the question of whether the alien is unaccompanied, the degree of independence, and the reception possibilities. If there are doubts about the age, it is possible to have an age test performed.

An alien will be considered unaccompanied if he or she is not accompanied by his or her adult parent(s) or a guardian who has already been appointed in this capacity abroad.<sup>112</sup>

## 8.2 Developments within the National Perspective

In 2010, there were 701 initial asylum applications from unaccompanied minor asylum seekers. Compared to 2009 (1,039 initial applications), this means a decrease of 33%.

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<sup>106</sup> On the basis of Article 3.56 of the Aliens Decree 2000. See also INDIAC – NL EMN NCP 2010a for more information on this subject ((EMN report *Alleenstaande Minderjarige Vreemdelingen in Nederland - amv-beleid en -cijfers inzake opvang, terugkeer en integratie (Unaccompanied Minors in the Netherlands – policy on unaccompanied minors and figures about the reception, return, and integration of unaccompanied minors)*).

<sup>107</sup> Article 3.56(1)(a) of the Aliens Decree 2000.

<sup>108</sup> Article 3.56(1)(b) of the Aliens Decree 2000. The assessment of independence is based on various factors, including age, personal facts and circumstances, and personal backgrounds of the individual unaccompanied minor. If the unaccompanied minor is able to support himself or herself independently, there is no reason to assess the presence of adequate reception possibilities. Independence cannot be enforced against an unaccompanied minor if the minor is younger than 16 years of age at the time of the decision.

<sup>109</sup> Article 3.56(1)(c) of the Aliens Decree 2000. The term 'adequate reception' means every form of reception under circumstances that do not differ significantly from the circumstances provided to peers finding themselves in similar positions as the unaccompanied minor. Adequate reception may be reception provided by, for instance the parents and other family members, but also by friends, neighbours, fellow tribesmen, clansmen or villagers, and reception provided by welfare organisation (private or otherwise).

<sup>110</sup> See below, the opening words of Section 2.2.3, for the conditions that generally apply to the issuance of a regular residence permit.

<sup>111</sup> Book 1, Section 233 of the Dutch Civil Code.

<sup>112</sup> C2/7.1.3. of the Aliens Act Implementation Guidelines 2000.

### **Intention to abolish the residence permit for unaccompanied minors**

As set out in the Annual Policy Report 2009, the Balkenende Cabinet IV expressed the intention to abolish the residence permit for unaccompanied minors.<sup>113</sup> After the fall of this Cabinet, the Lower House of Parliament declared this intended abolition of the residence permit for unaccompanied minors controversial on 11 March 2010.<sup>114</sup> As a result of this, the debates on this issue have not been conducted in the Lower House of Parliament. The present Minister for Immigration and Asylum Policy also has not yet stated his position on this issue.

The Minister for Immigration and Asylum Policy did however announce by letter of 14 December 2010 that he wants to elaborate and implement the required reassessment of the unaccompanied minors policy, of which the abolition of the permit for unaccompanied minors formed a part.<sup>115</sup>

### **Improved Asylum Procedure**

Since 1 July 2010, the Improved Asylum Procedure has also applied to unaccompanied minors.<sup>116</sup> The new provisions include the possibility to grant unaccompanied minors a longer period of rest and preparation, with a target period of three weeks. The Minister for Immigration and Asylum Policy promised the Lower House of Parliament to ensure the sound continuation of the secure reception of unaccompanied minors who have been, may have been, or threaten to become the victim of trafficking in human beings.<sup>117</sup>

## **8.3 Developments from the EU perspective**

See below, Section 11 of Annex I. In addition to the aspects discussed above, this Section will briefly discuss Dutch cooperation with countries including Norway, Sweden, Denmark, and the United Kingdom in the development of various projects targeted at the promotion of permanent return.

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<sup>113</sup> INDIAC – NL EMN NCP (2010), p. 23.

<sup>114</sup> List of controversial issues as established by the Lower House of Parliament on 11 March 2010, *Parliamentary Papers II 2009/2010*, 32 333, no. 14.

<sup>115</sup> *Parliamentary Papers II 2010/11*, 27 062, no. 67.

<sup>116</sup> See also below, Section 11 of Annex I.

<sup>117</sup> Source: Lower House of Parliament, session year 2009/-2010, no. 65, 18 June 2010.

# 9 Global Approach to Migration

## 9.1 Specific Context

All developments occurred for the purpose of fulfilling the commitments entered into by the Netherlands under the Pact and the Stockholm Programme. Information about various topics, including Dutch cooperation with the countries of origin and transit in order to discourage or combat illegal immigration, improved incorporation of immigration and development policy, and an annual meeting with diaspora groups, is provided in Section 12 of Annex I.

## 9.2 Developments within the National Perspective

See below, Section 12 of Annex I.

## 9.3 Developments from the EU perspective

See below, Section 12 of Annex I.





# 10 Implementation of EU Legislation

This chapter provides an overview of the developments in Dutch legislation and regulations in 2010 in connection with the implementation of EU legislation.

## 10.1 Transposition of EU Legislation 2010

Early in 2010, all Directives that had to be implemented had actually been implemented. The Return Directive should have been implemented on 24 December 2010 at the latest. The government did not succeed in this.

### 10.1.1 Return Directive

**Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ EU L348/98)**

This Directive should have been implemented before 24 December 2010, but this term has been exceeded. Implementation will be effected by an amendment to the Aliens Act 2000.

The Bill amending the Aliens Act 2000 was presented to the Lower House of Parliament on 17 June 2010.<sup>118</sup> By memorandum of alterations, the Minister for Immigration and Asylum Policy made several improvements to the Bill, in particular to the sanctioning of violations of the entry ban.<sup>119</sup> The Bill has not yet been adopted by the Lower House of Parliament.

Now that the Directive has not been implemented, it has direct effect. In accordance with established case law, the protection of the Directive may consequently be relied upon, whereas the State may not derive any statutory power from the Directive. Regulations that are not in agreement with the Return Directive are not binding.

### 10.1.2 Blue Card Directive

**Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (European Blue Card) OJEU, L155)**

The purpose of this Directive is to make the European Union more attractive for highly qualified third-country workers. The Directive is not only intended to enhance competitiveness within the framework of the Lisbon Strategy, but also to limit brain drain. The objectives of the Directive are the following:

- Easing rules on the admission for the persons concerned by harmonising the admission and residence conditions of this specific group throughout the EU;
- Simplifying the admission procedures of this group;
- Improving the legal status of those who are already on the territory of the EU.

The Directive applies to highly qualified third nationals who – for the purpose of employment – desire access to the territory of a Member State for stays of more than three months, as well as to their family members.

This Directive must have been implemented on 19 June 2011.

This Directive will be implemented essentially as a part of the Bill on Modern Migration Policy, which was adopted on 5 July 2010. As stated above, it is not yet clear when this Act will enter into force. If the

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<sup>118</sup> *Parliamentary Papers II 2009/10*, 3420 no. 2.

<sup>119</sup> *Parliamentary Papers II 2010/11*, 3420 no. 9.

Act has not yet entered into force on 19 June 2011, the aspects relating to the Directive will be taken out of the Bill and become effective around the implementation date.

### 10.1.3 Directive on combating illegal labour

#### **Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals**

The purpose of this Directive is to remove the most important pull factors of illegal immigration, i.e. employment carried out by third-country nationals who are staying illegally in the EU. The proposed measures are aimed at imposing sanctions on employers who illegally employ such third-country nationals.

This Directive must have been implemented by 20 July 2011.

Just like the Blue Card Directive, this Directive will be implemented essentially as a part of the Bill on Modern Migration Policy, which was adopted on 5 July 2010. The same situation applies to this Directive: if the Act has not yet entered into force on 19 June 2011, the aspects relating to the Directive will be taken out of the Bill and become effective around the implementation date.

## 10.2 Experiences, Debates in the (non-) Implementation of EU Legislation

The Dutch government adopts positions on each Directive. As stated above in Section 3.3, the Cabinet has also published a 'road map' setting out the efforts it will make at the European level with regard to the chapter on 'Immigration' as described in the coalition agreement. The purpose of this road map is to find and create support within the European Union to make it possible to make amendments to European legislation as desired by this Cabinet. As far as the different EU Directives are concerned, the Cabinet decides on an appropriate strategy depending on the subject and the decision-making phase. This Section will discuss the Directives by the phase they are in – current reviews, new proposals – and it will conclude with other requirements desired by the Cabinet. A number of the positions discussed in this Section have been adopted by the former Cabinet. Insofar as the current Cabinet has not explicitly adopted a different position, these positions may after all be considered to be the official Dutch positions.

### 10.2.1 Current reviews

#### *Amendments to the Qualification Directive*

#### **Proposal for a directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast).<sup>120</sup>**

The proposal submitted on 21 October 2009 is to amend and broaden Council Directive 2004/83/EC of 29 April 2004 providing minimum standards for the qualification as a refugee and as a person eligible for subsidiary protection. The proposal sets out the content of the protection granted. In this context it also takes account of the specific integration problems with which persons seeking international protection are confronted. The main objective of the Directive is to clarify a number of legal concepts, to streamline procedures for granting rights and facilities to refugees and persons eligible for subsidiary protection, and to facilitate integration in the EU of aliens to whom protection has been granted.

In the Hague Programme, the Commission was invited to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the Council and the

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<sup>120</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0551:FIN:EN:PDF>

European Parliament, with a view to their adoption before the end of 2010. In the Policy Plan on Asylum, the Commission proposed the completion of the second phase of the Common European Asylum System (CEAS) through raising the standards of protection and ensuring their consistent application across the EU. The European Pact on Immigration and Asylum ("Pact"), adopted on 16 October 2008, provided further political endorsement and impetus to this objective, by calling for initiatives to complete the establishment of the Common European Asylum System (CEAS) with a view to offering a higher degree of protection.

For the Netherlands, the most significant amendments to the Directive are the following:

- The definition of 'family member' will be broadened to also include the married minor children of the applicant;
- An exhaustive list will be provided, setting out when a State, party or national or international organisation may be considered to provide adequate protection against prosecution or serious harm;
- An internal alternative for protection may only be used if it provides access to protection against prosecution or serious harm, and if the person concerned can safely and legally travel, gain admittance and settle in that part of the country;
- Due consideration will be given to gender-related aspects for the purposes of defining whether a person belongs to a particular social group or identifying a characteristic of such a group.
- The rights of persons with subsidiary protection statutes will be brought in line, to the greatest extent possible, with the rights of refugees;
- The Member States will have the obligation to establish procedures for tracing the family members of the unaccompanied minors who have been admitted on the basis of the Directive.

The proposal is connected with the proposal of the Commission for amending the Asylum Procedures Directive which provides minimum standards on procedures in Member States for granting and withdrawing international protection.

The Commission considers the increase in efficiency, quality and justice in the procedures for the protection of asylum seekers a major result of the amendments. By applying the same minimum standards, the confidence among the Member States in the completion of asylum applications will increase. This will also result in more clarity among those persons who are submitting asylum applications within the European Union. According to the Commission, this clarity will result in fewer aliens travelling on illegally, as each Member State will apply the same standards.

As indicated in the Hague Programme, the European Union – and consequently also the Netherlands – attaches importance to a Common European Asylum System (CEAS).<sup>121</sup> On the whole, the Netherlands supports the amendments proposed by the Commission to arrive at improved international protection and further harmonisation of asylum procedures within the European Union. There are still large differences among the Member States in the regulations regarding the granting of international protection; the proposed amendments will reduce the differences among the Member States. This will promote the legal certainty of those seeking protection, and will prevent asylum seekers from travelling on within the European Union to the Member State where an asylum seeker stands the best chance of being admitted. The proposed amendments will also increase the confidence among the Member States of the EU in each others' asylum systems.

