



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

Annual Policy Report 2007

Developments in Dutch Migration and Asylum Policy

1 January 2007 - 31 December 2007

August 2008

(revised version January 2009)



Immigratie- en Naturalisatiedienst

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 migration network is an initiative of the European Commission and finds its Legal base in Council Decision 2008/381/EC of 14 May 2008. The EMN 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),
Information and Analysis Centre (INDIAC),
Dutch National Contact Point for the European Migration Network (EMN)

Executive Summary

The 2007 Annual Policy Report provides an overview of the developments in migration and asylum policy in the Netherlands from 1 January 2007 to 31 December 2007. This report is a product of the Immigration and Naturalisation Service Information and Analysis Centre (INDIAC), the Dutch contact point for the European Migration Network (EMN). The European Migration Network (EMN) is an initiative of the European Commission. The objective of the EMN is to provide the Community, its member states and, in the longer term, the public, with objective, reliable and comparable information regarding migration and asylum matters at a European and national level.

Every year, national contact points for the EMN formulate an Annual Policy Report. The annual Policy Report is intended to provide an overview of the main developments in the area of migration and asylum in the various member states. The developments in legislation and regulations and in the administrative practice are discussed first, including the associated political and public debates. The report also takes a comprehensive look at the implementation of EU legislation in the area of asylum and migration. The European Commission will compile the results of the different country studies into a synthesis report.

The Dutch report first focuses on the important political and institutional developments. After this, the developments in the area of legislation and regulations and the associated political and public debates relating to asylum and migration are examined in more detail. The integration policy is also discussed in the report, insofar as there is a direct link to migration. In order to determine which subjects must be included in the report, a number of criteria were used to define the term 'important developments'

The objective of the Annual Policy Report is to give the most complete overview possible of the changes and planned changes in legislation and regulations in the various policy areas discussed in this report. The report does not aim for completeness with respect to political and social debates and developments; rather, the level of attention devoted to them in Parliament and in the media is the determining factor for their importance. This report does provide a full overview of developments in respect of the implementation of European legislation and regulations in the area of asylum and migration. Further information about the selection criteria may be found in the appendix on methodology.

The 2007 Annual Policy Report examines the political system in the Netherlands, the (developments of the) organisation of asylum and migration, and general political developments. Following this, the report examines the developments in the following sub-areas:

- Refugee protection and asylum
- Unaccompanied minors and other vulnerable groups
- Control and monitoring of immigration
- Economic migration
- Family reunification and family formation
- Other legal migration
- Citizenship and naturalisation
- Integration
- Illegal immigration and legalisation
- Return migration

Finally, the report examines the implementation of European regulations in 2007, and a complete overview is provided of the state of affairs in this area.

It would be taking things too far to give a complete summary of the developments in 2007 in all the sub-areas. Instead, a brief overview was opted for of the most notable developments in 2007.

General developments

The new Balkenende IV Cabinet taking office in February has had an impact on the developments in 2007. In the previous term of government the opposition Labour Party (*Partij van de Arbeid (PvdA)*) and Christian Union (*ChristenUnie*), both of which are now in office, expressed a lot of criticism with respect

to the asylum and migration policy. In the mean time, the Christian Democratic Appeal (*Christen Democratisch Appèl (CDA)*) in its election manifesto also asked for policy changes.

One of the main policy objectives of the new Cabinet was the introduction of a pardon scheme for asylum seekers who have exhausted all legal remedies and who applied for their asylum under the old Aliens Act (the Aliens Act from before 1 April 2001). The new Cabinet also resulted in a number of institutional changes. The position of Minister for Immigration and Integration no longer exists under this Cabinet. The aliens policy is now largely covered by the State Secretary of Justice. The integration policy no longer comes under the Minister of Justice, but under the Programme Minister of Housing, Communities and Integration within the Ministry of Housing, Spatial Planning and the Environment (VROM).

A number of organisational changes initiated by the previous government also came into effect in 2007. The Repatriation & Departure Service (*Dienst Terugkeer & Vertrek*) became operational on 1 January. This organisation has taken over a large proportion of the tasks associated with the return migration of aliens from the Immigration and Naturalisation Service (IND), the Royal Constabulary (*Koninklijke Marechaussee (KMar)*) and the Aliens Police (*Vreemdelingenpolitie (VP)*). In the course of 2007 the IND has taken over the front desk function from municipalities with respect to regular (non-asylum) admission to the Netherlands. This concerns, for instance, the submission of an application for a residence permit and the collection of residence documents.

The Settlement of the legacy of the 'old' Aliens Act scheme

As mentioned above, a pardon scheme was one of the main objectives of the new Cabinet in the area of asylum and migration. The 'Settlement of the legacy of the 'old' Aliens Act scheme' came into effect on 15 June 2007. Asylum seekers who are still in the Netherlands and submitted their initial asylum application before 1 April 2001, or registered for the submission of an asylum application before 1 April 2001 are, on certain conditions, eligible for a permit under this scheme. Criminal antecedents and the submission of incorrect information constitute a contra-indication. The scheme comes with agreements between the State and the municipalities about the accommodation of this group, assistance from the municipalities in return migration and the termination of municipal (funding of) temporary reception facilities for asylum seekers who have exhausted all legal remedies.

Salah Sheekh vs. the Netherlands

In 2007 Dutch asylum policy was influenced most by the 11 January 2007 decision of the European Court of Human Rights in the case of the Somali national, Salah Sheekh, against the Netherlands. Salah Sheekh won this case and the argumentation has resulted in important adjustments of the evaluation as to whether a foreign national, upon deportation to his country of origin, is at risk of treatment that contravenes Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ban on torture and inhuman treatment).

Based on established case law of the Court, the asylum seeker must be able to show that he has special distinguishing features that demonstrate his risk of treatment that contravenes Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, in its decision in the Salah Sheekh case the Court has further qualified this requirement for asylum seekers belonging to a vulnerable minority group in the country of origin. It is more likely for this category of asylum seekers that, upon return to their country of origin, they will be at real risk of treatment that contravenes Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. For the purpose of this determination it is important that the foreign national:

- has already suffered negative personal consequences as a member of this vulnerable group, and;
- this group is, generally speaking, unable to get protection against human rights violations.

Since this policy change came into effect, the Netherlands has already designated a number of groups as vulnerable minority groups in their country of origin.

Combating of human trafficking

The combating of human trafficking and people smuggling received a lot of attention in 2007, in the first place from the police and the Public Prosecution Service (Openbaar Ministerie) in the context of investigation and prosecution:

- In January a Somali national was arrested who is suspected of being one of the organisers of a people smuggling ring.
- In February twelve suspects were arrested in the Netherlands and Germany in an investigation into a comprehensive network of internationally operating Turkish women traffickers.
- In October there were some twenty arrests and house searches in the Netherlands, the United States, England, Belgium, France, Germany and Spain in an investigation into human trafficking relating to minor asylum seekers from Nigeria.
- In November four suspects were arrested for smuggling Chinese nationals into England.

But the combating and prevention of human trafficking and people smuggling also received attention from a policy and organisational point of view. For instance, the residence scheme for foreign nationals who cooperate in the investigation and prosecution of human traffickers (the B9 scheme) was expanded. Based on this scheme foreign, nationals can get temporary right of residence. Before, the scheme only applied to victims who made official reports. However, since 14 November 2007 it has also applied to victims who cooperate in the investigation and prosecution of human traffickers in some other way, for instance by making statements or being interviewed as a witness. In 2007 a pilot was also announced for the protected reception of unaccompanied minor foreign nationals who are at risk of becoming victims of human trafficking. In anticipation of the official start of the pilot, a start was already made on this type of reception in 2007.

Modern migration policy – Quick wins

In 2006 a drastic modernisation of the migration policy was announced, with a clearer legal framework and a greater focus on the need for migrants in Dutch society. In anticipation of this modernisation, for which legislative changes are required, a number of so-called ‘quick wins’ have already been realised or announced in 2007. These include:

- The option for companies to enter into an agreement with the IND, as a result of which an entry visa can be issued to foreign employees who want to work for the company in question in the Netherlands within two weeks, has also been opened up the companies that bring in fewer than ten foreign nationals per year.
- The period in which foreign nationals who have completed studies in the Netherlands can remain in the Netherlands to look for work has been extended from three months to one year.
- The process of renewing residence permits for family reunification and family formation is being simplified. Applicants have to submit far fewer documents to substantiate their application. For instance, they are no longer asked to demonstrate that they meet the income requirement, and the IND itself will request information about the family composition from the Municipal personal records database (GBA). Passports are not checked until the residence document is issued, i.e. *after* the decision.
- The Cabinet has announced that in 2008 there will be a single service point for residence permit applications and work permit applications. Before, applications for residence permits first had to be submitted separately to the Immigration and Naturalisation Service and applications for work permits to the Centre for Work and Income (*Centrum voor Werk en Inkomen*).

Multiple nationality

One of the strongest political and social debates in 2007 with respect to asylum and migration occurred around the fact that two of the new members of government have another nationality next to their Dutch nationality. This resulted in a renewed debate in Parliament and in the media about the desirability of having multiple nationalities. The Freedom Party (*Partij Voor de Vrijheid (PVV)*) even submitted a vote of no confidence against the Ministers in question, but this was not supported by any of the other parties. Both the prime minister and other participants in the debate pointed out the constitutional provision stating that all Dutch nationals are equally eligible for appointment to public service. If the PVV wishes an exception to this for Dutch nationals with dual nationality, it should propose a revision of the constitution, Mr Slob (Christian Union) amongst others argued. The prime minister supported this position. Mr Wilders (PVV) answered, that the dual nationality of both members of government raised the semblance of a conflict of interest and that according to the PVV they should not have been appointed for that reason.

At the same time there was also a debate about a legislative proposal by the previous government to limit multiple nationalities and to introduce the option of revoking Dutch citizenship on the basis of serious damage to the essential interests of the Kingdom or one or more of its domains. Renouncing one's original nationality is a condition for obtaining Dutch citizenship, but there are many exceptions to this rule. Reducing these exceptions has been on the political agenda in the Netherlands for a long time. The new cabinet does not feel such reductions are necessary and withdrew the legislative proposal in December 2007. The cabinet wants to prepare a new legislative proposal on multiple nationalities and the revoking of Dutch citizenship

Civic Integration Act/ Civic Integration Delta Plan

Like the issue of multiple nationalities, the integration of foreign nationals in the Netherlands has been the subject of heated debate in the Netherlands for a long time. On 1 January 2007 the Civic Integration Act came into effect, which replaces earlier legislation and regulations in this area. In principle the Act imposes an obligation to pass the civic integration examination on all foreign nationals in the Netherlands. For a proportion of the foreign nationals this must be done within three and a half years, for others within five years. Some categories of foreign nationals are exempt from this obligation. The civic integration examination assesses the person's language knowledge and knowledge of Dutch society. Passing the civic integration exam is a precondition for obtaining a permanent residence permit. Not complying with this obligation may furthermore also result in a fine.

In the course of 2007 the implementation of the new Act caused a lot of problems, after which the rules for financing a civic integration programme were relaxed. The new cabinet considers civic integration a key point of its policy programme. In the coalition agreement a Civic Integration Delta Plan was announced. This plan was submitted to the House of Representatives by the Minister for Housing, Communities and Integration on 7 September 2007. The Delta Plan is intended to improve the quality of civic integration through increased customisation and to increase the number of participants in the civic integration programme.

Implemented Directives in 2007

As indicated above, the Annual Policy Report is formulated by order of the European Commission. It focuses extensively on the progress of the implementation of European Directives. The report contains a complete overview of the status of the implementation of the EU legislation and regulations in the area of asylum and migration in the Netherlands as per 31 December 2007. The developments in 2007 with regard to implementation are also discussed.

In 2007 three Directives were implemented in the Netherlands:

- Directive 2004/82/EC (Passenger data) on 1 September 2007 (deadline 5/9/2007)
- Directive 2005/71/EC (Researcher Directive) on 12 October 2007 (deadline 12/10/2007)
- Directive 2005/85/EC (Refugee status) on 19 December 2007 (deadline 1/12/2007)

All three of these Directives were implemented (almost) on time. In order to implement Directive 2004/82/EC a legal basis was created to obligate transport companies to collect data and supply this data to the authorities in charge of border control. The implementation of Directive 2005/71/EC has resulted in a new purpose of stay. The implementation of Directive 2005/85/EC did not result in essential changes to the Dutch asylum policy, but more rules with respect to the concept of a safe third country were formulated.

The only Directive that already should have been implemented in 2007 but still isn't, is Directive 2004/83/EC (Qualification Directive). This Directive, which stipulates 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, should have been implemented on 10 October 2006. On 31 December 2007 the legislative proposal for the implementation of the Directive was before the Senate. Questions are being raised in particular with regard to the scope of Article 15, under c, of the Directive. Does the protection pursuant to this Article exceed the existing protection pursuant to Article 3 of the ECHR? If this is the case, a new ground for admission is created. Interlocutory questions on this matter have now been submitted to the European Court in Luxembourg by the Administrative Law Division of the Council of State.

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1. Introduction

Every year, national contact points for the European Migration Network (EMN) formulate an Annual Policy Report. The EMN is an initiative of the European Commission. Its objective is to provide the Community, its member states and, in the longer term, the public, with objective, reliable and comparable information regarding migration and asylum matters at a European and national level.

The various Annual Policy Reports produced by the national contact points provide an overview of the main developments in the area of migration and asylum in the respective member states. The developments in legislation and regulations and in the administrative practice are discussed, including the associated political and public debates. The report also takes a comprehensive look at the implementation of EU legislation in the area of asylum and migration. The European Commission will compile the results of the different country studies into a synthesis report.

The Dutch 2007 Annual Policy Report provides an overview of the developments in migration and asylum policy in the Netherlands from 1 January 2007 to 31 December 2007. This edition of the Dutch Annual Policy Report has been drawn up by Hans Lemmens, policy officer with the Immigration and Naturalisation Service's Information and Analysis Centre (INDIAC). INDIAC is the Dutch contact point for the European Migration Network (EMN).

The report first focuses on the important political and institutional developments. After this, the main developments in the area of legislation and regulations and the associated political and public debates relating to asylum and migration are examined. Following this, the report examines the developments in the following sub-areas in more detail:

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In order to determine which subjects must be included in the report, a number of criteria were used to define the term 'important developments'. The objective of the Annual Policy Report is to give the most complete overview possible of the changes and planned changes in legislation and regulations in the various policy areas discussed in this report. The report does not aim for completeness with respect to political and social debates and developments; rather, the level of attention devoted to them in Parliament and in the media is the determining factor for their importance. This report does provide a full overview of developments in respect of the implementation of European legislation and regulations in the area of asylum and migration. Further information about the selection criteria may be found in the appendix on methodology.

2. Political and Institutional Developments in the Netherlands

This first chapter outlines the background against which the political and policy developments in the area of migration and asylum took place in 2007. First, a brief overview is provided of the general structure of the political system in the Netherlands and of the main institutions/parties in the area of migration and asylum. Next the general political developments in the Netherlands in 2007 are reviewed. Finally, this chapter looks at the changes that were made in 2007 to the way in which asylum and migration are organised in the Netherlands.

2.1. The Political System in the Netherlands and the Institutional Context for Migration and Asylum

2.1.1. The Political System

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 make decisions about policy lies with the Parliament. This means that the Ministers who prepare and execute this policy must have the confidence of the Parliament. The Parliament consists of two Houses, the Senate (*Eerste Kamer*) and the House of Representatives (*Tweede Kamer*) (jointly referred to as the States General). The House of Representatives is co-legislator with the government and supervises the government. The Senate also supervises the government, but its co-legislative tasks are more limited. For instance, the Senate cannot amend a legislative proposal and neither 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 together, led by the Prime Minister. The government is the executive authority and also has legislative competency. Each Minister is politically responsible for a certain policy area in which he/she may be assisted by State Secretaries, who in turn are allocated a specific policy area. The Prime Minister is the Chairman of the Council of Ministers and, in this capacity, coordinates government policy.¹ Ministers and State Secretaries are accountable to the Parliament for current and proposed policy. If it becomes apparent that the Parliament has lost confidence in a Minister and/or State Secretary (or possibly in the entire Cabinet) he/she or they must resign.

Together with Aruba and the Dutch Antilles (group of islands in the Caribbean) the Netherlands forms part of the Kingdom of the Netherlands. All three countries in the Kingdom have their own government and Parliament. The Charter for the Kingdom of the Netherlands lists a limited number of matters in which the authorities of the individual countries do not have a say but for which the powers lie with the authorities of the Kingdom. These include, for instance, Defence, foreign relations and the regulations for Dutch citizenship. Citizens of all three countries have Dutch nationality.

¹Meij, J.M de & Vlies, I.C. van der (Ed.). (2000) *Inleiding tot het Staats and Bestuursrecht* (Introduction to State and Administrative Law). Deventer: Kluwer b.v..

2.1.2. The Institutional Context

Asylum and migration

In the new Cabinet that took office on 22 February 2007 the State Secretary of Justice, within the limits of the policies laid down by the Minister of Justice, is entrusted with the migration and asylum policy.² The Minister of Justice fulfils the tasks associated with the Netherlands Nationality Act (*Rijkswet op het Nederlandschap*) (naturalisation) and with border control.³ The position of Minister for Immigration & Integration no longer exists in the new Cabinet. The visa policy is the responsibility of the Minister of Foreign Affairs. The formulation of general official notices, which describe the situation in the major countries of origin of asylum seekers, and individual official notices, which are used to check facts or documents presented by asylum seekers for correctness and authenticity, also come under his responsibility.⁴ Not all foreign nationals who come to the Netherlands are also allowed to work in the Netherlands. The Minister of Social Affairs and Employment is responsible for the admission of foreign nationals to the Dutch labour market.

A large number of organisations play a role in the implementation of the policy for asylum and migration. Below follows an overview of the main organisations:

- The Immigration and Naturalisation Service (IND), which is an agency of the Ministry of Justice, is responsible for the implementation of the Aliens Act and the Netherlands Nationality Act. The IND evaluates all applications from foreign nationals who stay or want to stay in the Netherlands or become Dutch citizens. On behalf of the Minister of Foreign Affairs, the IND also plays a role in the evaluation of visa applications.⁵
- The Repatriation & Departure Service (*Dienst Terugkeer & Vertrek (DT&V)*), which is also an agency of this Ministry, has been responsible since 1 January 2007 for humanely and professionally promoting the departure of foreign nationals who have been ordered to leave the Netherlands.⁶
- The National Agency of Correctional Institutions (*Dienst Justitiële Inrichtingen (DJI)*), which is also an agency of the Ministry of Justice, is responsible, among other things, for the implementation of the freedom-restricting measures for the purpose of deporting foreign nationals from the Netherlands, including detention (the so-called aliens detention).
- The Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang Asielzoekers (COA)*) is an independent administrative body that is financed by the Minister of Justice. The COA is responsible for the reception of asylum seekers.⁷
- The Centre for Work and Income (*Centrum voor Werk en Inkomen (CWI)*) is an independent administrative body that operates by order of the Ministry of Social Affairs and Employment. Among other things, the Minister has charged the CWI with issuing work permits to foreign nationals who want to work in the Netherlands.⁸

The Royal Constabulary (*Koninklijke Marechaussee (KMar)*), which is part of the Armed Forces, and the regional police forces play a role in border control and the supervision of foreign nationals. The municipalities are responsible for providing accommodation for holders of an asylum residence permit and also play a role in the processing of naturalisation applications. In 2007 the municipalities also had a

²Ministerie van Algemene Zaken. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011* (Working together, living together: 2007-2011 policy programme of the Balkenende IV Cabinet), The Hague: Ministerie van Algemene Zaken.

³Ministerie van Justitie (2007) *Wat doet Justitie: Taken*. . (What does Justice do?), retrieved 12 april 2007 from <http://www.justitie.nl/organisatie/wat%2Ddoet%2Djustitie/taken/>.

⁴De Nationale ombudsman. (2007) *Factsheet individuele ambtsberichten in asielzaken* (Fact sheet on individual official notices in asylum cases), retrieved 2 March 2007 from www.ombudsman.nl.

⁵Kuijjer, A. (Ed.). (2002) *Nederlands vreemdelingenrecht* (Dutch aliens law), The Hague: Boom Legal publishers.

⁶DT&V (2007) *Dienst Terugkeer & Vertrek* (Repatriation & Departure Service), retrieved 8 November 2008 from www.dienstterugkeerenvertrek.nl.

⁷COA. (2005) *Over COA* (About COA), retrieved 1 November 2005 from www.coa.nl.

⁸CWI (2008) *Over CWI: Taken* (About CWI: Tasks), retrieved 2 January 2008 from www.werk.nl.

front desk function for people submitting applications for residence permits (with the exception of asylum applications), but in the second half of 2007 this task was gradually taken over by the IND.⁹

A number of non-government organisations are also active in the area of asylum and aliens law. The most important of these are:

- the International Organisation for Migration (IOM), which plays a role in the voluntary return migration and/or through-migration of foreign nationals;
- the Dutch Council for Refugees (*VluchtelingenWerk Nederland*), which provides practical support for asylum seekers;
- the NIDOS Foundation, a nationally operating guardianship institution, specifically for unaccompanied, minor refugees and asylum seekers; and,
- Asylum Seekers' Legal Aid Foundation (*Stichting Rechtsbijstand Asiel (SRA)*), which provides legal aid for asylum seekers.¹⁰

Jurisprudence

Within the judiciary the following authorities are engaged in the dispensation of justice with respect to aliens policy. The Aliens division comes under the administrative law sector of the District Court in The Hague and deals exclusively with aliens law disputes. Officially, only the court in The Hague handles Aliens law disputes. However, the hearings do not take place in The Hague only, but also in so-called branch places of session. All nineteen courts in the Netherlands have an Aliens division. The Aliens division deals with appeals in aliens law cases.¹¹ The Administrative Law Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State (AbRvS)*) is the highest general administrative law court in the country. This is also where appeals in aliens law cases are decided.¹²

Integration

Since 22 February 2007 the integration policy has been the responsibility of the Programme Minister for Housing, Neighbourhoods and Integration. Programme Ministers, who were appointed in 2007 for the first time in Dutch history, have a responsibility for policy areas that extend across several Ministries.¹³ The budgets and the service units of the different Ministries involved in the integration policy are accommodated in the Housing, Communities and Integration programme and come under the direct responsibility of the Minister for Housing, Communities and Integration. The programme comes under the Ministry of Housing, Spatial Planning and the Environment (*Volkshuisvesting, Ruimtelijke Ordening en Milieu (VROM)*).¹⁴

2.2. General Political Developments in the Netherlands

From 27 May 2003 to 30 June 2006, the Netherlands was governed by the second Cabinet led by Prime Minister Mr Jan Peter Balkenende (the Balkenende II Cabinet). This Cabinet consisted of three parties:

⁹Decision of the State Secretary for Justice dated 4 October 2007, number 2007/29, with respect to changes of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 198, p. 70.

¹⁰A decision was made in 2006 to organize legal aid to asylum seekers differently; this is due to be finalised in 2008. The Netherlands Foundation for Legal Aid in Asylum Cases (*Stichting Rechtsbijstand Asiel Nederland (SRAN)*) will be discontinued, and its tasks will be taken over by the legal profession. The organisation and coordination of legal aid to asylum seekers will become the responsibility of the Legal Aid Council (*Raad voor Rechtsbijstand*) (*Parliamentary Papers II*2006/07, 19 637, no. 1108 (Letter)). Most of the regional SRAN offices were closed in 2007.

¹¹Article 8:7, paragraph 2 General Administrative Law Act; Article 71 Aliens Act 2000; Kuijer, A. (Ed.). (2002) *Nederlands vreemdelingenrecht* (Dutch aliens law), The Hague: Boom Legal publishers.

¹²Raad van State (RvS). (2005) *Raad van State in het kort* (Council of State in Brief), retrieved 1 November 2005 from www.raadvanstate.nl.

¹³Rijksvoorlichtingsdienst (RVD) (Ed.). (2007) *Begrippenlijst: Ministeries (departementen)* (Terminology list: Ministries (departments)), retrieved 8 November 2007 from www.regering.nl/Begrippenlijst/M/Ministeries_departementen; *Parliamentary Papers II*2006/07, 30 891, no. 7 (Letter).