The efforts of the Netherlands are focused on achieving full harmonisation, but this requires further steps to be taken. The previous Cabinet already adopted the position that the Netherlands will enter into negotiations on elements of the amendments to the Directive. On the one hand, because the Netherlands has comments on the content given by the Commission to the protection and, on the other hand, to examine to what extent the financial and legal consequences of the amendments and the broadening of the minimum standards as provided in the Directive may be further brought into line with Dutch regulations. If the Netherlands considers the costs and legal implications of the final Directive disappointing, it will possibly still adopt a more balanced position on the amendment to the Directive.

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<sup>121</sup> The position adopted by the Dutch government may be retrieved from [http://www.eerstekamer.nl/eu/edossier/e100008\\_kwalificatierichtlijn](http://www.eerstekamer.nl/eu/edossier/e100008_kwalificatierichtlijn).

The current Cabinet actually does see cause to do so. As the Qualification Directive is currently being negotiated, the Cabinet consequently has the opportunity to immediately aim its efforts at amendments in the context of the above-mentioned 'Road Map'. The efforts will primarily be directed at the Council and the European Parliament.

The amendment envisaged by the Netherlands pertains to shifting the burden of proving the absence of flight alternatives to the applicant. The Netherlands introduced this item during the negotiations in the working group of the Council, where it was adopted by the other Member States.<sup>122</sup> The negotiations in the Council are expected to be completed early in 2011, after which the European Parliament will give its opinion.

#### *Amendments to the Asylum Procedures Directive*

#### **Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast).<sup>123</sup>**

The proposal submitted on 21 October 2009 is to amend Directive 2005/85/EC on minimum standards on procedures for granting and withdrawing refugee status. The amendment is to put an end to the large variety of procedures in the EU, and to ensure that asylum seekers will get similar and sound investigations in all Member States of the EU when invoking the right to international protection. Measures must be taken to prevent refugees from being sent back to a country in which they fear prosecution within the meaning of the Convention of Refugees (the non-refoulement principle). The objective is a European Asylum Procedure ensuring improved access to asylum procedures throughout the European Union, with the ultimate goal being that an asylum application will result in the same outcome in every Member State.

This proposal is connected with the proposal to amend the Qualification Directive set out above.

The position of the Dutch government is as follows.<sup>124</sup> As explained above, the Dutch government supports the harmonisation of European asylum systems to achieve a Common European Asylum System (CEAS) before 2012, in conformity with the Immigration Pact. According to the Netherlands, a harmonised asylum system should finally result in a situation in which asylum applications are assessed in the same manner throughout Europe. Only then will it be possible for EU Member States to cooperate fully, to reduce subsidiary flows of asylum seekers to a minimum, and to show solidarity with the Member States with the largest influx of asylum seekers.

During the negotiations on the Directive, the Dutch government will discuss to what extent the minimum standards provided in the Directive may be brought into line with Dutch regulations, such as the regulations concerning the one status system applied by the Netherlands and the regulations concerning the Improved Asylum Procedure

As far as the organisation of the procedure is concerned, the Netherlands will indicate at the European level that it is aiming for greater flexibility in organisation within the European procedural framework. This relates, for instance to the requirements with regard to the determining authority. The proposal includes provisions that establish that there is to be a determining authority, that will be charged with the registration of the applications for international protection, and that the Member States are to have sufficient numbers of competent and specialised personnel available, and are to provide schooling and training programmes. In the opinion of the Netherlands, the core question should be whether the competent authority is capable of applying the international instruments designed for international protection in an appropriate manner. In the opinion of the Netherlands, it is up to the national governments to organise the authorities to this end and to ensure that these authorities are competent and adequately staffed and equipped.

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<sup>122</sup> According to the Annex, included in the *Parliamentary Papers II 2010/11*, 30 573, no. 61 (Letter).

<sup>123</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0554:FIN:EN:PDF>.

<sup>124</sup> Source: [http://www.eerstekamer.nl/eu/edossier/e100007\\_procedurerichtlijn](http://www.eerstekamer.nl/eu/edossier/e100007_procedurerichtlijn).

The efforts of the Dutch government are identical to the efforts made for the purpose of amending the Qualification Directive. The Netherlands will enter into negotiations on parts of the amendments of the Directive; on the one hand, because the Netherlands has comments on the content given by the Commission to the protection and, on the other hand, to examine to what extent the financial and legal consequences of the amendments and broadening of the minimum standards provided in the Directive may be further brought into line with Dutch regulations. If the Netherlands considers the costs and legal implications of the final Directive disappointing, it will possibly still adopt a more balanced position on the amendment to the Asylum Procedures Directive as well.

Because the negotiations about the proposed amendment have as yet not resulted in agreement, the responsible Euro commissioner Malström has been working since October 2010 on a review of the proposed amendment to the Procedure Directive with contribution of the Member States.<sup>125</sup>

#### *Amendments to the Family Reunification Directive*

#### **Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ EU, L251).**

Amendments to the Directive are forthcoming. Within the framework of the 'Road Map', the Dutch efforts regarding this Directive pertain to the following aspects:

- Increasing the age requirement to 24 years of age;
- Admitting not more than one partner in ten years;
- Increasing the income requirement to at least 120% of the minimum wage;
- Introducing a monetary deposit;
- Introducing a test showing whether the ties with the Netherlands are stronger than the ties with other countries;
- Excluding the possibility to admit family members of persons who have been convicted for specific violent offences;
- Setting educational requirements on family migrants in the interests of qualification for the purpose of participation and integration;
- Withdrawing the temporary residence permit after failure to pass the civic integration examination, barring exceptions;
- Closing the Europe route.

The European Commission expects the publication of the Green Paper on this Directive before March 2011. On the basis of this Green Paper, the Commission will receive proposals for amendments. The Netherlands is currently making efforts to cooperate with other Member States to develop a joint response to the Green Paper and to make joint proposals to amend the Directive. For this purpose, the Netherlands is actively seeking contact with the Member States. In addition, contact is being sought with the European Commission and the European Parliament in order to convince them of the Dutch position.

#### *Amendments to the Long-Term Residents Directive*

#### **Proposal for a Council Directive amending Directive 2003/109/EC to increase its scope to persons who are beneficiaries of international protection.**

Amendments to the Long-Term Residents Directive are also forthcoming.

This Directive was submitted by the European Commission on 6 June 2007 to satisfy an earlier call from the JHA Council. The proposal pertains to an extension of the Status of Long-Term Residents Directive to all persons who are beneficiaries of international protection in a Member State.<sup>126</sup>

More specifically, the Commission intends to amend the existing Directive on the following three points:

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<sup>125</sup> See for this *Parliamentary Papers I 2011/11*, 32 317, T and V.

<sup>126</sup> [http://www.eerstekamer.nl/eu/edossier/e090133a\\_richtlijn\\_tot\\_wijziging](http://www.eerstekamer.nl/eu/edossier/e090133a_richtlijn_tot_wijziging).

- Persons who are beneficiaries of international protection may acquire the status of long-term residents in the Member State where they are staying, on the same conditions as third-country nationals.
- Persons who are beneficiaries of international protection may apply for the status of long-term resident in a different Member State from the Member State where they are staying.
- Persons who are beneficiaries of international protection and who have acquired the status of long-term residents may also stay in another Member State.

In all the above-mentioned cases, the Member States must guarantee the right of non-refoulement (the guarantee that refugees will not be expelled to a country in which they fear prosecution).

Within the framework of the 'Road Map', the Dutch efforts regarding this Directive pertain to the following aspect:

- Introducing basic qualification for regular applications.

The Netherlands will propose to link the granting of the status of long-term resident to the requirement that a migrant has a good starting position, both economically and socially. This involves a broadening of the present Article 5(2) which already provides for the possibility to set integration requirements for the acquisition of the status of long-term residents.

The negotiations on the review of this Directive are nearing completion, but pertain to a different subject than the above-mentioned basic qualification. The efforts within the framework of the 'Road Map' will consequently not be made in this round of amendments, but when any amendments will be made to this Directive in the future.

On 14 December 2010, the European Parliament agreed to a compromise amendment to the proposal on the Long-Term Resident Directive. During the JHA Council of 2 and 3 December 2010, the meeting discussed the political agreement between the Council and the European Parliament. The adopted amendment corresponds to what the three institutions had agreed and it should therefore be acceptable to the Council. After updating the text by lawyer-translators, the Council should consequently be able to adopt the legislative act.

Early in 2011, the Commission will submit a report on the application of this Directive to the European Parliament and the Council. This was also planned for 2011 in the Stockholm Programme Action Plan. The Netherlands will aim for cooperation with other Member States to come to a joint reaction to the report.

### 10.2.2 New proposals

#### *Directive on seasonal workers*

#### **EU proposal for a Directive on Seasonal Workers (COM(2010)379<sup>127</sup>**

The objective of the proposal is to introduce common procedures for admission and stay in the EU and to lay down the rights of third-country seasonal workers. The objective of the proposed Directive is to contribute to effective management of migration flows for the specific category of seasonal migration by the introduction of fair and transparent rules for admission and stay of seasonal workers. At the same time, the Directive includes incentives and safeguards to prevent temporary stay from becoming permanent. The Directive is part of the European measures for the development of an integrated migration policy and to contribute to the implementation of the Europe 2020 Strategy as laid down in the document of the European Commission entitled 'Europe 2020. A strategy for smart, sustainable and inclusive growth'<sup>128</sup> Basic premise of the proposal is that EU economies face a structural need for seasonal workers in sectors such as agriculture, horticulture and tourism, but labour from within the EU is expected to become less and less available. Seasonal workers are consequently hired from third

<sup>127</sup> [http://www.eerstekamer.nl/europeesvoorstel/com\\_2010\\_379/document/f=/vih1bwy8f682.pdf](http://www.eerstekamer.nl/europeesvoorstel/com_2010_379/document/f=/vih1bwy8f682.pdf).

<sup>128</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDE>.

countries. They may be confronted with exploitation and sub-standard working conditions. The proposed Directive therefore explicitly contains various rights for seasonal workers.

According to the position as formulated even before the present Cabinet took office, the proposal currently does not have any added value to the Dutch labour market.<sup>129</sup> At the moment, there are hardly any seasonal workers who travel to the Netherlands from outside the EU; in 2009 there were 77. In the present economic climate, the admission of low-skilled workers is not opportune, certainly not with increased unemployment, and the priority being employing Dutch or European jobseekers, also for seasonal work. In the long term, the ageing of the labour market could result in employers starting to recruit more seasonal workers from outside the EU. From the EU perspective, many seasonal workers from, in particular, North and West Africa come to the southern Member States every year. An EU regulation could be useful to prevent exploitation of these workers, to manage the migration flows more effectively, and - in general - to promote cooperation with third countries in the area of migration and development. The EU may possibly succeed in motivating the third countries to tackle illegal migration. All things considered, the Netherlands will aim for fundamental amendments to the proposal during the negotiations, leaving sufficient room for essential aspects of the national admission, implementation and enforcement policy.

By letter of 14 October 2010, the Presidents of the Senate and the Lower House of the States General informed the European Commission of the positions adopted by both Houses of the States General on the EU proposal for a Directive on seasonal workers.<sup>130</sup> Both Houses are of the opinion that the European Commission has insufficiently demonstrated that the proposal complies with the principles of subsidiarity and proportionality. Both Houses do not share the consideration of the European Commission that the need for seasonal workers is equally strong in all Member States. The European Commission furthermore demonstrated insufficiently that the difference between the countries and the regions are the result of differences in legislation. As a result of this, the necessity for the rules proposed is clearly lacking. The Houses are of the opinion that the problem of illegality and 'overstay' of seasonal workers within the EU could be tackled better by an increase in the capacity of (or better cooperation between) national enforcement organisations and inspectorates than by means of the proposed partial harmonisation of legislation.

*Framework Directive on labour migration*

**EU proposal for a Directive on Seasonal Workers (COM(2007)638).<sup>131</sup>**

This proposal is to regulate the implementation of a common procedure and a single permit, and grants labour migrants a number of rights to equal treatment. According to the proposal, the two current documents (residence permit for labour migrant and work permit) should be combined into a single residence permit that also provides access to the labour market.

The proposal is currently being negotiated at the European Parliament.

The first opinion on the proposed draft directive as formulated by the Cabinet at the time, as early as in 2009, was not entirely positive.<sup>132</sup> The government was, in particular, negatively inclined towards the uniform admission procedure for the work permit and the residence permit. The Cabinet argued that the added value of European actions had not been demonstrated on this point. The labour market differs too much by Member State. Besides, the Netherlands wants to maintain its current dual permit system, with the employer receiving the work permit and the employee the residence permit. The Cabinet did not exclude that a uniform procedure could be implemented in specific cases. This should, however, be laid down in the specific regulation, just as this was done in respect of the Blue Card.

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<sup>129</sup> [http://www.eerstekamer.nl/eu/edossier/e100039\\_voorstel\\_voor\\_een](http://www.eerstekamer.nl/eu/edossier/e100039_voorstel_voor_een).

<sup>130</sup> States General, session year 2010/2011, 32 452, no. 5.

<sup>131</sup> [http://www.eerstekamer.nl/eu/europeesvoorstel/com\\_2007\\_638/document/f=/vhp9iy4u5eee.pdf](http://www.eerstekamer.nl/eu/europeesvoorstel/com_2007_638/document/f=/vhp9iy4u5eee.pdf).

<sup>132</sup> [http://www.eerstekamer.nl/eu/edossier/e090145\\_richtlijn\\_betreffende\\_een](http://www.eerstekamer.nl/eu/edossier/e090145_richtlijn_betreffende_een).



The Cabinet was more positively inclined towards the rights for labour migrants to equal treatment. This might promote the realisation of a level playing field, with the relevant minimum level of protection. What is more, the proposal leaves sufficient room for national interpretation.

The current Cabinet did not pay specific attention to this proposal for a Framework Directive on labour migration in its 'Road Map'.

### 10.2.3 Other requirements of the Cabinet

Directives in respect of which no amendments are expected are the Free Movement of Persons Directive and the Return Directive. The strategy of the new Dutch Cabinet in these matters is aimed at finding and creating support for the Dutch position, so as to be able to exert pressure on and create an understanding with the European Commission and the European Parliament in this way. The efforts are currently mainly aimed at seeking contact with EU Member States and at stating the Dutch position in cases dealt with by the European Court of Justice.

#### *Free Movement of Persons Directive*

**Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ EU L158)**

In respect of the EU Directive on the Free Movement of Persons, the Dutch efforts will be aimed at the following aspects:

Broadening of the possibility of an exclusion order and the termination of residence for EU citizens who have been convicted.

Objecting to illegal residence prior to application for a residence permit pursuant to this Directive (limit the exception to two categories: unaccompanied minors and B9);

Closing the Europe route.

Actions against integration problems of EU citizens and the possibility to set demands on integration.

In the Stockholm Programme Action Plan the evaluation of this Directive is planned for 2013. This provides the Netherlands the opportunity to aim its efforts at the desired amendments. The Netherlands will seek active support from Member States and it will continue its consultations with the European Commission.

#### *Return Directive*

**Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ EU L348).**

Within the framework of the 'Road Map', the Dutch efforts regarding the Return Directive pertain to the following aspect:

Return unaccompanied minors on the condition of local reception.

On 24 December 2013 at the latest, the Commission will submit its report on the application of this Directive to the European Parliament and the Council. Until that date, the Netherlands – in cooperation with other countries – will invest in the organisation of, for instance adequate reception in the form of orphanages in countries of origin to realise an accelerated return of unaccompanied minors.



# Annex I – Commitments to the European Pact and Stockholm Programme

## Legal Immigration and Integration

### 1 Economic migration

#### *1.1 European Pact on Immigration and Asylum*

The relevant commitments in the Pact for this sub-section are in particular:

#### ***I(a) Implement policies for labour migration***

The Modern Migration Policy Bill of the former Minister of Justice was adopted by Parliament on 5 July 2010.<sup>133</sup> Modern Migration Policy relates, in particular, to the regular purposes of stay such as employment, study, and family reunification. The new Act was expected to enter into force on 1 January 2011, but this date will not be met. This is caused by the introduction of a new computer system at the IND, which has been delayed. This new computer system is the precondition for the entry into force of the Modern Migration Policy Act. At the moment of writing this report, a new date for the entry into force of this Act had not yet been decided upon.

Until the date of entry into force, the preparations for the implementation of Modern Migration Policy will continue as usual. The test projects, in which knowledge and experience is gained with working in accordance with the Modern Migration Policy Act, will be continued and, where possible, expanded.

The key aspects in the context of this commitment are the following.<sup>134</sup>

The purpose of the Modern Migration Policy Act is to ensure a more efficient implementation and enforcement of the Aliens Act 2000. This Act provides for fast, effective, and manageable admission procedures, and an increase in the number of tools for control and enforcement. These objects will be achieved, among other things, by the following measures:

- Improved co-ordination between the procedure for granting a regular provisional residence permit (a D-visa) and that of a regular temporary residence permit;
- Increase in the role of the sponsor in regular aliens law (the sponsor is the person or organisation that wishes to have the alien come over to the Netherlands); and
- Simplification of the system of restrictions under which the regular temporary residence permit may be granted.

The Modern Migration Policy Act furthermore provides for a sponsor recognition system, on the basis of which reliable companies and institutions may gain access to shorter admission procedures.

#### ***I(b) Increase the attractiveness of the EU for highly qualified workers and further facilitate the reception of students and researchers***

##### **Blue Card**

The policy regarding the Blue Card or the European Blue Card has been published,<sup>135</sup> but has not yet been implemented. Implementation is expected to take effect in June or July 2011. The following situation will then come into force.

<sup>133</sup> See Dutch Bulletin of Acts and Decrees 2010, no. 290.

<sup>134</sup> A more detailed description can be found in the Dutch Annual Policy Report 2009.

In the Netherlands, the residence of the holder of the European Blue Card is regulated on the basis of a regular temporary residence permit. The fact that this concerns a highly skilled migrant within the meaning of the Highly Skilled Migrant Directive (Directive 2009/50/EC) is expressed in the restrictions under which this permit is granted.

The format of the residence permit is regulated in Regulation (EC) no. 1030/2002, which lays down a uniform format for residence permits for third-country nationals (OJEU L 157). In accordance with Article 7(3) of the Highly Skilled Migrant Directive, the indication "European Blue Card" will be included under the heading "type of permit".

By this indication, the residence permit that is granted by implementing the Highly Skilled Migrants Directive (the European Blue Card) is distinguished from the residence permit granted on the basis of the Dutch Highly Skilled Migrants Scheme.

This distinction is important, among other things, for the purpose of the intra-Community mobility of the holders of European Blue Cards pursuant to Chapter V of the Highly Skilled Migrants Directive. Third-country nationals who have been granted a residence permit on the basis of the Dutch Highly Skilled Migrants Scheme subject to the restriction of residence as a highly skilled migrant are not entitled to intra-Community mobility (Article 3(4), last sentence of the Highly Skilled Migrants Directive). They can also not invoke the derogations to Directive 2003/86/EC (family reunification) and Directive 2003/109/EC (long-term residents) (which derogations are favourable to Blue Card holders and their family members).

#### **ExpatCenter Amsterdam Area**

On 9 February 2010, the ExpatCenter Amsterdam Area and the IND concluded a cooperation agreement for the period of three years (from 9 February 2010 up to and including 31 December 2013). The ExpatCenter Amsterdam Area opened its doors in June 2008 as a joint initiative of the municipalities of Amsterdam and Amstelveen and the IND, in order to provide – in one location – high-quality services to highly skilled migrants and their family members in the Amsterdam region. In February 2010, the municipalities of Almere and Haarlemmermeer (including Amsterdam Airport Schiphol) joined the ExpatCenter. The IND and the ExpatCenter wished to formalise their cooperation, which was achieved by the cooperation agreement concluded on 9 February 2010.<sup>136</sup>

On 25 February 2010, ExpatCenter Brabant opened its doors, with offices in Eindhoven and Tilburg.

On 10 October 2010, Rotterdam also opened an ExpatCenter.

#### ***I(c) Do not aggravate the brain drain***

In 2010, a beginning was made with the Circular Migration Pilot Project.<sup>137</sup> This pilot project provides an opportunity for a small group of labour migrants (with secondary school education) from developing countries to come to the Netherlands to perform temporary work, in some cases in combination with training. In the pilot project, the labour migrants concerned come from Indonesia and South Africa: 80 persons from each country. With the working experience gained, the migrants will be able to improve their professional positions or set up a business of their own upon return, and in this way contribute to sustainable development in the countries of origin.<sup>138</sup>

The pilot project is to give an answer to the question of whether circular migration has added value as a new approach in development cooperation, and it is to show whether it is possible to organise a pilot project in such a way that return will be guaranteed. From these principal aims, the following four

<sup>135</sup> Dutch Bulletin of Acts and Decrees 2010, no. 307.

<sup>136</sup> Source: Dutch Government Gazette 2010 no. 3856 12 March 2010.

<sup>137</sup> Decree of the Minister of Justice of 15 June 2010, number WBV 2010/9, amending Aliens Act Implementation Guidelines 2000. This decree entered into force on 1 July 2010.

<sup>138</sup> For more information: See letter to Parliament of 20 November 2009 on the progress of the migration circular no. 30573-52. (Source: Dutch Government Gazette 2010 no. 10160 30 June 2010).

project aims were formulated. Firstly, the pilot project provides insight into the factors underlying the successful or unsuccessful progress of circular migration, both in respect to the circular migrant and to the countries of origin. Secondly, the pilot project has been organised in such a way that it is possible to duplicate these projects in broad outlines with current or future partner countries of the Netherlands in the area of development cooperation. Thirdly, this pilot project is aimed at gaining insight into the risks involved in the relatively new phenomenon of circular migration, such as exploitation, illegality, and suchlike. Finally, the pilot project is aimed at increasing and intensifying the cooperation of the Netherlands with the countries of origin in the area of development and/or migration.

## *1.2 Stockholm Programme*

The relevant commitment in the Stockholm Programme for this sub-section is in particular:

### ***1(b) Improving skills recognition and labour matching***

Dutch labour market policy mainly ensues from generic policy. No new initiatives were taken in 2010 in the area of skills recognition and labour-matching that were specifically aimed at third-country nationals.

This does not mean that no attention was being paid to this subject. Thus, Nuffic, the Netherlands organization for international cooperation in higher education, is specialised in the assessment and evaluation of foreign diplomas (and consequently the level of education) and in the recognition of competencies acquired previously (EVCs) without the necessity of a diploma attached to it.<sup>139</sup>

In addition, there is, for instance, the website Euraxess Netherlands. This is an information and advice point for internationally mobile researchers wishing to come to or to stay in the Netherlands. The website provides information on funding opportunities, job offers, immigration procedures, social security, tax issues, and other topics relating to researcher mobility.<sup>140</sup> Euraxess.nl is the Dutch subsidiary of Euraxess.eu, an initiative of the European Commission, in which 35 countries currently participate.<sup>141</sup>

More in general, UWV WERKbedrijf (which is the work placement division of the Netherlands Employees Insurance Agency (UWV)), as the authority in the area of labour market knowledge, provides monthly labour market information. At request, they provide labour market data – if required, even sorted by postal code – for investigation and planning purposes at the municipal level. UWV data may be used as a basis for further analysis at the regional and sectoral level, and to identify friction on the regional labour market.