¹⁴RVD. (Ed.). (2007) *Kabinet Balkenende IV: Portefeuilleverdeling* (Balkenende IV Cabinet: Portfolio distribution), retrieved 8 November 2007 from www.regering.nl/Onderwerpen/Politiek_and_bestuur/Kabinet_Balkenende_IV/Portefeuilleverdeling.

the Christian Democratic Appeal (*Christen Democratisch Appèl (CDA)*), the liberal People's Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie (VVD)*) and the Democrats 1966 (*Democraten 1966 (D66)*), a (progressive) social-liberal party.¹⁵ After the fall of the Balkenende II Cabinet on 30 June 2006, a minority Cabinet was formed with the VVD and CDA (Balkenende III) and early Government elections were held on 22 November 2006.

These elections resulted in a high seat gain for the Socialist Party (*Socialistische Partij (SP)*). The Freedom Party (*Partij voor de Vrijheid (PVV)*), a conservative right-wing party¹⁶, the Christian Union (*ChristenUnie*) (Protestant-Christian) and the Animal Rights Party (*Partij voor de Dieren*) also gained. The losers were the social-democratic opposition party, the Labour Party (*Partij van de Arbeid (PvdA)*) and the government parties, VVD and D66. Although the government party CDA did lose a number of seats, it still remained the largest party. The *Lijst Pim Fortuyn* (LPF) disappeared from the House entirely.

Table 1: Election results: House of Representatives elections, 2006 compared to 2003

Total result in the Netherlands	No.	Percentage	Seats	No.	Percentage	Seats
	(TK-06)	(TK-06)	(TK-06)	(TK-03)	(TK-03)	(TK-03)
Christian Democratic Appeal (CDA)	2,608,573	26.51	41	2,763,480	28.62	44
Labour Party (PvdA)	2,085,077	21.19	33	2,631,363	27.26	42
People's Party for Freedom and Democracy (VVD)	1,443,312	14.67	22	1,728,707	17.91	28
SP (Socialist Party)	1,630,803	16.58	25	609,723	6.32	9
(Lijst Pim) Fortuyn	20,956	0.21	0	549,975	5.7	8
GREENLEFT (<i>Groenlinks</i>)	453,054	4.6	7	495,802	5.14	8
Democrats 66 (D66)	193,232	1.96	3	393,333	4.07	6
Christian Union	390,969	3.97	6	204,694	2.12	3
Political Reformed Party (SGP)	153,266	1.56	2	150,305	1.56	2
Animal Rights Party	179,988	1.83	2	47,754	0.49	0
Wilders Group / Freedom Party	579,490	5.89	9	-	-	-
Other	116,278	1.18	0	91,466	0.95	0
Turnout	9,854,998	80.35	150	9,666,602	80.04	150

Source: www.verkiezingsuitslagen.nl

As the largest party, the CDA was allowed to take the initiative in the formation of a new Cabinet. After exploratory talks regarding the formation of a Cabinet with the CDA, PvdA and SP on 11 December 2006 were unsuccessful, a start was made on 15 December 2006 to form a Cabinet comprised of the CDA (41 seats), PvdA (33 seats) and the Christian Union (6 seats); together making up 80 of the 150 seats in the House of Representatives. On 7 February 2007, this resulted in a coalition agreement between the three parties. The new Cabinet was sworn in on 22 February by her Majesty the Queen.¹⁷ As was the case in the previous three Cabinets, this Cabinet is led by CDA Prime Minister Balkenende (the Balkenende IV Cabinet).

The elections for the Provincial Councils of the twelve Dutch provinces took place on 7 March 2007, after which the members of the various Provincial Councils elected the members of the Senate on 29 May 2007. On the whole, these elections showed the same results as the parliament elections in 2006, even

¹⁵Parlementair Documentatie Centrum. (2005) *Kabinet-Balkenende II (2003-2006)*, retrieved 1 November 2005 from www.parlement.com.

¹⁶Koning, P. De (2006, 15 July) Geert Wilders noemt tien zetels reëel (Geert Wilders feels ten seats is realistic). *NRC Handelsblad*, National section.

¹⁷Parlementair Documentatie Centrum. (2007) *Kabinetsformatie 2006-2007* (Cabinet formation 2006-2007), retrieved 14 November from www.parlement.com.

though one of the significant winners of these elections, the PVV, did not take part. In the Senate, the new government coalition also gained a majority with 39 of the 75 seats.¹⁸

2.3. Institutional Developments in the Field of Migration, Asylum and Integration

As a result of the fourth Balkenende Cabinet taking office on 22 February 2007, a number of changes took place in the institutional embedding of policy with respect to asylum, migration and integration. The Minister of Justice is still responsible for migration and asylum policy. In the new Cabinet, however, the position of Minister for Immigration and Integration no longer exists. In its stead, the State Secretary of Justice, Ms Nebahat Albayrak (PvdA) is, within the limits of the policies laid down by the Minister of Justice, entrusted with the aliens and asylum policy, the Immigration and Naturalisation Service (IND), the Central Agency for the Reception of Asylum Seekers (COA) and the Repatriation & Departure Service (DT&V) in the Balkenende IV Cabinet.¹⁹ The Minister of Justice, Mr Ernst Hirsch Ballin (CDA) is responsible for the tasks relating to the Netherlands Nationality Act (naturalisation) and those relating to border control.²⁰ The integration policy no longer comes under the Minister of Justice but rather, as indicated above, under the Ministry of Housing, Spatial Planning and the Environment (VROM). The Programme Minister for Housing, Communities and Integration, Ms Ella Vogelaar (PvdA) has, among other things, the integration and minorities policy and anti-racism policy in her portfolio.

Other institutional changes that were realised in 2007 are the establishment of the Repatriation & Departure Service (DT&V) and the gradual takeover by the IND of the front desk function for the application for and collection of regular (non-asylum) residence permits. The DT&V became operational on 1 January 2007. It has taken over all the tasks in the context of the return migration and departure of foreign nationals who have exhausted all legal remedies and/or are illegal from the IND, the Royal Constabulary and the Aliens Police. The objective of the DT&V is to realise the departure from the Netherlands of all illegal foreign nationals found in the Netherlands and all asylum seekers who are required to leave the country. The encouragement of independent departure is the first matter of importance.²¹ The organisations that are directly involved in the return migration of foreign nationals (the Aliens Police, the Royal Constabulary and the IND) have made employees available for this repatriation organisation.²²

In the autumn of 2007 the IND gradually took over the front desk function for the application and collection of regular residence permits from the municipalities. This was a result of a critical report published by the Netherlands Court of Audit (*Algemene Rekenkamer*)²³ in 2005 about the IND in the Aliens chain²⁴, which was discussed comprehensively in the previous Policy Analysis Reports. The last two IND facilities were opened in Hoofddorp and Amsterdam on 29 November 2007. Since the opening of all nine IND facilities, which are distributed throughout the country, a regular (non-asylum) temporary residence permit can only be obtained from these facilities.

¹⁸Parlementair Documentatie Centrum. (2007) *Eerste Kamerverkiezingen 2007 (uitslag)* (Senate elections 2007 (results)), retrieved 27 November from www.parlement.com.

¹⁹Ministerie van Algemene Zaken. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011* (Working together, living together: 2007-2011 policy programme of the Balkenende IV Cabinet), The Hague: Ministerie van Algemene Zaken.

²⁰Ministerie van Justitie (2007) *Wat doet Justitie: Taken*. Op 12 april 2007 ontleend aan <http://www.justitie.nl/organisatie/wat%2Ddoet%2Djustitie/taken/>.

²¹IND, afdeling Informatie- en Analysecentrum (INDIAC), nationaal contactpunt Europees Migratie Netwerk (EMN). (2006) *Research Study III: Terugkeer/Return* (Return migration/Return), Rijswijk: IND.

²²Ministerie van Justitie. (2007) *Introductiedossier* (Introductory dossier), retrieved 12 April 2007 from www.justitie.nl.

²³The Netherlands Court of Audit is a High Institution of State and has an independent position with respect to the government. Its task is to monitor and report on the functioning and performance of the Public Administration, see www.rekenkamer.nl.

²⁴*Parliamentary Papers II* 2004/05, 30 240, no. 1-2 (Letter – Report).

3. Policy and Legislative Developments in the area of Migration and Asylum

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 social organisations will be examined. However, a description will first be given of the legal context in which these developments take place.

3.1. The Dutch Legal System

The Dutch legal system has a hierarchical structure with the Dutch Constitution at the top. The laws follow this (in a formal sense), which are laid down by the parliament (the Senate and the House of Representatives) upon suggestions from the government or a member of the House of Representatives. These laws cannot contravene the principles of the Constitution. In addition, the general rules of administrative law that serve as guidelines for administrative bodies are laid down in the General Administrative Law Act (*Algemene wet bestuursrecht (Awb)*). The General Administrative Law Act may be deviated from in the case of special laws.²⁵

The main laws with respect to migration and asylum are:

- the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*): this Act regulates the conditions for obtaining or losing Dutch citizenship.
- the Aliens Employment Act (*Wet arbeid vreemdelingen (Wav)*): this Act regulates the admission of foreign nationals to the Dutch employment market.
- the Administrative Penalties for Aliens Employment Act (*Wet bestuurlijke boete arbeid vreemdelingen*): this Act stipulates that employers can be given an administrative fine if they illegally employ foreign nationals.
- the Aliens Act 2000 (*Vreemdelingenwet 2000 (Vw 2000)*): The Aliens Act 2000 regulates the conditions for the access and admission of foreign nationals to the Netherlands (including the asylum procedure) and for deportation from the Netherlands.
- the Civic Integration Act and the Civic Integration Abroad Act (*Wet inburgering* and *Wet inburgering buitenland*): these Acts prescribe the compulsory civic integration of foreign nationals in the Netherlands and, in a number of cases, also prior to the arrival in the Netherlands. In principle this applies only to foreign nationals who reside in or are coming to the Netherlands on the basis of a permanent residence objective.

The Aliens Act 2000 is a so-called special law. Although the Aliens Act 2000 constitutes a deviation from the General Administrative Law Act, the stipulations in the Aliens Act 2000 prevail.

In general the laws only contain the main outlines of what needs to be regulated in a certain area. The interpretation of the laws takes place in various types of lower regulations.

- At the top are the decrees (*Algemene Maatregelen van Bestuur (AMvBs)*). These are established by the government, following advice from the Council of State. The main decree with respect to Aliens law is the Aliens Decree 2000 (*Vreemdelingenbesluit 2000 (Vb 2000)*). The Aliens Decree 2000 further defines the substantive rules and procedural rules of the Aliens Act 2000. The Aliens Employment Act Implementation Decree does the same for the Aliens Employment Act.
- The ministerial regulations follow this. They are established by a Minister. The government is not involved in ministerial regulations and the Council of State does not give advice on them. The Regulations on Aliens 2000 (*Vv 2000*) are ministerial regulations that outline the administrative stipulations and the models to be used by government officials. The Aliens Employment Act Delegation and Implementation Decree contains rules about the powers and implementation of the Aliens Employment Act.

²⁵Kuijer, A. (Ed.). (2002) *Nederlands vreemdelingenrecht* (Dutch aliens law). The Hague: Boom legal publishers.

- Next, the Aliens Act implementation guidelines 2000 (*Vreemdelingencirculaire 2000 (Vc 2000)*) contain the policy rules with respect to asylum and migration. The policy rules in the Aliens Act implementation guidelines 2000 are general and special instructions for all government officials charged with the implementation of aliens legislation. They are signed by the Director General for International Affairs and Aliens Affairs of the Ministry of Justice on behalf of the State Secretary of Justice.

3.2. The Main Policy and Legislative Debates in the Area of Migration and Asylum

The new Cabinet taking office influenced the debate and developments in the area of migration and asylum in 2007. In the preceding period, the two former opposition parties that form part of the new Cabinet (the PvdA and the Christian Union) were very critical of government policy in this area, finding it to be too restrictive. They opposed policy proposals by the previous government on numerous occasions. In the mean time, the CDA in its election manifesto also called for policy changes.²⁶ Although the new Cabinet has not made a radical break with the previous policy, it is clear from the plans announced when the Cabinet took office that there are important differences in emphasis. The main elements are:

- Firstly, this Cabinet has decided on a pardon scheme for a certain category of asylum seekers who have exhausted all legal remedies.
- Secondly, the Cabinet has split up the portfolios for aliens policy and integration, whereby integration policy no longer comes under the Ministry of Justice.
- Finally, the Cabinet has also announced a Delta Plan for Integration.