The additional number of persons seeking employment due to the crisis was tackled by UWV with various measures. The most important measures included: additional employees, additional efforts to fill vacancies *and* the setting up of 33 Mobility Centres. In the so-called “Matching Offensive”, the UWV made agreements with companies and sectors to give young people priority in filling vacancies at companies and placing trainees. Additional attention was also being paid to young people with a weaker market position (e.g. due to an impairment), young people running a higher risk of long-term unemployment, and young people with a non-Dutch background.

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<sup>139</sup> See <http://www.nuffic.nl/>. See in particular also

[http://www.werk.nl/werk\\_nl/werknemer/meer\\_weten/kansen\\_vergroten/tipsvoorallochtonen/internationaleddiplomawaardering](http://www.werk.nl/werk_nl/werknemer/meer_weten/kansen_vergroten/tipsvoorallochtonen/internationaleddiplomawaardering).

<sup>140</sup> <http://www.euraxess.nl/v>

<sup>141</sup> <http://ec.europa.eu/euraxess/v>

### 1.3 Key statistics

<b>First residence permits, by reason (provisional data)<sup>142</sup></b>				
	Total	Education reasons	Remunerated activities reasons	Other reasons
First permits	n.a.	10.510	10.448	n.a.

<b>All valid residence permits, by duration</b>				
	Total	3-5 months	6-11 months	12 months and over
All permits	n.a.	n.a.	n.a.	n.a.

<b>Unemployment rates of Member State citizens versus third-country nationals residing in the Member State<sup>143</sup></b>		
	Member State citizens	Third-country nationals
Unemployment rate (%)	3,7%	9,2%

## 2 Family reunification

### 2.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***I(d) To regulate family migration more effectively***

The distinction applied by the Netherlands between family formation (with the family ties being established the moment that the principal person has principal residence in the Netherlands) and family reunification (with the family ties being established outside the Netherlands at a moment at which the principal person also did not have principal residence in the Netherlands) was considered in conflict with Directive 2003/86/EC (Family Reunification Directive) by the European Court of Justice, by judgment of 4 March 2010.

By the decree of the State Secretary for Justice of 24 July 2010, the family reunification policy was brought into line with the obligations ensuing from the aforementioned Directive. The consequences of this included a decrease in the income requirement of 120% of the minimum wage, which had applied to family formation until then. The income requirement was reduced to 100%, which already applied to family reunification. The distinction between the minimum age of the partners/marriage partners for family reunification (18 years of age) and family formation (21 years of age) was abandoned as well. From then on, the principal person as well as the family member requesting entry to the Netherlands must at least be 21 years of age, irrespective of whether it concerns family reunification or family formation. (Source: Dutch Bulletin of Acts and Decrees 2010 no. 306).

In response to the judgment of the Court of Justice in the Sahin case (C-242/06), the IND reduced the charges for applications to extend or change a residence permit or applications for a permanent residence permit from Turkish citizens who may derive rights from the standstill provision of Article 13 of Decision 1/80. As a result of the judgment in C92-07 of the Court of Justice, the charges for initial admission of Turkish employees and their family members were brought into line with the rates introduced for Turkish citizens in response to the judgment in the Sahin case: € 60 for a regular provisional residence permit, and € 41 for a residence permit. The standard rates are € 830 for a provisional residence permit and € 188 for a residence permit.

<sup>142</sup> Source: IND Information System INDIS.

<sup>143</sup> Source: Statistics Netherlands (CBS).

## 2.2 Stockholm Programme

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

### **2(b) The Directive on family reunification, the importance of integration measures**

In the Netherlands, a number of measures were being taken to strengthen the integration and full participation of family migrants and to maximise the chance of successful integration in advance. These measures were aimed at improving the starting position of family migrants, so that they could prepare themselves for the demands made from them by society.

As a result of the implementation of the Civic Integration Abroad Act, the admission of family migrants is made subject to the condition that they learn the Dutch language at a basic level and become acquainted with the basic concepts of Dutch society. In 2011, the Dutch government will increase the level of the Spoken Dutch Test from level A1-min to level A1 of the European Framework for Modern Foreign Languages and add the Literacy and Comprehensive Reading Test.<sup>144</sup>

## 2.3 Key statistics

### **First residence permits for family reasons (provisional data)<sup>145</sup>**

Number of first permits	21.565
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## 3 Other legal migration

### 3.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***I(e) To strengthen mutual information on migration by improving existing instruments where necessary***

The activities of the Dutch National Contact Point for the European Migration Network contributed to this commitment.

The Netherlands has also continued to participate in the Intergovernmental Consultations on migration, asylum and refugees (IGC) and the General Directors Immigration Services Conference (GDISC).

The Netherlands furthermore has continued to provide statistics on asylum and migration to Eurostat.

The mutual information mechanism (Decision 2006/688/EC) also continued to be an important tool for the Netherlands.

#### ***I(f) Improve information on the possibilities and conditions of legal migration***

The improvement of information provision on legal migration was a topic of immediate importance in 2010 and will continue to be so in the future.

The Dutch immigration portal [www.newtoHolland.nl](http://www.newtoHolland.nl), a joint initiative of several government bodies, was improved and restyled in 2010. The portal serves as a good central information point for immigrants to the Netherlands. In addition to the new to Holland portal, the IND made concrete plans for a new IND website. These plans will be implemented at the end of 2010, and the result will be a new site with a very strong client/customer focus. The European Migration Portal serves to guide migrants/visitors to one of these information sites on the basis of their question(s).

<sup>144</sup> Decree of 31 August 2010 amending the Aliens Decree 2000 in connection with the amendment of the civic integration examination abroad by amending Article 3.98a of the Aliens Decree 2000 regarding the two parts referred to (Source: Dutch Bulletin of Acts and Decrees 2010 679).

<sup>145</sup> Source: IND Information System INDIS.

The IND, furthermore, cooperated closely with the Dutch Ministry of Foreign Affairs to improve the consistency in the provision of information. The IND and the Consular Service Center (CDC) of the Ministry of Foreign Affairs use a joint knowledge bank with editors from both organisations, in order to secure consistent information on legal immigration for foreigners/immigrants. The knowledge bank will also be available for the Dutch embassies and consulates abroad, starting with the Dutch embassy in Washington at the end of 2010.

See also Section 1, commitment 1(b) above.

### 3.2 Stockholm Programme

The relevant commitments in the Stockholm Programme are similar to the Pact objective above, hence no further information required.

## 4 Integration

### 4.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***I(g) Promote harmonious integration in line with the common basic principles***

The common basic principles may be found in the JHA Council Conclusions of 19 November 2004, [doc. 14615/05](#),<sup>146</sup> as well as the Commission Communication [COM\(2005\) 389](#).<sup>147</sup>

Dutch integration policy centres on the importance of participation of newcomers in society. In this context, qualification is considered a basic condition. For this reason, great importance is attached to civic integration of newcomers. The Civic Integration (Newcomers) Act has been effective since 1 January 2007. This Act requires from all aliens from outside of the EU between 18 and 65 years of age that they pass a civic integration examination. The civic integration examination consists of knowledge of Dutch society and of the Dutch language at level A2 of the European Framework for Modern Foreign Languages.

The Netherlands aims at eliminating the disadvantages, for instance, on the labour market or in education by means of generic policy, and at realising integration objectives by means of general policy. The Netherlands is making great efforts to combat discrimination on all grounds. In the autumn of 2009, the Municipal Anti-Discrimination Facilities Act entered into force. This Act regulates the obligation for municipalities to provide access to independent and low-threshold anti-discrimination facilities. The purpose of these facilities is to provide assistance to victims of discrimination (e.g. mediation or assistance in reporting to the police) in addition to registration of complaints about discrimination.

On 30 September 2010, the House for Democracy and The Rule of Law was established.<sup>148</sup> The House for Democracy and The Rule of Law is an independent foundation with the mission to increase people's knowledge of and participation in democracy. The House aims at different target groups, including participants in civic integration programmes.

<sup>146</sup> Available from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/82745.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf).

<sup>147</sup> Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0389:EN:NOT>.

<sup>148</sup> See <http://democratie-rechtsstaat.nl>

### ***1(h) Promote information exchange on best practices in terms of reception and integration***

The Dutch government provides information exchanges in several ways, including the following:

- In cooperation with municipalities, it established the Common Integration Agenda (GIA). In this context, information is exchanged between the government and municipalities and among municipalities.
- Every year, Statistics Netherlands and The Netherlands Institute for Social Research take turns in publishing the Annual Report on Integration by order of the Ministry for the Interior and Kingdom Relations. This report provides a broad (scientific) overview of the status of the integration process in different areas.
- The Ministry for the Interior and Kingdom Relations subsidises FORUM knowledge centre, which specifically focuses on integration issues. FORUM gives advice to municipalities, social institutions, and other organisations.
- Within the framework of the National Ethnic Minorities Consultative Committee, information is exchanged between the central government and the different migrant communities in the Netherlands (see 3(e) for more information).

### ***4.2 Stockholm Programme***

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

### ***3(b) To incorporate integration issues in a comprehensive way in all relevant policy areas***

The Netherlands aims at eliminating disadvantages by means of generic policy and realising integration objectives by means of general policy. The policies on education, labour market, and youth must be designed in such a way that all Dutch citizens benefit equally from these policies. Efficiency was the first matter of importance in this context. This applied to reducing the school dropout rate, combating nuisance and crime, and increasing labour market participation. Specific integration programmes, such as an action plan for Moroccan and Antillean young people, will be completed during the next few years and imbedded in generic policy. An exception, in the form of compulsory participation in a civic integration programme, applies to new migrants from third countries.

### ***3(e) Improved consultation with and involvement of civil society***

In the Netherlands, a national dialogue structure on integration policy has been laid down by an Act of Parliament. Through this national dialogue structure, all important policy proposals on integration policy will be discussed with minority organisations before a final decision will be taken by the Dutch Government.

### ***3(f) To enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts***

With a view to promoting intercultural dialogue, the Dutch government subsidized the programme “EigenWijze Buurten” [Awareness Neighbourhoods] for three consecutive years (from 2008 until 2010). On the basis of this programme, mixed ethnic teams in different neighbourhoods developed at least two small-scale activities within their neighbourhoods and blocks of flats in order to reinforce mutual understanding among different cultures.

#### 4.3 Key statistics

<b>Long-term third-country national residents</b>	
Number of long-term third-country national residents	n.a.

  

<b>Acquisition of citizenship</b>	
Number of third-country national nationals (Citizens of countries other than of EU-27, EFTA and Candidate countries) taking up citizenship	n.a.



# Illegal Immigration and Return

## 5 Illegal immigration

### 5.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***II(a) Only case-by-case regularisation***

There have not been any new developments since 2009.