However, a number of the important proposals of the Balkenende IV cabinet in the area of the Aliens policy are mainly a continuation of the changes initiated by the previous Cabinet. The modernisation of the regular (non-asylum) migration policy, referred to in the previous Policy Analysis Report, the possible abolishment of the procedure for the provisional residence permit (*machtiging tot voorlopig verblijf (mvv)*) procedure²⁷, the objective of limiting the number of repeated asylum applications and the improvement and acceleration of the asylum procedure are subjects that had already come up under the previous Cabinet and are again being taken up by the new Cabinet. In addition, the new Cabinet has not reversed any important policy changes by the previous Cabinet.

In 2007 criticism of government policy came mainly from the right wing of the political spectrum. The new PVV, which is the party of former VVD Member of Parliament Geert Wilders, particularly dominated the political and social debate about migration and integration policy. The PVV, which in the 2006 election was well represented in the House of Representatives with 5.9% of votes and 9 seats, wants to drastically limit the immigration of persons of non-Western foreign heritage and advocates, for instance, a five-year ban on family-based migration for this group. The PVV also feels that the purpose of integration must be assimilation into 'the dominant Dutch values and norms'.²⁸ Furthermore, the PVV feels that the Netherlands is 'islamicising' and advocates calling a halt to this 'islamification'.²⁹ In 2007 the views of the PVV received a lot of attention in the media. However, in the House of Representatives this party is often on its own. The VVD also advocates a more restrictive admission policy and supports a

²⁶CDA. (2006) *Vertrouwen in Nederland. Vertrouwen in elkaar. Verkiezingsprogramma 2006-2011* (Faith in the Netherlands. Faith in each other. Election manifesto 2006-2011), Den Haag: CDA.

²⁷A provisional residence permit is an entry visa for persons who want to stay in the Netherlands for more than 3 months (a D-visa within the meaning of the Schengen Convention). Applications for provisional residence permits must be submitted to the Dutch Embassy or Consular representation in the country of origin or the country where the person is living on a permanent basis. The person then needs to apply for a residence permit upon arrival in the Netherlands. The government is able to evaluate by means of this visa obligation whether the foreign national meets the requirements, without being faced with a *fait accompli* by the person's presence.

²⁸Partij Voor de Vrijheid (PVV) (2007) PVV-immigratieplan: achttien maatregelen om de stroom ECHT in te dammen (*PVV immigration plan: eighteen measures to REALLY slow down the flow*), on www.pvv.nl, 24 January 2008.

²⁹See, for instance, the input of parliamentary party chairman Geert Wilders during the General Political Debates in 2007 (*Proceedings II 2007/08*, no. 2, p. 42-77).

“national, uniform and hard-line approach to the integration problems”.³⁰ The VVD reproaches the Cabinet for a migration and asylum policy that is too ‘slack’ and an approach to integration that is too casual. The opposition parties on the other side of the political spectrum are currently less critical with respect to the government policy.

3.3. Developments in the Area of Migration and Asylum

Modern migration policy

In May 2006 the previous Cabinet introduced the policy memorandum ‘Towards a modern migration policy’ (*naar een modern migratiebeleid*)³¹, which proposes a far-reaching revision of the current admission system (with the exception of the asylum-related part). This memorandum already received due attention in the previous Policy Analysis Report. The modern migration policy pertains to admission to the Netherlands for reasons not related to asylum. This is the main avenue for foreign nationals to be admitted to the Netherlands.

Table 2: Provisional Residence Permits (mvv) in the Netherlands, 2006-2007

	2007	2006
Number of applications	40.250	40.450
Number of decisions	37.950	43.100
Number of decisions on applications for review	3.050	4.150
Positive decisions*	74%	62%

*(% of total number of decisions, including applications for review)

Source: IND (2008), *De IND belicht: Jaarresultaten 2007* (The IND in the spotlight: 2007 annual results). Rijswijk: IND.

Table 3: Applications for mvv by purpose of stay, 2007

	% of total number of applications	% of positive decisions by purpose of stay
Family reunification/formation	52%	62%
Study	18%	93%
Labour	9%	81%
Highly skilled migrants	14%	95%
Others	7%	75%

Source: IND (2008), *De IND belicht: Jaarresultaten 2007* (The IND in the spotlight: 2007 annual results). Rijswijk: IND.

Table 4: Applications for regular (non-asylum) temporary residence permits in the Netherlands, 2006-2007

	2007	2006
Number of applications	55.000	77.550
Number of decisions	55.250	77.300
Number of decisions on applications for review	22.450	13.150
Positive decisions*	83%	81%

*(% of total number of decisions, including applications for review)

Source: IND (2008), *De IND belicht: Jaarresultaten 2007* (The IND in the spotlight: 2007 annual results). Rijswijk: IND.

³⁰Kamp, H. (2007) *Immigratie en Integratie* (Immigration and Integration), The Hague: VVD Parliamentary party.

³¹*Parliamentary Papers II* 2005/06, 30 573, no. 1 (Letter).

Table 5: Applications for regular (non-asylum) temporary residence permits by purpose of stay, 2007

	% of total number of applications	% of positive decisions by purpose of stay
Family reunification/formation	36%	88%
Study	10%	98%
Labour	8%	82%
Highly skilled migrants	16%	96%
Others	30%	68%

Source: IND (2008), *De IND belicht: Jaarresultaten 2007* (The IND in the spotlight: 2007 annual results). Rijswijk: IND.

The new Cabinet has embraced the starting points that have been formulated in this memorandum, and it plans to bring about this reform of migration policy during the current term of government. Two sets of advice issued in 2007 will also play a role. On 16 March 2007 the Social and Economic Council (*Sociaal-Economische Raad (SER)*)³² issued advice on the employment migration policy in the light of the aforementioned policy memorandum at the request of the State Secretary for Social Affairs and Employment (SZW) and the Minister for Development Cooperation.³³ In its advice, the SER advocates a change in the employment migration policy from 'no, unless' to 'yes, provided that', with a selective and inviting policy for highly qualified employment migrants. At the request of the State Secretary of Justice, the Advisory Commission for Aliens Affairs (*Adviescommissie voor Vreemdelingenzaken (ACVZ)*) also issued advice on the proposals in this policy memorandum. This advice was published on November 2007 and mostly regards the proposals in a positive light. However, the ACVZ does make a number of recommendations about the starting points, the further interpretation and the enforcement of the proposed admission model.³⁴ In anticipation of the changes in legislation and regulations that will be needed to achieve a fundamental change to the admission policy, a number of so-called 'quick wins' will also be realised. Paragraphs 2.3.4, 2.3.5 and 2.3.6 look at this in more detail.³⁵

3.3.1. Refugee Protection and Asylum

In the coalition agreement between the CDA, PvdA and Christian Union³⁶ and the policy programme of the new Cabinet for the period 2007-2011³⁷, the following intentions for policy in the area of refugee protection and asylum are included:

- The asylum procedure must be accelerated and improved. This must result in early clarity about staying or returning, and prevent repetitions. The Cabinet plans to better coordinate the accelerated 48-hour procedure and the procedure for applications that cannot be completed in that time. This is largely in line with the conclusions of the 2006 evaluation report of the Commission for the Evaluation of the Aliens Act 2000 (*Commissie Evaluatie Vreemdelingenwet 2000*)³⁸ and the advice

³²The SER is a statutory advisory body for the government with members from employers' and employees' organisations, as well as independent experts. Sociaal-Economische Raad (SER). (2007) *Welkom bij de SER*. (Welcome to the SER), retrieved 2 May 2007 from www.ser.nl

³³SER. (2007) *Advies arbeidsmigratiebeleid* (Advice on the employment migration policy). The Hague: SER.

³⁴Adviescommissie voor Vreemdelingenzaken (ACVZ). (2007) *Immigratie op maat: advies over een nieuwe opzet for het regulier migratiebeleid* (Tailor-made immigration: advice on a new structure for the regular migration policy), The Hague: ACVZ.

³⁵*Parliamentary Papers II*2007/08, 29 861, no. 21 (Letter).

³⁶CDA, PvdA en ChristenUnie. (7 February 2007) *Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie* (Coalition agreement between the Parliamentary parties CDA, PvdA and Christian Union), The Hague.

³⁷Ministerie van Algemene Zaken. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011*, (Working together, living together: 2007-2011 policy programme of the Balkenende IV Cabinet), The Hague: Ministerie van Algemene Zaken.

³⁸Commissie Evaluatie Vreemdelingenwet 2000. (2006) *Evaluatie Vreemdelingenwet 2000: De asielpcedure* (Evaluation of the Aliens Act 2000: The asylum procedure) The Hague: Boom Legal publishers.

issued by the ACVZ on 9 February 2007 on its own initiative, 'Secure and fast: a proposal for a new asylum procedure'.³⁹

- A study about restricting repeated asylum applications as much as possible will be conducted in the near future. This study will explore the possibility of evaluating in the context of an ongoing procedure without requiring a new application, obstacles on the basis of Article 3 of the ECHR and other non-imputable circumstances that occur subsequent to the application.
- After 2007, the quota for so-called 'invited refugees' will also be set at an average of 500 persons per year. The Cabinet will promote this quota being utilised fully.

In 2007 these policy intentions have not yet resulted in concrete adaptations to legislation and regulations. Nevertheless, in 2007 quite some changes took place in the legislation and regulations relating to asylum, partly as a result of case law.

Table 6: Asylum applications in the Netherlands, 2006-2007

	2007	2006
First application	6.300	5.850
Second or subsequent application	2.100	3.400
Other asylum applications	1.350	5.200
Total	9.750	14.450
% unaccompanied minor asylum applicants	6%	3%
% of applications granted in accelerated procedure	13%	13%
% of applications denied in accelerated procedure	15%	29%

Source: IND (2008), *De IND belicht: Jaarresultaten 2007* (The IND in the spotlight: 2007 annual results). Rijswijk: IND.

Table 7: Top 10 countries of origin for first asylum applications 2007

	Number	%
Iraq	2.004	28%
Somalia	1.875	26%
China	242	3%
Iran	187	3%
Nigeria	179	3%
Afghanistan	156	2%
Eritrea	150	2%
Sierra Leone	135	2%
Burundi	118	2%
Others	2.056	29%
Total	7.102	100%

Source: www.ind.nl

European Court of Human Rights: Salah Sheekh vs. the Netherlands

On 11 January 2007 the European Court of Human Rights ruled in the case of Somali national Salah Sheekh versus the Netherlands⁴⁰. The Court decided that the Netherlands had violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ban on torture and inhuman treatment) by deciding to deport this asylum seeker to Somalia. The Court's argumentation in this ruling had far-reaching consequences for the Dutch asylum policy, because it qualifies the so-called 'singled-out criterion'.

³⁹ACVZ. (2007) *Secuur en Snel: voorstel voor een nieuwe asielprocedure* (Secure and fast: a proposal for a new asylum procedure), The Hague.

⁴⁰European Court of Human Rights, 11 January 2007, no. 1948/04 (Salah Sheekh/the Netherlands).

According to established case law of the Court, the evaluation of an asylum application must be conducted on the basis of individual risk. The considerations of the Court in the Salah Sheekh case showed that the Court further qualifies this requirement for asylum seekers who belong to a vulnerable minority group in their country of origin. It is more likely for this category of asylum seekers that, upon return migration to their country of origin, they will be at real risk of treatment that contravenes Article 3 of the ECHR. In this context it is important that the foreign national:

- has already suffered personal consequences as a member of this vulnerable group, and;
- this group is, generally speaking, unable to get protection against human rights violations.⁴¹

In the Netherlands, an asylum seeker may be given a temporary residence permit if he can show it is likely that, upon deportation, he is at real risk of treatment that contravenes Article 3 of the ECHR (Article 29, under b, of the Aliens Act 2000). The foreign national must be able to show special distinguishing features that demonstrate this risk of treatment that contravenes Article 3 of the ECHR. After the European Court of Human Rights rejected a request by the Dutch State for an internal appeal, the policy was adapted to conform to the ruling on 30 July 2007. It is now assumed that there is a real and individual risk of treatment that contravenes Article 3 of the ECHR if:

- the foreign national belongs to a vulnerable minority group in his country of origin; and
- he has been able to demonstrate, by means of in itself limited individual indications, that as a result of these indications there is a threat of violations of Article 3 of the ECHR.⁴²

Since this policy amendment came into effect, the following groups have been designated vulnerable minority groups in their country of origin:

- the Reer Hamar in Somalia⁴³;
- Christians, mandaeans, yezidi (all religious minorities) and Palestinians in Iraq⁴⁴;
- persons who come from an area in Afghanistan where they are part of an ethnic or religious minority⁴⁵;
- single women in Afghanistan (women who, upon return migration to Afghanistan, are not accompanied by a husband or other adult male family member with whom the woman lived in a family context before leaving Afghanistan and with whom she can live upon her return)⁴⁶;
- the non-Arabic population groups in Darfur⁴⁷;
- Tutsis in the Democratic Republic of Congo⁴⁸.

Decision and departure moratoriums

Pursuant to Article 43 of the Aliens Act 2000 (Vw 2000), a decision moratorium may be imposed for certain categories of asylum seekers because of the situation in the country of origin or because of a massive influx from a certain country or region. Pursuant to Article 45, fourth paragraph, of the Aliens Act 2000 a departure moratorium may also be imposed for certain categories of asylum seekers whose application has been rejected and who are required to leave the Netherlands. This happens if the situation in the country of origin changes to such an extent that it is not certain whether the persons can

⁴¹ *Parliamentary Papers II* 2006/07, 29 344 and 30 800 VI, no. 64 (Letter).

⁴² Decision of the State Secretary for Justice dated 30 July 2007, no. 2007/19, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 148, p. 5.

⁴³ Decision of the State Secretary for Justice dated 30 July 2007, no. 2007/20, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 148, p. 6.

⁴⁴ Decision of the State Secretary for Justice dated 30 July 2007, no. 2007/21, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 148, p. 7.

⁴⁵ Decision of the State Secretary for Justice dated 26 October, no. 2007/33, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 216, p. 12.

⁴⁶ Decision of the State Secretary for Justice dated 26 October, no. 2007/33, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 216, p. 12.

⁴⁷ Decision of the State Secretary for Justice dated 5 November 2007, no. 2007/34, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 221, p. 6.

⁴⁸ Decision of the State Secretary for Justice dated 5 November 2007, no. 2007/35, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 221, p. 5.

be deported to this country. In such cases, the facilities for the category of foreign nationals in question will not be terminated. Neither will people in this category be forcibly deported. Exceptions to both decision and departure moratoriums are possible, however. In 2007 the following decision and departure moratoriums were in effect:

- From 2 March to 1 July 2007 a decision and departure moratorium was in effect for Tamils originating from Sri Lanka.⁴⁹
- From 5 May 2007 a decision and departure moratorium was in effect for asylum seekers from Guinea. This decision and departure moratorium was in force throughout all of 2007 and was valid until 31 March 2008.⁵⁰
- On 19 May 2007 the decision and departure moratorium for asylum seekers from Iran, which had been in effect since 19 May 2006, was terminated.⁵¹
- On 30 June 2007 the decision and departure moratorium for asylum seekers from Libya, which had been in effect since 19 July 2006, was terminated.⁵²

Iraq

In December 2006 the Minister of Foreign Affairs issued an official notice about the situation in Iraq, which concluded that the safety situation in the centre and south of Iraq had further deteriorated compared to April 2006.⁵³ As a result of this official notice, the decision was made to initiate a policy of categorial protection for people originating from the centre and south of Iraq, effective from 2 April 2007.⁵⁴ This means that asylum seekers who come from these parts of Iraq will, in principle (assuming there are no contra-indications), be given a temporary asylum residence permit based on the situation in the country of origin. However, it will first be investigated whether the applicant is eligible for an asylum residence permit on individual grounds, for instance because he is a refugee within the definition of the Geneva Convention.

Criticism National Ombudsman regarding individual official notices

On 27 September 2007 the National Ombudsman⁵⁵ presented the results of a study into the quality of individual official notices of the Ministry of Foreign Affairs.⁵⁶ The study was a response to complaints and signals from interest groups and asylum solicitors. In individual official notices, the Ministry of Foreign Affairs answers questions from the IND in the context of the processing of an individual asylum application. The IND only asks the Ministry of Foreign Affairs for individual official notices in a limited number of asylum cases. This is done only in asylum cases whereby a decision cannot be made on the basis of the asylum seeker's story or on the basis of the IND's further investigations. The questions asked

⁴⁹Decision of the State Secretary for Justice dated 2 March 2007 for the setting up of a decision and departure moratorium for Tamils originating from Sri Lanka, *Netherlands Government Gazette* 48, p. 21; Decision of the State Secretary for Justice dated 14 September 2007, terminating the departure moratorium for asylum seekers originating from Sri Lanka, *Netherlands Government Gazette* 186, p. 7.

⁵⁰Decision of the State Secretary for Justice dated 20 April 2007 for the setting up of a decision and payment moratorium for asylum seekers originating from Guinea, *Netherlands Government Gazette* 85, p. 7.

⁵¹Decision of the State Secretary for Justice dated 13 July 2007, terminating the departure moratorium for asylum seekers originating from Iran, *Netherlands Government Gazette* 141, p. 19.

⁵²Decision of the Minister of Justice dated 15 December 2006, for an extension to the decision and departure moratorium for asylum seekers originating from Libya, *Netherlands Government Gazette* 3, p. 12.

⁵³Ministerie van Buitenlandse Zaken, Directie Personenverkeer, Migratie en Vreemdelingenzaken, afdeling Asiel- en Migratiezaken (DPV/AM). (2006) *Algemeen ambtsbericht Irak, december 2006* (General official notice on Iraq, December 2006) The Hague: Ministerie van Buitenlandse Zaken.

⁵⁴*Parliamentary Papers II* 2006/07, 19 637, no. 1137; Decision of the State Secretary of Justice dated 21 May 2007, no. 2007/09, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 100, p. 42.

⁵⁵The National Ombudsman is a High Council of State and is independent of the government. Upon request or upon his own initiative, the National Ombudsman conducts studies into the conduct of administrative bodies of the Central Government and of other administrative bodies appointed by or pursuant to law. De Nationale ombudsman. (2008) *Over de Nationale ombudsman* (about the National Ombudsman), retrieved 3 January 2008 from www.ombudsman.nl.

⁵⁶De Nationale ombudsman. (2007) *De geloofwaardigheid van ambtsberichten: Hoe asielverhalen worden bevestigd of ontkracht* (The credibility of official notices: How asylum stories are confirmed or negated). The Hague: Bureau Nationale ombudsman.

by the IND are aimed at the verification of certain parts of the asylum story in the country of origin, are intended to ensure that someone is not, for instance, a war criminal, or are focus on the authenticity of certain documents.

According to the National Ombudsman, the Ministry of Foreign Affairs does not always exercise enough care in the formulation of individual official notices. The National Ombudsman also feels that the way in which the IND uses the official notices indicates prejudice and bias.⁵⁷ The IND rejects these statements.⁵⁸ The National Ombudsman is making a number of recommendations to the Ministry of Foreign Affairs and the IND on the basis of the results of the study, including:

- broader access for IND decision-making officials to all the underlying documents that resulted in the official notice;
- broader access for asylum seekers to the underlying documents;
- the official notice must be made available to the asylum seeker more quickly;
- the Ministry of Foreign Affairs should exercise more openness about the investigations they have conducted.

An official joint response from the Minister of Foreign Affairs and the State Secretary of Justice to the report by the National Ombudsman was published on 18 December 2007.⁵⁹ In this response the Minister and State Secretary indicated, among other things, that they do not plan to give IND officials or the asylum seeker in question more access to the underlying documents that form the basis for an official notice. An important reason for this decision is to protect the identity of the Ministry of Foreign Affairs' confidants in the asylum seeker's country of origin who assist in the formulation of the official notice.

Broader employment opportunities for asylum seekers

In the aforementioned advice of the Social and Economic Council (*Sociaal-Economische Raad (SER)*) about the labour migration policy⁶⁰, the Council advocates the improved utilisation of the potential among highly educated refugees. One of the Council's suggestions is to considerably expand the opportunities for asylum seekers to work in the period before they receive a final decision. In its response to the advice⁶¹ the Cabinet announced that it does indeed plan to broaden these opportunities, but not to the extent proposed by the SER. An expansion of the opportunities for employment can also have negative effects, according to the Cabinet. Someone who has had access to the Dutch labour market for an extended period of time, and has therefore been actively participating in society, can subsequently receive a negative decision on their asylum application. This employment may then make it harder for them to initiate a return to their country of origin. On 12 October 2007, the Minister of Social Affairs and Employment submitted a proposal for amendment to the Aliens Employment Act Implementation Decree to the House of Representatives.⁶² This proposal entails:

- expanding the employment opportunities for asylum seekers from 12 to 14 weeks out of every 52 weeks if they work as an artist, musician, work in films and/or provide technical support to artists and/or musicians (this is associated with the rules relating to unemployment benefits entitlement);
- expanding the employment opportunities for asylum seekers from 12 to 24 weeks out of every 52 weeks for other work.

The change is expected to be implemented early in 2008. No changes are made to the rule that access to the labour market does not start until after the first six months of the asylum procedure.

⁵⁷De Nationale Ombudsman. (2007) *Persbericht: Asielprocedures niet altijd eerlijk* (Press release: Asylum procedures not always fair), retrieved 3 January 2008 from www.ombudsman.nl.

⁵⁸Ministerie van Justitie. (2007) *Reactie op rapport Nationale ombudsman 'Individuele ambtsberichten'* (Response to National Ombudsman when report 'Individual official notices'), retrieved 3 January 2008 from www.ombudsman.nl.

⁵⁹*Parliamentary Papers II* 2007/08, 19 637, no. 1179 (Letter).

⁶⁰Sociaal-Economische Raad. (2007) *Advies arbeidsmigratiebeleid* (Advice on labour migration policy), The Hague: Sociaal-Economische Raad.

⁶¹*Parliamentary Papers II* 2006/07, 29 861/30 573, no. 17 (Letter).

⁶²*Parliamentary Papers II* 2007/08, 29 861/30 573, no. 20 (Letter).

3.3.2. Unaccompanied Minors and other vulnerable groups

Victims of human trafficking – B9 scheme

Foreign nationals who cooperate with the investigation and prosecution of human traffickers may be given temporary residence on the basis of the so-called B9 scheme. The B9 scheme was created in the context of the combating (on a criminal law basis) of human trafficking and has been in existence since 1988.⁶³ Foreign nationals are granted the right of residence for the length of the period that they are providing assistance in the investigation and prosecution of the suspect. For this reason, the right of residence in the B9 scheme is linked to the reporting of human trafficking and the criminal procedure. Until recently, the right of residence existed only if the foreign national made such a report. The notification of a report, faxed by the police to the IND, constitutes the application for a regular residence permit in this context. In principle this notification is sufficient to grant a residence permit for the duration of the investigation and the possible prosecution of the human trafficker. Witnesses/persons making a report are granted residence *if* and for as long as the Public Prosecution Service (*Openbaar Ministerie*) deems the presence of the foreign national necessary for the purpose of the criminal procedure. The right of residence terminates when the suspect's sentence becomes irrevocable or if the case is irrevocably dismissed. Following the criminal procedure against the perpetrators, the victim can submit an application for a permanent residence permit.