#### ***II(c) Ensure that risks of irregular migration are prevented***

##### **i-Map**

The Netherlands supports the MTM i-Map project of the International Centre for Migration Policy Development (ICMPD). The MTM i-Map is an interactive site used to provide an overview of illegal immigration in the countries around the Mediterranean Sea (Mediterranean – MTM). The MTM i-Map was launched by the ICMPD in January 2007 and is a good example of the cooperation among the partner states participating in the MTM dialogue. The MTM i-Map facilitates the practical cooperation between the Arabian and European partner states in the area of migration; one of the reasons why the Netherlands (the Ministry of Justice – now the Ministry of the Interior and Kingdom Relations – and the Ministry of Foreign Affairs) supports this project. The MTM i-Map seeks to support continued information exchange among the partner states in the area of migration. The MTM i-Map started as an interactive map on illegal migration routes in Africa, the Middle East, and the Mediterranean Sea Region and is used as a starting point for further development of a thorough instrument for information exchange and analysis. The MTM i-Map recently entered its fourth phase “a dialogue in action”. Until 2013, i-Map will receive funds from the Thematic Programme.<sup>149</sup> The Netherlands will not contribute financially this time, but it will continue to participate in the project by providing international liaison officers (ILOs) and other expertise to the project.

In 2010, the Netherlands furthermore contributed actively to the development of a similar i-Map, namely the BMP i-Map (Building Migration Partnerships), which focuses on the eastern European external borders.

##### **Carriers**

For the implementation of the Articles 26 and 27 of the Convention implementing the Schengen Agreement, a provision was included in Section 108 of the Aliens Act 2000 to tighten the liability of the carrier carrying undocumented aliens or incorrectly documented aliens to the EU external borders. This provision entered into force on 1 July 2010.<sup>150</sup>

On 15 April 2010, the authorities furthermore designated a number of carriers who are obliged to photograph, photocopy or scan the documents of their passengers.<sup>151</sup> The carriers that were designated

<sup>149</sup> For the purpose of financing specific activities, Member States and/or non-governmental organisations may submit project proposal from the «thematic programme for cooperation with third countries in the areas of migration and asylum» (hereinafter “Thematic Programme”) of the European Commission. The Thematic Programme has five objectives: Fostering the links between migration and development; promoting well-managed labour migration; fighting illegal immigration and facilitating the readmission of illegal immigrants; protecting migrants against exploitation and exclusion and supporting the fight against trafficking in human beings; and promoting asylum and international protection. See Lower House of Parliament, session year 2009–2010, 30 573, no. 54.

<sup>150</sup> Source: Dutch Government Gazette 2010 no. 9603 23 June 2010.

<sup>151</sup> Regulation of the Minister of Justice of 26 March 2010 no. 5647371/10, amending the Aliens Regulations 2000 (ninety fifth amendment).

in this context are those flying from specific airports to the Netherlands. In order to ensure that airlines are not burdened unnecessarily, the list has been limited to a number of airports from where undocumented aliens are often carried to the EU external borders. In order to ensure that the measure is as effective as possible, the list of airports is updated continually on the basis of the data collected in this context.<sup>152</sup>

#### **Capacity building in Liberia**

The IND and the Repatriation and Departure Service, in cooperation with Ghana and the United Nations, participate in a project to strengthen the capacity of the Liberian immigration service: the “Strengthen Institutional Capacity and Competence of the Bureau of Immigration and Naturalisation, Liberia” Project. This project was launched in June 2009 and runs until June 2011. The project is aimed at training more than a hundred Liberian recruits to become immigration employees and twenty Liberian immigration employees to become trainers. The training is given at the Ghanaian training centre of the immigration service in Ghana.

#### ***II(d) To develop cooperation between Member States, using, on a voluntary basis and where necessary, common arrangements to ensure the expulsion of illegal immigrants***

For joint expulsion measures (e.g. flights) see under 6.2 4(f).

#### ***II(g) Take rigorous actions and penalties against those who exploit illegal immigrants***

As the “Employer Sanctions Directive” was not adopted until 18 June 2009, this Directive had not yet been implemented at the time of writing this report. The Netherlands has, however, been operating in accordance with this Directive. If an inspector of the Health and Safety Inspectorate discovers a breach, this officer will apply an enforcement tool that may be followed by a sanction. As stated in the “Employer Sanctions Directive”, it is possible to impose sanctions in the event of illegal employment.

#### ***II(h) An Expulsion Decision taken by one Member State (MS) should be applicable throughout the EU and entered into the SIS obliging other MSs to prevent the person concerned from entering or residing***

The Netherlands is currently in the process of implementing the Return Directive, which includes amending existing legislation. A proposal for amendment was submitted for approval to Parliament on 17 June 2010.<sup>153</sup> Pending the approval procedure, aliens who are or will be subject to an entry ban have been entered into the Schengen Information system (SIS) by the IND.

### ***5.2 Stockholm Programme***

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

#### ***4(j) More effective action against illegal immigration and trafficking in human beings and smuggling of persons by developing information on migration routes as well as aggregate and comprehensive information which improves our understanding of and response to migratory flows***

As discussed above in Pact-commitment II(c), the Netherlands has been active in i-Map.

In addition, the Expertise Centre for Human Trafficking and Human Smuggling (EMM) has been active since 13 May 2005. In this Centre, the National Criminal Intelligence Service, the Aliens Police, the Royal Netherlands Marechaussee, the Social Security, Intelligence and Investigation Service, and the IND

<sup>152</sup> Source: Dutch Government Gazette 2010 no. 4949 31 March 2010.

<sup>153</sup> Parliamentary Paper of the Lower House of Parliament, session year 2009-2010, 32 420, no. 2.

cooperate in combating human trafficking and human smuggling.

In addition, the tenth anniversary of the Bureau of the National Rapporteur on Trafficking in Human Beings was celebrated in 2010. The duties of the National Rapporteur are to report on the nature and scope of human trafficking in the Netherlands and on the effects of policy in this area. The reports contain information on relevant legislation and regulations, prevention, investigation and prosecution of human trafficker, and aid to victims. The Rapporteur also makes recommendations to improve the approach to human trafficking. The National Rapporteur is independent, and reports to the Dutch government. The reports are public and are available from the website of the National Rapporteur.<sup>154</sup>

#### ***4(k) Increased targeted training and equipment support***

##### **SIOD**

The Social Security Intelligence and Investigation Service (SIOD), which is part of the Ministry of Social Affairs and Employment, launched a specific training course to combat human trafficking. This four weeks' course was developed by the ICMPD in Vienna (status of UN reporter) and the SIOD and is titled "Identification and Treatment of Victims or Potential Victims of Human Trafficking". It focuses on the human-rights approach, the international legal framework, the indicators of potential victims, the multi-agency approach etc., and is also supported by simulations and role plays. The European Commission and the National Reporter on Trafficking in Human Beings have repeatedly stressed the utmost importance of the position and rights of victims of human trafficking, which is reflected in a new European Directive. So far, 18 investigators of the SIOD have completed this training course.

##### **Health and Safety Inspectorate**

All inspectors of the Health and Safety Inspectorate who carry out inspections aimed at illegal employment and underpayment have been trained in the scope of application of the Aliens Act. They are highly experienced in establishing [officially: verifying] the identities and nationalities of the employers found at the working place. They have been trained to establish whether an employer is illegal or not. They provide information on illegality to the police and the aliens police. All these inspectors have also been trained in recognising false or forged identity documents and so-called "look-alikes" (profiling). If necessary, they contact the police or the Royal Netherlands Marechaussee, they draw up official reports, and they arrange for the transfer of any suspects to the police on the spot.

##### **Police**

In 2009, the police academy – in close cooperation with the regional forces and the EMM<sup>155</sup> – developed a course programme specifically aimed at migration-related crime. The course started this year. The students are trained in recognising the signals of human trafficking, human smuggling, abuse of travel documents and fraud, developing a plan of action, and interviewing the victims, witnesses, and suspects of these crimes. Once a student has passed the final examination, he or she will be authorised, pursuant to the Instructions for Human Trafficking, to interview victims/witnesses as a certified investigator. Although this course was developed for police staff, an abridged version is provided to cooperating organisations and partners, such as municipalities, Health and Safety Inspectorate, SIOD, Tax and Customs Administration, Employee Insurance Agency, RIEC (Regional Information and Expertise Centre), et cetera.

#### ***4(l) A coordinated approach by Member States by developing the network of liaison officers in countries of origin and transit.***

The Netherlands also maintained an active network of liaison officers in 2010. There are plans to increase this network in 2011.

<sup>154</sup> <http://www.bnrm.nl>.

<sup>155</sup> EMM, see commitment 4(j) of the Stockholm Programme above.

In addition to the international liaison officers (ILOs) of the IND, the Royal Netherlands Marechaussee and the National Police Services Agency<sup>156</sup> also have liaison officers in the countries of origin and the countries of transit. The liaison officers of the Royal Netherlands Marechaussee are stationed in cities such as Kuala Lumpur, Rabat, and Ankara. The Royal Netherlands Marechaussee's Identity and Document Fraud Centre of Expertise provided the base from where intensive cooperation was maintained with these liaison officers, among others things by providing document courses to the local authorities responsible for border control.

### 5.3 Key statistics

<b>Third-country nationals apprehended</b>	
Third-country nationals apprehended	7.610 <sup>157</sup>

<b>Third-country nationals regularised</b>	
Third-country nationals regularised	n.a.

## 6 Return

### 6.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***II(b) To conclude readmission agreements at EU or bilateral level***

<b>Type of readmission agreement</b>	<b>Third countries involved</b>	<b>Main purpose of the agreement</b>
There are no EU or bilateral (BENELUX) readmission agreements negotiated and achieved in the reference period.		

#### ***II(f) To devise incentive systems to assist voluntary return and to keep each other informed***

The Netherlands has a number of long-term projects, which have been expanded by new projects and partial projects in 2010 as well.

##### **REAN and HRT programme**

In the Netherlands, the two main voluntary return and reintegration programmes are implemented by the International Organization for Migration (IOM) through the return programme REAN: "Return and Emigration of Aliens from the Netherlands" and the Return and Reintegration Regulation (HRT).

##### **Additional voluntary return and reintegration projects which are also implemented by the IOM**

###### *– Assisted Voluntary Return/Native Counsellors (RIIM)*

Within this program, counsellors with the same cultural background encourage illegal third-country nationals to return to their country of origin. These counsellors use a special working method through which they can reach the migrants.

###### *– Assisted Voluntary Return from Detention (AVRD)*

<sup>156</sup> The National Police Services Agency (KLPD) is a specialist police force that operates alongside the regional police forces in the Netherlands. The duties of the KLPD include conducting large-scale investigations into organised crime and terrorism. See <http://www.politie.nl/KLPD/overhetKLPD/>.

<sup>157</sup> Source: IND Information System INDIS.

This project is aimed at those aliens in detention who are excluded from the REAN and HRT programmes. They can make use of the return assistance offered by IOM. They receive assistance in obtaining travel documents and their flight ticket, and they receive a minor financial contribution.

– *UAM project*

Unaccompanied minors and adult aliens who have applied for asylum before their 18th birthday are eligible for special reintegration support if they return voluntarily with IOM.

– *Shelter for unaccompanied minors in Angola and in the Democratic Republic of Congo*

In both programmes, the Netherlands is making use of orphanages in the countries of origin where unaccompanied minors can find accommodation and care, if necessary.

**Country specific projects implemented by the IOM**

- *Assisted Voluntary Return and Reintegration Iraq*
- *Assisted Voluntary Return and Reintegration Afghanistan*
- *Assisted Voluntary Return and Reintegration Sierra Leone*

The AVRR projects in Iraq, Sierra Leone, and Afghanistan concern assistance in kind and include assistance aimed at employment / self-employment / economic activity.