A possible expansion of this scheme was discussed during debates with the House of Representatives in 2007. In the debate on 12 April 2007, the State Secretary undertook to notify the House by letter about the expansion of the B9 scheme. She also indicated that the possibilities for such an expansion were already being researched.⁶⁴ In her letter dated 18 October 2007⁶⁵ the State Secretary announced the following changes to the B9 scheme:

- If a foreign national has had three years' consecutive residence on the basis of a B9 permit, it will be possible, even if the criminal case is still in progress, to assess upon request whether an independent residence permit may be granted at that time. Previously this was possible only after the criminal case had come to an end. This change, which is a response to one of the recommendations in the fifth report of the National Rapporteur on Trafficking in Human Beings (*Nationaal Rapporteur Mensenhandel*)⁶⁶ is still in the preparation phase.
- Since 14 November 2007, it has also been possible to grant residence on the basis of the B9 scheme to victims who do not report human trafficking but who cooperate in the investigation and prosecution in some other way, for instance by making a statement or being heard as a witness.⁶⁷

Unaccompanied minor foreign nationals

Unaccompanied minor asylum seekers who are not entitled to an asylum residence permit may be given a temporary regular (non-asylum) residence permit as an unaccompanied minor foreign national. The conditions for receiving this residence permit are:

- the minor asylum seeker must be unaccompanied;
- it cannot reasonably be expected of the minor asylum seeker that he is able to independently settle in his country of origin or another country where the minor could reasonably go; and,
- adequate support (measured by local standards) is not available in the country of origin or another country where the minor could reasonably go.

The guardianship of unaccompanied minor foreign nationals is awarded to a designated guardianship institution.

⁶³ *Parliamentary Papers II*2003/04, 28 638, no. 2 (Letter).

⁶⁴ *Proceedings II*2006/07, 61, p. 3434.

⁶⁵ *Parliamentary Papers II*2007/08, 19 637, no. 1174 (Letter).

⁶⁶ Nationaal Rapporteur Mensenhandel. (2007) *Mensenhandel: Vijfde rapportage van de Nationaal Rapporteur* (Trafficking in Human Beings: Fifth report of the National Rapporteur), The Hague: Bureau Nationaal Rapporteur Mensenhandel.

⁶⁷ Decision dated 30 October 2007, relating to a change of the Aliens Decree 2000 as a result of the expansion of the categories of victims of human trafficking and some other amendments, *Law Gazette* 2007, 436

The situation of unaccompanied minor foreign nationals was also regularly the subject of debate in 2007. As in 2006 (see the 2006 Policy Analysis Report), due attention was devoted in 2007 to the disappearance of unaccompanied minor foreign nationals from asylum reception facilities, possibly as victims of human trafficking. In anticipation of the official start to the protected reception pilot, a start was made in 2007 on the protected reception of unaccompanied minor foreign nationals. The objective is to provide categories of unaccompanied minor foreign nationals who are at risk of becoming victims of exploitation with protected reception facilities.

In addition, in April 2007 the House of Representatives asked the State Secretary of Justice, by means of a motion, to ensure that the Aliens Police has the resources to always be able to immediately investigate the disappearance of unaccompanied minor foreign nationals. The House acknowledges that there may be circumstances in which such an investigation is not conducted, but if this happens it must be carefully documented.⁶⁸ The State Secretary presented a number of measures for this purpose in August 2007, including the revision of the existing protocol on missing unaccompanied minor foreign nationals.⁶⁹

This subject once again received a lot of attention in the media and political circles in October 2007 as a result of a successful operation by the Dutch police (see also §2.3.9). In conjunction with the authorities in the United States, England, Belgium, France, Germany and Spain, an internationally operating organisation was broken up which is suspected of having brought minor asylum seekers - mostly girls - from Nigeria into the Netherlands over a period of many years and on a large scale. These minors were probably recruited under false pretences to work in the prostitution business elsewhere in Europe.⁷⁰

Former unaccompanied minor foreign nationals

The situation of so-called former unaccompanied minor foreign nationals also received a lot of attention in 2007. When coming of age, the foreign national is no longer entitled to a residence permit as a minor, unless he has held such a residence permit for three years. In the past, the living allowance to which the foreign national was entitled as an unaccompanied minor foreign national would be continued to be paid by the guardianship institution. The previous Cabinet decided that this payment would stop at the time the foreign national comes of age and the guardianship relationship is terminated.⁷¹ For some of this group, however, the rule applies that they do have legal residence in the Netherlands because an application for a residence permit is still being processed. As a result of the termination of the living allowance, this group remains in the Netherlands without facilities. The House of Representatives has therefore asked the State Secretary to take measures against the negative effects of the termination of the allowance.⁷²

The State Secretary responded to this with her letter of 21 December 2007.⁷³ She wants to deal with the problem by means, on the one hand, of measures to promote return migration and, on the other hand, by means of measures that provide legal residence. There is a particular emphasis on intensified return migration support by the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek (DT&V)*). In addition, measures have already been taken in 2007 that have resulted in a proportion of former unaccompanied minor foreign nationals being able to get residence on other grounds, namely a pardon scheme initiated by the Cabinet (see § 2.3.9), the aforementioned relaxation of the B9 scheme and the more relaxed application of the no blame-criterion.

Expansion of the no blame-criterion

Foreign nationals who are required to leave the Netherlands but who are unable to do so through circumstances beyond their control, may be admitted for this reason under certain circumstances.

⁶⁸ *Parliamentary Papers II* 2006/07, 19 637, no. 1152 (Motion).

⁶⁹ *Parliamentary Papers II* 2006/07, 27 062 and 19 637, no. 60 (Letter).

⁷⁰ Openbaar Ministerie. (24 October 2007) *Internationale actie tegen handel in minderjarige Nigerian asielzoekers* (International action against the trade of minor Nigerian asylum seekers) retrieved 31 March 2008 from http://www.om.nl/dossier/soorten_misdrijven/human_trafficking.

⁷¹ *Parliamentary Papers II* 2005/06, 27 062, no. 52 (SO Report).

⁷² *Parliamentary Papers II* 2006/07, 19 637, no. 1145 (Motion).

⁷³ *Parliamentary Papers II* 2007/08, 27 062, no. 61 (Letter).

Effective from 7 April 2007, unaccompanied minor foreign nationals who have exhausted all legal remedies and foreign nationals who are unable to leave for medical reasons may, in addition to foreign nationals who have unsuccessfully tried to leave, also be eligible for a residence permit. This will then be on the basis of the policy for foreign nationals who are unable to leave the Netherlands through circumstances beyond their control.⁷⁴ Before, it was only possible to get such a permit if the foreign national was able to demonstrate he had actively tried everything possible to leave the Netherlands.

An unaccompanied minor foreign national is eligible for a residence permit on the basis of this policy if he has been in the Netherlands unlawfully for three years or longer without his departure having been achieved and is under the age of 18. The foreign national must have cooperated sufficiently in the investigation into adequate support in his country of origin or a third country during that period. After all, the Dutch government will in these cases have taken on the duty of care for a minor for three or more years without being able to resort to return migration. This demonstrates that the government in this individual case was not able to achieve return migration.

If a foreign national who is required to leave the Netherlands is permanently unable to travel for health reasons, he may also be eligible for a residence permit on the basis of the policy for foreign nationals who are unable to leave the Netherlands through circumstances beyond their control. This not only affects foreign nationals who are unable to travel because of their health. The policy also applies to foreign nationals for whom the prescribed physical transfer to a medical institute or physician in their country of origin after the journey is consistently impossible. However, the foreign national must have made every possible effort to effect his departure from the Netherlands. The IND's Medical Assessment Section is responsible for evaluating the nature and scope of the medical impediments present.

3.3.3. Control and Monitoring of Immigration

In its policy programme for the period 2007-2011⁷⁵, the new Cabinet has paid particular attention to the development of a system for determining a person's identity, partly for the benefit of the Aliens policy. The government's target is to start using a new identification system in 2010. A National Research and Development programme is also being set up to develop new methods and techniques for such a system.

The following developments have also taken place in the area of control and monitoring of migration:

Identification documents for undocumented persons

On 28 March 2007, the National Ombudsman announced the results of the study into the issue of so-called W2 documents to foreign nationals by the Immigration and Naturalisation Service (IND)⁷⁶. Since 1 January 2005 there has been a general duty of identification on the street and in public spaces in the Netherlands. Undocumented foreign nationals who are legally residing in the Netherlands must also be able to identify themselves. This initially caused problems for a number of categories of undocumented foreign nationals, which led to the opportunity being created in 2005 to provide a number of groups with a so-called W2 document.⁷⁷ This applies to:

- foreign nationals who, on the basis of Article 64 of the Aliens Act 2000, have been granted postponement of departure: it is not safe to travel in view of the health of the foreign national or one of his family members;
- foreign nationals who come under a departure moratorium;

⁷⁴Decision of the Minister of Justice and the State Secretary of Justice dated 23 March 2007, no. 2007/02, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 68, p. 11.

⁷⁵Ministerie van Algemene Zaken. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011* (Working together, living together: 2007-2011 Policy programme of the Balkenende IV Cabinet). The Hague: Ministerie van Algemene Zaken.

⁷⁶De Nationale ombudsman. (2007) *Bewijs maar wie je bent: De afgifte van identiteitsdocumenten (W2) door de Immigratie- en Naturalisatiedienst* (Prove who you are: The issue of identity documents (W2) by the Immigration and Naturalisation Service), The Hague: Bureau Nationale Ombudsman.

⁷⁷*Parliamentary Papers II* 2004/05, 19 637, no. 939 (Letter).

- unaccompanied minor foreign nationals who are awaiting a decision on their application for renewal or amendment of a previously granted permit;
- foreign nationals who are victims of human trafficking and who are legally residing in the Netherlands because they are using the consideration period of a maximum of three months that is awarded to some potential victims of human trafficking, in order to decide whether they want to report a crime or cooperate in some other way in the criminal investigation or prosecution.

Table 8: Number of W2 documents issued by the IND

2005	2006	2007	Total
7	689	599	1,295

Source: IND Documents Bureau

However, the National Ombudsman points out a fifth group of people who have difficulty getting a valid identity document, namely former asylum seekers who apply for a regular (non-asylum) residence permit. Asylum seekers are mostly undocumented and are usually unable to obtain a new passport through their embassy. In his report, the Ombudsman expresses criticism of the policy of not letting this group be eligible for a W2 document. He suggests that all foreign nationals who are legally residing in the Netherlands should be given the opportunity to comply with the duty of identification during their regular residence procedure by issuing them with a W2 document as long as they do not have a valid passport. In November 2007, the State Secretary of Justice indicated that she plans to partially comply with the criticism of the Ombudsman. Former asylum seekers who:

- have submitted an application for a regular (non-asylum) residence permit and are in the Netherlands legally as a result of this application, and
- do not have a valid passport

will also be issued a W2 document. The State Secretary is not prepared to issue such a document to all foreign nationals who submit a regular (non-asylum) application and do not have a valid passport. There are no obstacles for foreign nationals who are not asylum seekers to obtain a passport from the authorities in their country of origin.⁷⁸

Sliding scale

The withdrawal of residence permits because the foreign national poses a risk to public order and security is based on the principle of the "sliding scale". This means that the longer a foreign national has enjoyed lawful residence in the Netherlands, the more serious the breach of public order - and therefore the more heavily punished the foreign national - has to be to lead to the termination of his residence rights. The previous report looked comprehensively at the previous Cabinet's plans for toughening up the public order policy and therefore sooner resorting to the termination of the residence of foreign national who commit crimes. The new Cabinet has shelved these plans.⁷⁹ In her letter to the House of Representatives dated 13 August 2007, the State Secretary announced instead a study into the application and effectiveness of the current policy and possible increase in the effectiveness of the policy by means of the proposed tightening of the rules. In this context, it must also be investigated whether the current policy and the proposed amendments contribute to preventing crimes and repeated crimes among foreign nationals. She also announced a bundle of measures aimed at improving the implementation of the existing policy.

The Prüm Treaty

On 27 May 2005 a treaty was signed in Prüm, Germany, between Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria, in respect of the intensification of cross-border collaboration, in particular for the purpose of combating terrorism, cross-border criminality and illegal migration.

⁷⁸ *Parliamentary Papers II* 2007/08, 19 637, no. 1177 (Letter).

⁷⁹ *Parliamentary Papers II* 2006/07, 19 637, no. 1168 (Letter).

(*Treaty Series* 2005, 197). This Treaty was ratified by the House of Representatives on 12 June 2007. The debate in the Senate had not yet been fully finalised at the end of 2007.⁸⁰

Schengen Borders Code

The Aliens Act 2000 will be amended for the purpose of implementing Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105).⁸¹ Although the Regulation has direct effect, a legislative change is needed for the implementation of the code and the clarity of the Aliens Act 2000. Incidentally, the changes will be technical in nature and will therefore not result in important changes in daily practice. The House of Representatives started the debate on the legislative proposal in the second half of 2007, but at the end of that year this had not been finalised.

3.3.4. Economic Migration

In its policy programme, the new Balkenende IV Cabinet gives a great deal of prominence to increasing the attractiveness of the Netherlands to highly-skilled workers. The extension of the job search period for foreign students in the Netherlands after their studies, the lowering of the income limit for this group to 25,000 euros, the shortening of the IND procedure to two weeks by entering into covenants with companies and educational institutions and the improvement of the collaboration and exchange of information between the IND, the Centre for Work and Income (*Centrum voor Werk en Inkomen (CWI)*), the municipalities and the Dutch Tax and Customs Administration are all intended to contribute to this objective.⁸²

In anticipation of the structural policy reform that will result from the introduction of a 'modern migration policy', a number of changes (so-called 'quick wins') were implemented in 2007 that are further described below. A points system was also initiated in 2007 for the admission of foreign nationals who want to work in the Netherlands as self-employed persons.

Shortened provisional residence permit procedure accessible to more companies

To be able to apply for a residence permit in the Netherlands, foreign nationals with a visa obligation must apply for a provisional residence permit. Because the normal procedure for applying for a provisional residence permit is time-consuming, there is an accelerated provisional residence permit procedure for larger companies. The target within this is to finalise applications within two weeks. Companies that want to use this procedure must enter into a covenant with the IND. Until now this scheme was only accessible for companies that bring a minimum of ten foreign nationals per year into the country for employment or work placement. In the light of the development toward a modern migration policy, this condition was abandoned on 12 October 2007.⁸³ A company may sign an

⁸⁰Legislative proposal for the approval of the Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the Republic of France, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria, in respect of the intensification of cross-border collaboration, in particular for the purpose of combating terrorism, cross-border criminality and illegal migration, signed in Prüm on 27 May 2005 (*Treaty Series* 2005, 197), *Parliamentary Papers II* 2006/07, 30 881, no. 1- 7; *Parliamentary Papers I* 2006/07 and 2007/08, 30 881, no. A-D.

⁸¹Legislative proposal for changes to the Aliens Act 2000 with a view to the implementation of Regulation (EC) no. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105), *Parliamentary Papers II* 2007/08, 31 208, no. 1-4.

⁸²Ministerie van Algemene Zaken. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011* (Working together, living together: 2007-2011 policy programme of the Balkenende IV Cabinet), The Hague: Ministerie van Algemene Zaken.

⁸³Decision of the State Secretary of Justice dated 25 September 2007, number 2007/28, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 196, p. 14.

agreement with the IND if it complies with the other conditions⁸⁴ for admission to the abbreviated procedure.

Access to the labour market for foreign graduates in the Netherlands

In its advice of 20 February 2007 about the study migration policy,⁸⁵ the Advisory Commission for Aliens Affairs (ACVZ) concludes that the current scheme for retaining foreign students who graduated in the Netherlands for the labour market is failing because of the strict requirements. The Social and Economic Council (SER) shares this view, as demonstrated by its aforementioned advice about the future of the employment migration policy. The ACVZ feels that the period in which graduates can look for work in the Netherlands after completing their studies is too short (only three months). The ACVZ also concludes that in most cases a graduate is unable to use the highly-skilled migrant scheme, because new entrants to the labour market can usually not meet the salary criterion (in 2007 this was a gross annual salary of at least €34,130 for persons under the age of 30 and at least €46,541 for persons over 30).

In anticipation of the changes in the context of the modern migration policy, the Cabinet has followed the advice of the ACVZ with regard to the above points. Effective from 20 December 2007, the job search period for foreign students who have graduated in the Netherlands has been extended to a maximum of one year, without entitlement to benefits. The graduate has full access to the labour market during this year. A reduced salary criterion of €25,000 has been introduced for this group within the highly-skilled migrant scheme.⁸⁶ In addition, the Cabinet agrees with the advice given by the ACVZ that entrepreneurial study migrants must have the option of starting their own company. They may also use the job search year for this purpose. Further definition of these changes will take place in the context of the modern migration policy.⁸⁷

Simplification of the procedure for family members of highly-skilled migrants

In its response at the end of 2006 to Parliamentary questions from Members of Parliament Dijsselbloem and Meijer (both from the PvdA) about the obstacles in the highly-skilled migrant scheme, the then Minister for Immigration and Integration announced that family members of highly-skilled migrants who arrive in the Netherlands later can submit their applications to the IND front office for Highly-skilled and Labour Migration starting in the summer of 2007.⁸⁸ To this end, spouses and partners of highly-skilled migrants and their underage children have been able to submit their applications at this front office since 6 June 2007, even if they travel to the Netherlands later than the highly-skilled migrant. As is the case for the application of the highly-skilled migrant, the target period for the processing of these applications is two weeks.⁸⁹ In December 2007 this option was also incorporated in the regulations.⁹⁰

Points system for the admission of independent entrepreneurs

Foreign nationals may be admitted to the Netherlands to work as independent entrepreneurs if their presence serves a material Dutch economic interest. In order to evaluate this, the IND requests advice from the Ministry of Economic Affairs. On 1 May 2006 the then Minister of Economic Affairs announced

⁸⁴The main conditions are that companies are registered with the Chamber of Commerce, can demonstrate that they are solvent if asked to do so and are willing to sponsor the migrant (Paragraph B1/1.5.1.1 Aliens Act implementation guidelines 2000).

⁸⁵Adviescommissie voor Vreemdelingenzaken (ACVZ). (2007) *Profijt van studiemigratiebeleid: een advies over de arbeidsmarktpositie van buitenlandse afgestudeerde* (Benefits of the study migration policy: advice on the labour market position of foreign graduates), The Hague: ACVZ.

⁸⁶Decision of the State Secretary of Justice dated 6 December 2007, no. 2007/37, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 243, p. 12; Decision dated 28 November 2007 for changes to the Aliens Employment Act Implementation Decree and the Access to National Insurance (Additional Categories of Persons) Decree 1999 amending the job search year and the income limit for foreign nationals who have graduated in the Netherlands within the knowledge migrant scheme, *Law Gazette* 2007, 502.

⁸⁷*Parliamentary Papers II* 2006/07, 29 861/30 573, no. 17 (Letter).

⁸⁸*Parliamentary questions II* 2006/07, no. 437.

⁸⁹*Parliamentary Papers II* 2006/07, 19 637, no. 1160 (Letter).

⁹⁰Decision of the State Secretary of Justice dated 6 December 2007, no. 2007/37, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 243, p. 12.

that, effective immediately, new criteria would apply, consisting of a number of basic requirements and a points system for assessing the value the entrepreneur in question would contribute to the Dutch economy.⁹¹ However, in June 2007 the Minister of Economic Affairs informed the House of Representatives that the implementation of the new system had suffered some delays as a result of organisational problems.⁹² In the end the new system was not yet implemented in 2007 either.

Joint IND/CWI front office for labour migration

In many cases a residence permit and a work permit are needed to be able to work in the Netherlands as a labour migrant. The residence permit must be obtained from the IND and the work permit from the Centre for Work and Income (CWI). In the context of simplifying procedures and reducing the administrative burden, the Cabinet has announced that a single front office will be set up by the CWI and IND for the processing of both types of applications⁹³. This is something the Social and Economic Council, for instance, advocated in its aforementioned advice on labour migration. In December 2007 the Minister of Social Affairs announced that the objective is to have the joint front office set up by 1 July 2008⁹⁴, whereby the following basic premises apply:

- a uniform process that is easy to understand for the client, with the fastest possible processing of permit applications combined with the least possible amount of ‘red tape’;
- one joint application form for all employer applications for work permits and residence permits for work as an employee; the ultimate objective is a website from which an electronic application can be sent and therefore submitted.

3.3.5. Family Reunification and Formation

Expansion of extended family reunification

In addition to the normal family reunification of spouses or partners and of underage children with their parents, the Dutch family reunification policy also offers the opportunity for so-called extended family reunification. Other relatives of a Dutch citizen or a foreign national who legally resides in the Netherlands can also qualify for admission. In that case the relative in question must be an actual member of the household of the person with whom the foreign national in question wants to stay and was an actual member of that person’s household in the country of origin as well. Moreover, leaving this foreign national behind must constitute undue harshness in the Minister of Justice’s view.⁹⁵

However, admission in the context of extended family reunification has only been defined in the family reunification policy for children who have come of age. Leaving an adult child behind in the country of origin is considered unduly harsh if there are one or more special individual circumstances that would create a distressing situation if this child were to remain behind in the country of origin. Since 7 April 2007 a policy has also been formulated whereby the same conditions apply as those for adult children for the admission of other family members and relatives in the context of extended family reunification, such as nephews, nieces and cousins, brothers, sisters and grandparents.⁹⁶

Article 8 of the ECHR

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) stipulates a person’s right to a private and family life. In the context of the aliens law, this Article is relevant in terminating the residence of a foreign national, since terminating a person’s residence may infringe on his right to a private and family life and thus constitute a violation of Article 8 of the ECHR.

⁹¹ *Parliamentary Papers II* 2005/06, 29 696, no. 3 (Letter).

⁹² *Parliamentary Papers II* 2006/07, 29 696, no. 5 (Letter).

⁹³ *Parliamentary Papers II* 2007/08, 29 861/30 573, no. 21 (Letter).

⁹⁴ *Parliamentary Papers II* 2007/08, 29 861, no. 25 (Letter).

⁹⁵ Article 3.24 Aliens Decree 2000 (Vreemdelingenbesluit 2000 (Vb 2000)).

⁹⁶ Decision of the Minister of Justice and the State Secretary of Justice dated 23 March 2007, no. 2007/02, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 68, p.11.

Effective from 18 October 2007 changes were implemented in Dutch policy with respect to the possible violation of Article 8 of the ECHR in cases of termination of residence.⁹⁷ These changes are the result of developments in the case law of the European Court of Human Rights and of the Administrative Law Division of the Council of State:

- not only is the right to a family life invoked, but increasingly also the right to a private life;
- termination of residence always means interference by the State in people's private lives or their family lives.

In the past, an invocation of Article 8 of the ECHR always related to the honouring of family life. However, as a result of the case law of the European Court of Human Rights, appeals are increasingly made to a person's right to a private life. An evaluation framework for this has now been described in national regulations whereby in accordance with the case law of the European Court of Human Rights the unjustified invasion of a person's private life is only assumed after a very long stay in the Netherlands (approximately 30 years).

The Netherlands has abandoned its earlier standpoint that interference in a person's family life could only occur if a residence permit aimed at exercising family life was revoked or not renewed. If the residence permit had a different purpose, its revocation was not regarded as interference in family life. As a result of the case law of the Administrative Law Division of the Council of State (AbRvS)⁹⁸ and of the European Court of Human Rights⁹⁹ this basic premise has now been abandoned. The revocation/non-renewal of a residence permit always means interference by the State into the family life/private life of the foreign national. Incidentally, this does not mean that the revocation/non-renewal should not take place, because the next thing that must be considered is whether the interference is justified. As has always been the case, in this consideration the basic premise applies that Article 8 of the ECHR does not constitute a general obligation to respect the choice of migrants to exercise their family life in a certain country. However, an express consideration of interests must now be made in more cases. In this consideration of interests, having a residence permit of a very temporary nature when family life started, is to the disadvantage of the foreign national.

Evaluation of the family reunification policy

At the end of 2004 the rules for admission in the context of family formation were tightened¹⁰⁰. The income requirement and the age limit for this form of family reunification were increased. From this date, foreign nationals who reside in the Netherlands must earn 120% of the minimum wage (before this was 100%) and both spouses/partners must be at least 21 years of age (before this was 18). In January 2007, during the debate on the Ministry of Justice budget and as a result of questions by Groenlinks (Green Left) Member of Parliament Azough, the Minister of Justice promised an evaluation into the effects of these measures.¹⁰¹ The evaluation was supposed to be limited to a quantitative study into the starting position of newcomers in the Netherlands before and after the aforementioned measures.¹⁰² Finally, as a result of Parliamentary questions about the evaluation, the State Secretary of Justice announced in September 2007 that both a qualitative and quantitative study would be conducted. The objective of these studies is to obtain an understanding of the way in which the policy changes influence or have influenced the choices of those affected by them.¹⁰³ The study will be conducted by the Information and Analysis Centre of the IND (INDIAC) and the Research and Documentation Centre

⁹⁷Decision of the State Secretary of Justice dated 8 October 2007, number 2007/30, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 200, p.7.