**Other**

- The Dutch government has furthermore financed a cooperation of Dutch organisations working with asylum seekers or ex asylum seekers and/or aliens residing illegally in the Netherlands, which is responsible for reintegration projects aimed at sustainable return to several countries. This cooperation started only recently.
- The Dutch government has also financed (smaller) reintegration projects of other organisations.

**Planned measures**

On 1 January 2011, the Repatriation and Departure Service will launch three Post-Arrival Assistance programmes for voluntary returnees in Liberia, Azerbaijan, and Sierra Leone or Burundi.

## 6.2 Stockholm Programme

The relevant commitments in the Stockholm Programme for this sub-section are in particular:

***4(c) Ensuring that the objective of the EU's efforts on readmission should add value and increase the efficiency of return policies, including existing bilateral agreements and practices***

Readmission Agreements establish clear principles and modalities for the return of own nationals as well as third-country nationals. In addition to this, the time limits for submitting and responding to the readmission applications mentioned in those Agreements provide a well-defined procedure in these matters.

***4(e) Assistance by the Commission and Frontex and Member States on a voluntary basis, to Member States which face specific and disproportionate pressures, in order to ensure the effectiveness of their return policies towards certain third states***

The Repatriation and Departure Service of The Netherlands did not provide any return support to another Member State in 2010 in the context of any specific and disproportioned pressures in another Member State.

The Netherlands did participate, however, in an EU-Greek action plan, which will be implemented in 2011.

**4(f) Increased practical cooperation between Member States, for instance by regular chartering of joint return flights**

**Joint return flights**

The Netherlands has collaborated with other EU countries in joint return operations within the EU. The general coordination is with the Return Operations Sector (ROS) of Frontex. Frontex offers all Member States the opportunity to participate in organized Joint Return Operations (JROs). During the CCG Frontex meetings (Core Country Group), decisions and assessments are made on destinations, flight dates, flight schedules etc. These flights are operated on the basis of co-financing in close cooperation with Frontex ROS. In addition to this, the planning of flights will be discussed during the DCP Frontex meeting (Direct Contact Point of Return). All information can furthermore, be retrieved from ICONET, the Frontex database. In 2010, the Netherlands participated in 7 JROs (Frontex coordinated flights). Two flights were organised by the Netherlands.

Apart from the JROs, the Netherlands – in cooperation with Frontex – participated in national charter flights arranged by other EU countries. This participation depended on the availability of flights, if any, and whether the Netherlands had a sufficient number of illegal aliens to board these flights. All expenses must be settled with the organizing Member State. These flights could thus be financed from the (national) ETF. The Netherlands participated in 3 flights, this is in accordance with bilateral agreements.

**Travel documents**

In 2010, a task force Armenia and a task force Azerbaijan were organised in cooperation with Germany. A delegation from both countries visited Germany and the Netherlands for the identification and return of illegal migrants. It is the objective to organise more task forces in cooperation with Germany and Belgium in 2011.

6.3 Key statistics

<b>Third-country nationals ordered to leave and returned (provisional data)</b> <sup>158</sup>				
	Ordered to leave	Returned following an order to leave	Returned as part of forced return measures	Returned through an Assisted Return Programme
Third-country nationals	29.868	10.354	n.a.	n.a.

7 Actions against human trafficking

7.1 European Pact on Immigration and Asylum

The relevant commitment in the Pact for this sub-section is in particular:

**II(e) Cooperation with the countries of origin and of transit, in particular to combat human trafficking and to provide better information to communities under threat**

The Netherlands and Nigeria entered into a cooperative working arrangement, in the context of which Dutch police officers arranged a number of training sessions for their Nigerian colleagues. One of these training sessions was aimed at identifying and dealing with signs and indicators of human trafficking and human smuggling. In this context, attention was also paid to the multi-disciplinary approach, working method, and procedures of the Expertise Centre for Human Trafficking and Human Smuggling (EMM).<sup>159</sup>

<sup>158</sup> Source: IND Information System INDIS.

<sup>159</sup> EMM, see above in Section 5, Illegal Immigration, commitment 4(j) of the Stockholm Programme.

In order to emphasise the multi-disciplinary approach, the participants originated from different Nigerian services: the police, the immigration service, and the Naptip (the Nigerian investigation service specifically charged with human trafficking and human smuggling).

### 7.2 Stockholm Programme

The relevant commitments in the Stockholm are similar to the Pact commitments, hence no further description is required.

### 7.3 Key statistics

<b>Third-country nationals receiving a residence permit as victims of human trafficking</b>	
Third-country nationals	n.a.

<b>Traffickers arrested and convicted</b>		
	Arrested / otherwise involved in a criminal proceeding	Convicted
Traffickers	n.a.	n.a.

# Border Control

## 8 Control and surveillance at external borders

### 8.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***III(a) More effective control of the external land, sea and air borders***

The Royal Netherlands Marechaussee (KMar) is responsible for border control (with the exception of the Rotterdam Port, for which the Rotterdam-Rijnmond Seaport Police is responsible). The following developments took place at the KMar in 2010:

- A quality management system was introduced, specifically for border control at Amsterdam Airport Schiphol, but there are plans to introduce this system throughout all the KMar units. This system provides border guards 7 steps to complete, with the responsibility resting with the border guards himself or herself. This system has improved the knowledge and quality level of the border guards.
- An additional Coaching & Supervision Department was established at Amsterdam Airport Schiphol. This Department may be used to provide additional schooling and training, and to increase the knowledge level of the KMar officers.

The approach to border control has become increasingly multi-disciplinary. In addition to actual border checks, investigation and security will be incorporated in the border control system. See the developments within the Border Management Renewal Programme.<sup>160</sup>

- The training courses provided by the KMar were continually brought into line with current EU legislation and the Common Core Curriculum.
- The KMar was connected to CIRCA, the secure network of the EU, to ensure that it is always informed of the correct and most recent legislation.
- The border guards working at the desk were given an Aliens Legislation Pocketbook to ensure that border checks are conducted in accordance with current legislation.

#### ***III(e) Deploy modern technological means for border control***

The Annual Policy Report 2009 already paid detailed attention to the Border Management Renewal Programme. The ambition of this programme is to create an effective and efficient border control process, with maximum use of automated control and risk-driven actions on the basis of pre-obtained information on passengers and their baggage. In this process, the right balance must be sought between maximum security and optimum mobility. The programme is an inter-organisational cooperation of the Royal Netherlands Marechaussee, the Customs, the Seaport Police, the Ministry of Security and Justice, the National Coordinator for Counterterrorism, the IND, the Schiphol Group, and KLM Airlines, under the umbrella of the Ministry of the Interior and Kingdom Relations.

The programme has been divided into two phases, with the first phase running until 2012. For the time being, the programme consists of the following four projects: the PARDEX (“Passenger Related Data Exchange”) Project, the API (“Advance Passenger Information”) Project, the No-Q (“Automated Border Passage”) project, and the RT (“Registered Travelers”) Project.

An action plan to realise the basic PARDEX facilities (level 2, 2012-2014) is currently being formulated, and a project is currently being designed to identify and prepare the necessary amendments to national regulations and legislations. The new government included a reservation for PARDEX in its financial section on Immigration and Integration.

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<sup>160</sup> See below, this Section, Pact commitment III(e)



In 2010, a beginning was made with the execution of a pilot project to obtain advanced passenger information (API). The pilot project was executed in a limited number of flights and in cooperation with KLM. This information is currently obtained from 11 KLM routes. In the first six months of 2010, attention was particularly aimed at the technical and process-related requirements which are necessary to be able to obtain the information and to match the information with checklists. So far, there have not been any bottlenecks in the process to obtain advanced passenger information.

The purpose of the No-Q project is to realise a fast and ethical concept for automated border passage. In respect of the automated border passage at Amsterdam Airport Schiphol, it was decided to initially start with EU citizens who depart from the Netherlands. These travellers are provided the opportunity to arrange the border passage on their own, assisted by innovative IT, without active interference from an officer charged with border control. In May/June 2010, two test assemblies were set up at the border. The actual implementation depends on the European tendering procedure, but is expected to take place mid-2011. The implementation will be effected on a phased basis, and will be linked to the possible building alteration plans of Amsterdam Airport Schiphol.

The RT project aims at developing the frameworks and execution of different programmes for automated border passage for registered travellers. In this context, special attention is paid to frequent travellers who are prepared to pay for a service programme including an automated border passage, such as Privium.<sup>161</sup> In the context of this project, the pilot project "FLUX" for automated border control between the Netherlands and the US for citizens of the two countries was launched in April 2009.

In addition to FLUX, frameworks are being developed in the context of the RT project to expand the existing Privium programme with frequent travellers who do not have an EU nationality (third-country nationals) and in respect of whom a material Dutch interest exists. A beginning will be made with the development of a pilot project called "Orange Lane", which will give diplomats stationed in the Netherlands (privileged persons who have ID cards coded AD, AO, or AC) and privileged employees of international organisations established in the Netherlands the opportunity to become a member of Privium and to use the automated border passage at Amsterdam Airport Schiphol (through Privium). Given the technical adjustments that must be made to Privium, this system is expected to be operational at the beginning of 2011.

#### *8.2 Stockholm Programme*

The relevant commitment in the Stockholm Programme for this sub-section is in particular:

***7(i) invites the Member States and the Commission to explore how the different types of checks carried out at the external border can be better coordinated, integrated and rationalised with a view to the twin objective of facilitating access and improving security***

In 2010, initiatives were made to be able to conduct joint border checks by the Customs and the Royal Netherlands Marechaussee (KMar). Several Customs officers, for instance, attended a course Doc1 (basic document course of the KMar) and in Basic Alien Care. At the same time, KMar officers attended a basic Customs course. All of this with a view to conduct effective and efficient border checks on, for instance, baggage and freight.

In respect of this commitment as well, reference may be made to the above-mentioned Border Management Renewal Programme, which includes the FLUX, No-Q, and Privium projects.

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<sup>161</sup> Privium is Schiphol's service programme for frequent flyers who wish to travel without unnecessary delay. The Privium membership offers exclusive facilities that provide speed, comfort and priority.

### 8.3 Key statistics

<b>Third-country nationals refused entry</b>				
	Total refused	Refused at the land border	Refused at the sea border	Refused at the air border
Third-country nationals refused entry by Royal Netherlands Marechaussee (KMar)	2.779	-	33 <sup>162</sup>	2.746 <sup>163</sup>
Third-country nationals refused entry by Seaport Police	44	-	44 <sup>164</sup>	-
Total refused entry	2.823	-	77	2.746

<b>Visas issued</b>			
	Total Visas	Schengen Visas	National Visas
Visas issued by Royal Netherlands Marechaussee (KMar) <sup>165</sup>	45.121	45.121	-
Visas issued by Seaport Police <sup>166</sup>	16.218	16.218	-
Total visas issued	61.339	61.339	-

## 9 Cooperation with respect to border control

### 9.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### **III(b) Generalise the issue of biometric visas, improve cooperation between MSs' consulates and set up joint consular services for visas**

The Netherlands did not yet issue any biometric visas. Although the Netherlands is ready to do so, it follows the roll-out scheme that will be established by the European Commission in respect of EU-VIS. Linked to this, the Netherlands will start taking fingerprints. The roll-out of EU-VIS has (for the time being) been postponed to mid-2011. The phased roll-out of EU-VIS is expected to start in June 2011 at the diplomatic posts of the Netherlands, to begin with the posts in North Africa.

<sup>162</sup> Source: Royal Netherlands Marechaussee.

<sup>163</sup> Source: Royal Netherlands Marechaussee.

<sup>164</sup> Source: Seaport Police.

<sup>165</sup> Source: Royal Netherlands Marechaussee.

<sup>166</sup> Source: Seaport Police.

**III(d) Solidarity with MS subjected to disproportionate influxes of immigrants**

The Netherlands contributes to the RABIT<sup>167</sup> pool. Now that the decision was taken recently to actually deploy the pool (in Greece), the Netherlands contributed by deploying the Royal Netherlands Marechaussee and the Seaport Police. The Netherlands deployed 16 border guards and 8 interpreters to assist in the Frontex operation in the Evros region (border area between Turkey and Greece).<sup>168</sup>

In addition, the Netherlands wants to show solidarity with Member States that are confronted with disproportionate influxes of immigrants. In this light, the Netherlands contributed to the Joint Operation “Poseidon” (eastern Mediterranean Sea) and the Pulsar Program at the EU air borders. The Netherlands also participated in various Joint Operations at country borders (Hungary, Slovakia, Bulgaria, and Rumania).

**III(f) intensify cooperation with the countries of origin and of transit in order to strengthen border control**

There were no new developments in 2010.

*9.2 Stockholm Programme*

The relevant commitment in the Stockholm Programme for this sub-section is in particular:

**6(a) The European Council encourages the Commission and Member States to take advantage of the entry into force of the Visa Code and the gradual roll-out of the VIS**

The Visa code was implemented in full on 5 April 2010.

As stated above (Pact commitment III(b)) a phased roll-out of EU-VIS is expected to start in June 2011 at the diplomatic posts of the Netherlands, to begin with the posts in North Africa.

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<sup>167</sup>Rapid Border Intervention Teams. RABIT –team in Member States will be deployed for a limited period of time in situations of urgent and exceptional pressure, especially the arrivals of large numbers of third-country nationals trying to enter a Member State illegally. After receiving a request from a Member State, the Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) makes the decision on the deployment of one or more rapid border intervention teams, including border guards from other Member States, as soon as possible and not later than five working days from the date on which the request was received. See Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers.

<sup>168</sup>See also the answers to the written Parliamentary questions of 9 November 2010, Parliamentary questions (Appendix) 2010-2011, 427, Lower House of Parliament.

# Asylum

## 10. International protection

### 10.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***IV(c) solidarity with MS which are faced with specific and disproportionate pressures on their national asylum systems***

This concerns information on support provided to Member States experiencing specific and disproportionate pressures on their national asylum systems, with regard to the processing of requests for international protection. This could include seconding staff and sending resources or equipment.

The Netherlands promised Greece to provide assistance in the implementation of the Greek Action Plan for migration management.<sup>169</sup>

This concerns any action undertaken with regard to the reallocation from Member States experiencing specific and disproportionate pressures of beneficiaries of international protection to other Member States. This relates to intra-EU movements, for example, as part of EU projects.

There were no actions in this area. Neither are there plans for this.

#### ***IV(d) Strengthen cooperation with the Office of the United Nations High Commissioner for Refugees to ensure better protection for people outside the territory of European Union Member States who request protection, in particular by moving, on a voluntary basis, towards the resettlement within the European Union***

By letter of 28 January 2008, the Dutch government informed the Lower House of Parliament of its policy framework for invited refugees in the period 2008 up to and including 2011.<sup>170</sup> The government promised to take in 2,000 refugees within the context of the resettlement programme. In 2010 (the third year), resettlement missions were made in Nepal (selection of Bhutanese refugees), Lebanon (Iraqi refugees), Sudan (Eritrean and Ethiopian refugees), and Thailand (Burmese refugees and so-called “urban cases”). The planned mission to the ETC (Emergency Transit Center) of the UNHCR in Rumania has been postponed to January 2011. The new Minister for Immigration and Asylum will express his views on the Dutch resettlement programme in more detail in the next few months.

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<sup>169</sup> See also the answers to written Parliamentary questions of 9 November 2010, Parliamentary questions (Appendix) 2010-2011, 427, Lower House of Parliament.

<sup>170</sup> Lower House of Parliament, session year 2007–2008, 19 637, no. 1182.

**IV(e) MS are invited to provide the personnel responsible for external border controls with training in the rights and obligations pertaining to international protection.**

The basic training course for border guards deals with the recognition of asylum seekers, also in the event that the individual concerned does not request asylum in the standard terms. The course also addresses the UNHCR Treaty, and attention is paid to the rights and obligations of individuals requesting protection. The border guard plays a crucial role in this; this element is therefore taught in the basic course to each border guard.

*10.2 Key statistics*

<b>Asylum applications and decisions</b> <sup>171</sup>							
	Applications	First instance decisions on asylum applications					
	Total applications under consideration	Total positive	Rejected	Geneva Convention	Subsidiary protection	Temporary protection	Humanitarian status
Asylum applications	15.148	8.003	9.577	812	4.010	-	3.181

<b>Third-country nationals reallocated and resettled to your Member States</b> <sup>172</sup>			
	Total	Reallocated	Resettled
Third-country nationals	413	-	413

<b>Training of border guards on asylum</b>		
	Total number of border guards	Border guards who received training
Border guards Royal Dutch Marechaussee	710 <sup>173</sup>	335 <sup>174</sup>
Border guards Seaport Police	109 <sup>175</sup>	- <sup>176</sup>
Total border guards	819	335

<sup>171</sup> Source: IND Information System INDIS.

<sup>172</sup> Source: IND Information System INDIS.

<sup>173</sup> Source: Royal Netherlands Marechaussee. This concerns the total number of border guards at the Royal Dutch Marechaussee on the reference date 1 January 2011.

<sup>174</sup> Source: Royal Netherlands Marechaussee. This concerns the number of students who completed the general Criminal Investigation course. Immigration Law forms part of this course.

<sup>175</sup> Source: Seaport Police. This concerns the number of border guards at the Seaport Police by the end of 2010.

<sup>176</sup> Source: Seaport Police. There was no intake of no new students in 2010.

# Unaccompanied Minors and Other Vulnerable Groups

## 11 Unaccompanied Minors (and other vulnerable groups)

### 11.1 European Pact on Immigration and Asylum

No specific commitments are included.

### 11.2 Stockholm Programme

The relevant commitment in the Stockholm Programme for this sub-section is in particular:

**5(a) Develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return**

The intended review of the policy on unaccompanied minors sent by the former State Secretary for Justice to the Lower House of Parliament on 11 December 2009<sup>177</sup> was declared controversial by the caretaker government after the fall of the Balkenende IV government. A core issue of the review would have been the abolition of the residence permit for unaccompanied minors and the promotion of return.

In order to promote the return of unaccompanied minors, the Netherlands is cooperating with several countries, including Norway, Sweden, Denmark, and the United Kingdom, in the development of various projects aimed at the promotion of permanent return.<sup>178</sup>

On 1 July 2010, the Improved Asylum Procedure entered into force in the Netherlands. The former Application Centre Procedure (which aimed at deciding on an asylum application within 48 working hours) has been extended into a General Asylum Procedure of eight days. This is currently the standard procedure for all applications, and is therefore not only intended for the evident applications, as used to be the case in the Application Centre Procedure. It is the intention that all asylum applications that do not require further investigation (i.e. applications that are either granted or rejected, and part of the Dublin cases) will be dealt with in the General Asylum Procedure. If a decision cannot be made within eight days for substantive reasons, the case will be referred to the Extended Asylum Procedure.

Since 1 July 2010, the Extended Asylum Procedure has also applied to unaccompanied minors. Where necessary, the options include giving unaccompanied minors a longer period for rest and preparations, with a target time of approximately three weeks. The Minister for Migration and Asylum furthermore promised the Lower House of Parliament to ensure a justified way of continuing protected reception.<sup>179</sup>

### 11.3 Key statistics

<b>Unaccompanied minors</b>	
Number of unaccompanied minors	-
Number of asylum applicants considered to be unaccompanied minors	701 <sup>180</sup>

<sup>177</sup> More on this in INDIAC – NL EMN NCP (2010).

<sup>178</sup> Source: Lower House of Parliament, session year 2010–2011, 27 062, no. 66, Letter from the Minister of Justice to the Chairman of the Lower House of the States General 5 October 2010.

<sup>179</sup> Source: Lower House of Parliament, session year 2009–2010, 27 062, no. 65, 18 June 2010.

<sup>180</sup> Source: IND Information System (INDIS).

# Global Approach to Migration

## 12 External cooperation / global approach to migration

### 12.1 European Pact on Immigration and Asylum

The relevant commitments in the Pact for this sub-section are in particular:

#### ***V(a) Conclude EU-level or bilateral agreements with the countries of origin and of transit containing clause on legal and illegal migration as well as development***

This concerns information on any (planned) EU level or bilateral agreements (e.g. Mobility Partnerships), which are in addition to those mentioned under Sections 1.1, Pact commitment I(a) Implement policies for labour migration; 7.1, Pact commitment II(b) To conclude readmission agreements; and 11, Pact commitment III(f) intensify cooperation with the countries of origin and of transit in order to strengthen border control. These could include wider, more comprehensive agreements covering various elements related to legal and illegal migration, as well as return.

#### ***V(b) Offer the nationals of partner countries to the East and South of Europe opportunities for the legal immigration***

In 2010, there were no special developments in this area. In Section 1 on Economic Migration above, under Pact commitment I(c), reference has been made to the circular migration pilot project, which may also prove to be of importance in this context.

#### ***V(c) Cooperation with the countries of origin and of transit in order to deter or prevent illegal immigration***

In 2010, a large qualitative (field) and quantitative (database) research was conducted to make new estimates of the number of aliens staying in the Netherlands illegally. The draft report was completed in 2010; the final report is expected in January 2011. In addition to this, an approach to the aliens-related duty of the police was specified in further detail on the basis of the interim results, both as regards contents and direction.

In 2010, efforts were also made to increase the effectiveness of return policy. The procedures around return were adjusted also under the influence of the new asylum procedure, and as a result of the implementation of Directive 2008/115/EC (Return Directive) the rules were adjusted even further.

In 2010, the Netherlands participated in various joint Frontex operations by the deployment of border guards throughout the year. In addition, the Netherlands also participated in Frontex operations with heavy equipment: two mine hunters in Operation INDALO near Spain and one coast guard airplane in Operation POSEIDON<sup>181</sup> near Greece. The Netherlands contributed 16 border guards to the fast border intervention teams that have been active on the Greek-Turkish country border since November 2010.

#### ***V(d) More effective integration of migration and development policies***

Three persons focused their research within their PhD programme at Maastricht University (funded by the Dutch government) on gaining better insight into the options to improve the integration of migration and development policy.

#### ***V(e) Promote co-development actions and support instrument for transferring migrants' remittances***

<sup>181</sup> More on Poseidon, see also above, Section 9 Cooperation with respect to border control, Pact commitment III(d).

There were no developments in this area in 2010.

#### *12.2 Stockholm Programme*

The relevant commitment in the Stockholm Programme for this sub-section is in particular:

***11(h) How diaspora groups may be further involved in EU development initiatives, and how EU Member States may support diaspora groups in their efforts to enhance development in their countries of origin***

In 2010 as well, the annual meeting with the diaspora groups for the purpose of mutual information exchange was organised in the Netherlands by the Ministries of Justice and Foreign Affairs.



# Annex II - Overview of Implementations of EU Directives

## State of Affairs on Implementation of EU legislation, as per 31 December 2009

EU legislation	Corresponding national legislation and regulations (status)
<p><b>Directive 2001/51/EC (Schengen Implementation Agreement)</b></p>	<p>Ultimate implementation date: 10 February 2003            Status: implemented on 15 September 2004            Aliens Act 2000</p> <ul style="list-style-type: none"> <li>- Act of 13 May 2004 to bring the Aliens Act 2000 in line with Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.</li> </ul>
<p><b>Directive 2001/55/EC (Temporary protection of displaced persons)</b></p>	<p>Ultimate implementation date: 31 December 2002            Status: implemented on 15 February 2005            Aliens Act 2000, the Aliens Decree 2000, and Aliens Act Implementation Guidelines 2000</p> <ul style="list-style-type: none"> <li>- Act of 16 December 2004 amending the Aliens Act 2000 to implement Council Directive No 2001/55/EC of 20 July 2001 on minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJEU L 212), Dutch Bulletin of Acts and Decrees 2004, 691.</li> <li>- Decision of 12 January 2005 to amend the Aliens Decree 2000 for the purpose of implementing Directive No 2001/55/EC, Dutch Bulletin of Acts and Decrees 2005, 25.</li> <li>- Regulation of the Minister for Alien Affairs and Integration of 24 February 2005 amending the Regulations on Aliens 2000 (thirty second amendment), Dutch Government Gazette 53, p. 17.</li> </ul>
<p><b>Directive 2003/9/EC (Reception of asylum seekers )</b></p>	<p>Ultimate implementation date: 6 February 2005            Status: implemented on 3 February 2005            Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2000 (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005)</p> <ul style="list-style-type: none"> <li>- Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2005, Dutch Government Gazette 2005 24, p. 17.</li> </ul>
<p><b>Directive 2003/86/EC (Family reunification)</b></p>	<p>Ultimate implementation date: 3 October 2005            Status: implemented on 1 November 2004            Aliens Decree 2000</p> <ul style="list-style-type: none"> <li>- Decision of 29 September 2004 to amend Aliens Decree 2000 in connection with the implementation of Directive 2003/86/EC, Dutch Bulletin of Acts and Decrees 2004, 496.</li> </ul>
<p><b>Directive 2003/109/EC (Third-country nationals who are long-term residents)</b></p>	<p>Ultimate implementation date: 23 January 2006.            Status: implemented on 1 December 2006.            Aliens Act 2000, Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, Aliens Employment Act Implementation Regulations (Uitvoeringsregels Wet arbeid vreemdelingen), and the Netherlands Nationality Act Application Manual.</p> <ul style="list-style-type: none"> <li>- Act of 23 November 2006 amending the Aliens Act 2000 for the purpose of implementing Council Directive No 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 2004, L16). Dutch Bulletin of Acts and Decrees 2006, 584.</li> <li>- Decision of 23 November 2006 to amend the Aliens Decree 2000 in connection with the implementation of Directive No 2003/109/EC, Dutch Bulletin of Acts and Decrees 2006,</li> </ul>

	<p>585.</p> <ul style="list-style-type: none"> <li>– Regulation of the Ministry of Justice of 7 January 2007 amending the Regulations on Aliens 2000 (fifty-sixth amendment) Dutch Government Gazette 11, p. 6.</li> <li>– Decision of the State Secretary for Justice of 16 April 2007, no 2007/04 amending the Aliens Act Implementation Guidelines 2000, Government Gazette no 78, p. 11.</li> <li>– Regulation of the State Secretary for Social Affairs and Employment of 21 December 2006, Labour Market Department amending the Aliens Employment Act Implementation Regulations relevant to the Aliens Employment Act Delegation and Implementation Decree, Dutch Government Gazette 1, p. 10.</li> <li>– Nationalities Interim Communication (Tussentijds Bericht Nationaliteiten, TBN 2007/5) of the Ministry of Justice, Dutch Government Gazette 67, p. 7.</li> </ul>
<b>Directive 2003/110/EC (Removal by air)</b>	<p>Ultimate implementation date: 6 December 2005  Status: implemented on 22 December 2005  Aliens Act Implementation Guidelines 2000</p> <ul style="list-style-type: none"> <li>– Decision of the Ministry of Justice of 08 December 2005, no 2005/59 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 247, p. 35.</li> </ul>
<b>Directive 2004/38/EC (Free movement of EU citizens and their family members)</b>	<p>Ultimate implementation date: 30 April 2006  Status: implemented on 29 April 2006  Work and Social Assistance Act (Wet werk en bijstand), Student Finance Act 2000 (Wet studiefinanciering 2000), Fees and Educational Expenses (Allowances) Act (Wet tegemoetkoming onderwijsbijdrage en schoolkosten), Aliens Act 2000, Aliens Decree 2000, and the Netherlands Nationality Act Application Manual</p> <ul style="list-style-type: none"> <li>– Act of 7 July 2006 amending the Work and Social Assistance Act, the Student Finance Act 2000, the Fees and Educational Expenses (Allowances) Act, and the Aliens Act 2000 in connection with the coming into effect of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, as well as the approval of a reservation associated with the European Treaty on social and medical assistance, Dutch Bulletin of Acts and Decrees 2006, 373.</li> <li>– Decision of 24 April 2006 to amend the Aliens Decree 2000 in connection with the implementation of Directive 2004/38/EC, Dutch Bulletin of Acts and Decrees 2006, 215.</li> <li>– Nationalities Interim Communication (TBN 2006/3), Dutch Government Gazette 109, p. 25.</li> </ul>
<b>Directive 2004/81/EC (Human trafficking)</b>	<p>Ultimate implementation date: 6 August 2006  Status: implemented on 1 February 2006  No amendments to legislation and regulations</p>
<b>Directive 2004/82/EC (Passenger data)</b>	<p>Ultimate implementation date: 5 September 2006  Status: implemented on 1 September 2007  Aliens Act 2000, Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, and Aliens Act Implementation Guidelines 2000</p> <ul style="list-style-type: none"> <li>– Act of 9 July 2007 to bring the Aliens Act 2000 in line with Council Directive No 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJEU L 261), Dutch Bulletin of Acts and Decrees 2007, 252.</li> <li>– Decision of 27 July 2007 to bring the Aliens Decree 2000 in line with Directive No 2004/82/EC, Dutch Bulletin of Acts and Decrees 2004, 283.</li> <li>– Regulation of the Ministry of Justice of 16 August 2007 amending the Aliens Act Implementation Guidelines 2000 (sixty-fifth amendment) Dutch Government Gazette 163, p. 9.</li> <li>– Decision of the State Secretary for Justice of 25 September 2007, no 2007/27 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 194, p. 10.</li> </ul>

<p><b>Directive 2004/83/EC (Qualification Directive)</b></p>	<p>Ultimate implementation date: 10 October 2006. Status: implemented on 25 April 2008.</p> <ul style="list-style-type: none"> <li>– Act of 3 April 2008 amending the Aliens Act 2000 to implement Council Directive No 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJEU L 304) Dutch Bulletin of Acts and Decrees 2008, p. 115.</li> <li>– Decision of 9 April 2008 to amend the Aliens Decree 2000 and the Youth Care Act Implementation Decree to implement Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJEU L 304), Dutch Bulletin of Acts and Decrees 2008, 116.</li> <li>– Regulation of the State Secretary for Justice of 8 May 2008 amending the Regulations on Aliens 2000 (eightieth amendment), Government Gazette no 97, p. 16.</li> <li>– Decision of the State Secretary for Justice of 10 November 2008, no 2008/27 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 728.</li> </ul>
<p><b>Directive 2004/114/EC (Student Directive)</b></p>	<p>Ultimate implementation date: 12 January 2007 Status: implemented on 11 November 2006 Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, and the Aliens Act Implementation Guidelines 2000.</p> <ul style="list-style-type: none"> <li>– Decision of 2 October 2006 to amend the Aliens Decree 2000 to implement Directive No 2004/114/EC, Dutch Bulletin of Acts and Decrees 2006, 458.</li> <li>– Decision of the Minister for Alien Affairs and Integration of 26 April 2006 amending the Regulations on Aliens 2000 (forty-sixth amendment), Dutch Government Gazette 84, p. 15.</li> <li>– Decision of the Ministry of Justice of 3 January 2007, no 2007/01 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 38, p. 7.</li> </ul>
<p><b>Directive 2005/71/EC (Research Directive)</b></p>	<p>Ultimate implementation date: 12 October 2007. Status: implemented on 12 October 2007. Aliens Decree 2000, Aliens Employment Act Implementation Decree, Civic Integration Decree, Aliens Act Implementation Guidelines 2000, and the Aliens Act Implementation Guidelines 2000.</p> <ul style="list-style-type: none"> <li>– Decision of 26 September 2007 to amend the Aliens Decree 2000, the Aliens Employment Act Implementation Decree, and the Civic Integration Decree in connection with the implementation of Directive No 2005/71/EC, Dutch Bulletin of Acts and Decrees 2007, 366.</li> <li>– Regulation of the State Secretary for Justice of 16 October 2007 amending the Regulations on Aliens 2000 (seventy-first amendment), Dutch Government Gazette 202, p. 24.</li> <li>– Decision of the State Secretary for Justice of 21 January 2008, no 2008/07 amending the Aliens Act Implementation Guidelines 2000, Government Gazette no 21, p. 9.</li> </ul>
<p><b>Directive 2005/85/EC (Refugee status)</b></p>	<p>Ultimate implementation date: 1 December 2007. Status: implemented on 19 December 2007. Aliens Act 2000, Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, and the Aliens Act Implementation Guidelines 2000.</p> <ul style="list-style-type: none"> <li>– Act of 15 November 2007 amending the Aliens Act 2000 to implement Council Directive No 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (OJEU L 32), Dutch Bulletin of Acts and Decrees 2007, 450.</li> <li>– Decision of 29 November 2007 to bring the Aliens Decree 2000 in line with Directive No 2005/85/EC, Dutch Bulletin of Acts and Decrees 2007, 484.</li> <li>– Regulation of the State Secretary for Justice of 7 December 2007 amending the</li> </ul>

	<p>Regulations on Aliens 2000 (seventy-third amendment), Dutch Government Gazette 240, p. 9.</p> <ul style="list-style-type: none"> <li>- Decision of the State Secretary for Justice of 7 December 2007, no 2007/38 amending the Aliens Act Implementation Guidelines 2000, Government Gazette no 240, p. 10.</li> </ul>
<b>Directive 2008/115/EC (return directive)</b>	<p>Ultimate implementation date: 24 December 2010. For article 13 (4) 24 December 2011 Status: the implementation date has been exceeded.</p> <p>The legislative proposal amending the Aliens Act 2000 was presented to the Lower House of Parliament on 17 June 2010. By memorandum of amendment the Minister for Immigration and Asylum Policy made a number of corrections in the legislative proposal on 6 December 2010. The legislative proposal has not yet been adopted by the Lower House of Parliament.</p>
<b>Directive 2009/50/EC (blue card)</b>	<p>Ultimate implementation date: 19 June 2011</p> <p>Status: In principle the implementation of this directive forms part of the legislative proposal Modern Migration Policy, which was adopted on 5 July 2010. If the Act has not yet entered into effect by 19 June 2011, the aspects related to the directive will at any rate be removed from the legislative proposal and will take effect as yet around the implementation date.</p> <ul style="list-style-type: none"> <li>- Legislative proposal Modern Migration Policy adopted on 5 July 2010.</li> </ul>
<b>Directive 2009/52/EC (combating illegal labour)</b>	<p>Ultimate implementation date: 20 July 2011</p> <p>Status: In principle the implementation of this directive forms part of the legislative proposal Modern Migration Policy, which was adopted on 5 July 2010. If the Act has not yet entered into effect by 19 June 2011, the aspects related to the directive will at any rate be removed from the legislative proposal and will take effect as yet around the implementation date.</p> <ul style="list-style-type: none"> <li>- Legislative proposal Modern Migration Policy adopted on 5 July 2010.</li> </ul>

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