⁹⁸AbRvS 23 March 2007, LJN (national jurisprudence number) BA 2163.

⁹⁹See, for instance, European Court of Human Rights, 31 January 2006, no. 50435/99 (Rodrigues da Silva and Hoogkamer/the Netherlands) and European Court of Human Rights 11 April 2006, no. 61292/00 (Useinov/the Netherlands).

¹⁰⁰Family formation means that the family ties were not created until the foreign national with whom residence is being applied for was already legally residing in the Netherlands. This concerns family reunification with a spouse, registered partner or non-registered partner.

¹⁰¹*Proceedings II* 2006/07, no. 32, p. 2094–2110.

¹⁰²*Parliamentary Papers II* 2006/07, 30 573, no. 5 (Letter).

¹⁰³*Parliamentary Papers II* 2007/08, 30 573, no. 6 (Letter).

(Wetenschappelijk Onderzoeks- en Documentatiecentrum (WODC)) of the Ministry of Justice and will be completed by the end of 2008 at the earliest.

Simplifying the renewal of a regular residence permit for family reunification and family formation

In the context of the modern migration policy and partly inspired by developments in case law in respect of Article 8 of the ECHR, the State Secretary of Justice announced on 15 October 2007 that, in anticipation thereof, the evaluation of applications for the extension of a regular residence permit for family reunification and family formation will be simplified.¹⁰⁴ This policy change means that a foreign national no longer has to demonstrate that he meets the income requirement. An application for renewal will only be rejected if the person depends on public resources (Work and Social Assistance Act (*Wet Werk en Bijstand*)). Passports will now only be checked upon collection of residence documents, thus *after* the decision. In order to check whether the applicant is still part of the family for which the residence was granted, the IND itself will henceforth request information about the composition of the family from the municipal personal records database (GBA). All these measures result in the applicant having to submit fewer documents when submitting an application for the renewal of his residence permit.

3.3.6. Other Legal Migration

Towards a single verification moment

As explained in § 2.3.4, foreign nationals with a visa obligation must first apply for an entry visa (provisional residence permit) at a diplomatic post abroad. Only then can they come to the Netherlands to apply for a residence permit. On 24 January 2007, the Minister of Justice requested advice from the Advisory Commission for Aliens Affairs (ACVZ) about the possibilities of redesigning the provisional residence permit procedure in the future, partly with a view to ultimately having a single verification moment. This objective was also included in the memorandum entitled 'Towards a modern migration policy'.¹⁰⁵

In September 2007, the ACVZ presented the requested advice about the provisional residence permit procedure¹⁰⁶. The ACVZ concludes that there is duplicated verification of the application, since the conditions for obtaining the provisional residence permit are the same as those for obtaining the residence permit. However, the processing of the application for a residence permit still often takes another 2 to 3 months. The ACVZ considers this duplicated verification superfluous, unnecessarily stressful for the foreign national and, in the context of applications for family reunification, also in violation of Article 2, under d and Article 13, first paragraph, of the European Directive on family reunification (*gezinsherenigingsrichtlijn*). According to the ACVZ, there needs to be a single verification procedure with a single decision, which then results in both an entry visa and the granting of the residence permit. Only an identity check will still need to take place upon arrival in the Netherlands, after which the residence document can be issued.

The State Secretary has already announced that the possibilities for taking a first step in this direction within the current legal framework, by refraining from a separate verification of the conditions for the residence permit of migrants who have entered the Netherlands in possession of a provisional residence permit, are being investigated.¹⁰⁷ It will, however, remain necessary to submit a separate application. A final response to the advice of the ACVZ will be included in the policy document the State Secretary of Justice will be submitting to the House of Representatives in the spring of 2008, and in which the modern migration policy will be defined in concrete terms.¹⁰⁸

¹⁰⁴ *Parliamentary Papers II* 2007/08, 29 861/30 573, no. 21 (Letter).

¹⁰⁵ *Parliamentary Papers II* 2005/06, 30 573, no. 21 (Letter).

¹⁰⁶ Adviescommissie voor Vreemdelingenzaken (ACVZ). (2007) *Mvu, weg ermee? Voorstel voor één procedure voor inreis- en verblijfsvergunning* (The provisional residence permit – let's get rid of it? Proposal for a single procedure for entry and residence permits), The Hague: ACVZ.

¹⁰⁷ *Parliamentary Papers II* 2007/08, 29 861/30 573, no. 21 (Letter).

¹⁰⁸ *Parliamentary Papers II* 2007/08, 29 861/30 573, no. 23 (Letter).

Exemption from the provisional residence permit requirement for South Koreans

Effective from 1 June 2007, subjects of South Korea are exempt from the requirement of being in possession of a provisional residence permit when applying for a residence permit.¹⁰⁹ South Korea had asked the Netherlands for this concession a number of times, for the purpose of good bilateral and economic relations. The business community also considered the obligation to apply for a provisional residence permit as an administrative obstacle. The Dutch government finally agreed to abandon the provisional residence permit requirement in view of the economic ties between the Netherlands and South Korea, the political and economic stability of South Korea and the limited risk of illegal immigration from this country.¹¹⁰

Means requirement

One of the admission requirements for a number of purposes of stay is that the applicant or the person with whom the applicant will be staying has independent, sustainable and adequate means of income. In most cases, the income of the spouse or registered partner of the person with whom residence is being applied for may be added to make up this income. This is also permitted from 22 June 2007 in cases of extended family reunification of foreign nationals age 65 or over (see also §2.3.5), residence for study purposes and residence for the purpose of a family visit.¹¹¹ Incidentally, in the case of residence for study purposes the relevant criterion is whether the person in the Netherlands who is financing the study has independent, sustainable and adequate means of income. The change of 22 June 2007 corresponds with regulations in respect of the residence permit for children, children of a previous marriage, and/or foster children travelling to the Netherlands after the main applicant and for extended family reunification.

Admission for religious purposes

The Netherlands has special regulations for the admission of foreign nationals to the Netherlands for religious purposes. Foreign nationals who want to work in the Netherlands as ministers of religion or spiritual leaders at the request of a certain religious group can request a residence permit for this purpose.¹¹² The religious group or employer must have a work permit for the foreign national. There is currently a transitional scheme for foreign nationals who want to stay in the Netherlands with a religious or ideological organisation (e.g. a monastery or convent), which limits such stays to a number of specific organisations, in anticipation of a final policy framework.¹¹³

In October 2004, the then Minister for Immigration and Integration asked the Advisory Commission for Aliens Affairs (ACVZ) to advise on a single policy framework for admission and residence on ideological and religious grounds. This advice was published in September 2006.¹¹⁴ On 11 May 2006, the Minister subsequently sent a response to this advice to the House of Representatives, incorporating a policy proposal for a new evaluation framework for admission on religious grounds.¹¹⁵ However, the new Cabinet has shelved this policy proposal, which would combine the aforementioned two options for residence on religious grounds. In June 2007, the Cabinet indicated that it wants to reconsider aspects of this proposal and include them in the modernisation of the migration policy.¹¹⁶

On 12 June 2007, as a result of a Parliamentary question from Van der Vlies from the Staatkundig Gereformeerde Partij (SGP), the Minister of Social Affairs and Employment did however announce that, in anticipation of a new final policy framework, the policy for the issue of work permits to ministers of

¹⁰⁹ Decision of the Minister of Justice and State Secretary of Justice dated 2 August 2007, no. 2007/22, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 156, p. 5.

¹¹⁰ *Parliamentary Papers II* 2006/07, 19 637, no. 1151 (Letter).

¹¹¹ Decision of the State Secretary of Justice dated 12 June 2007, no. 2007/12 relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 116, p. 11.

¹¹² B 5.4.1 Aliens Act Implementation Guidelines (Vreemdelingendecirculaire 2000 (VC 2000))

¹¹³ B 19 Aliens Act Implementation Guidelines (Vreemdelingendecirculaire 2000 (VC 2000))

¹¹⁴ Adviescommissie voor Vreemdelingenzaken (ACVZ). (2006) *Toelating en verblijf voor religieuze redenen* (Admission and residence for religious reasons), The Hague: ACVZ.

¹¹⁵ *Parliamentary Papers II* 2005/06, 19 637, no. 1051.

¹¹⁶ *Parliamentary Papers II* 2006/07, 19 637, no. 1159.

religion will be relaxed.¹¹⁷ This decision corresponds with the intention of the previous Cabinet. A vacancy must normally be reported to the Centre for Work and Income (CWI), and candidates for the function must first be sought within the European Union (the so-called priority supply). Since 22 July 2007, this obligation no longer applies as a condition for the granting of a work permit for foreign nationals who perform a spiritual, religious or ideological function for which specific education, knowledge or experience is required and which is of material importance for the worship or functioning of a religious denomination or another community with a religious or ideological basis.¹¹⁸

Covenants for study and au pairs

One of the basic premises of the modern migration policy is the principle of shared responsibility between the government, on the one hand, and institutions and companies that bring foreign nationals to the Netherlands on the other. The latter will play a greater role in the admission procedure on the basis of covenants, with the objective of enabling a faster and more flexible admission of selected migrants.¹¹⁹ From 1 August 2007, institutes for higher education that have entered into the appropriate covenant with the IND can submit applications on behalf of foreign nationals who want to study at the institute in question. Until 31 July 2008, students can also still apply directly to the IND for a residence permit; after this date it can only be done by institutes for higher education that have entered into a covenant.¹²⁰ The possibility for educational institutions to enter into a covenant with the IND did already exist, but as a condition to be able to use the accelerated provisional residence permit procedure for study purposes.

The State Secretary also announced that covenants will be signed with au pair agencies located in the Netherlands, so that they can submit applications for au pairs coming to the Netherlands for whom they are responsible. The State Secretary expects this can start around the middle of 2008. Once again, improved service and quicker processing of the applications are important objectives.¹²¹

3.3.7. Citizenship and Naturalisation

Table 9: Naturalisation in the Netherlands, 2006-2007

	2007	2006
Number of applications	27.100	28.200
Number of decisions	26.650	23.900
Number of decisions on applications for review	1.300	950
Positive decisions*	81%	83%

*(% of total number of decisions, including applications for review)

Source: IND(2008) *De IND belicht: Jaarresultaten 2007* (The IND in the spotlight: 2007 annual results), Rijswijk: IND.

Multiple nationalities

As early as 2005 the then Minister for Immigration and Integration submitted a legislative proposal to restrict multiple nationalities and to introduce the possibility of revoking Dutch citizenship for causing

¹¹⁷ *Appendix to Proceedings II* 2006/07, no. 1819.

¹¹⁸ Scheme of the Minister of Social Affairs and Employment of 12 July 2007 for changes to the Implementation rules for the Aliens Employment Act associated with the Aliens Employment Act Delegation and Implementation Decree, *Netherlands Government Gazette* 138, p. 25.

¹¹⁹ *Parliamentary Papers II* 2005/06, 30 573, no. 1.

¹²⁰ Regulation of the State Secretary of Justice dated 29 August 2007 relating to a change of the Regulations on Aliens 2000 (sixty-sixth change), *Netherlands Government Gazette* 173, p. 8; Decision of the State Secretary of Justice dated 29 August 2007, no. 2007/24, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 173, p. 6.

¹²¹ *Parliamentary Papers II* 2007/08, 29 861/30 573, no. 21 (Letter).

serious detriment to the essential interests of the Kingdom, or one or more of its countries.¹²² The subject of multiple nationalities has been on the political agenda in the Netherlands for a long time. Between 1992 and 1997 it was not necessary for a person to relinquish his original nationality in order to become a Dutch citizen. After 1997, this obligation was reintroduced. However, a series of exceptions to this obligation are possible (for instance if the legislation of the country of origin makes it impossible to relinquish the nationality in question). This main stipulation of Dutch naturalisation policy is not up for discussion, but the previous Cabinet wanted to restrict the series of exceptions.

Table 10: Dutch citizens; dual nationality at 1 January (2003-2007)

Second nationality	2003	2004	2005	2006	2007	%
Total non-Dutch nationalities	869,931	908,036	940,485	972,552	1,001,318	100.0%
Turkish	234,466	243,556	252,434	260,223	267,254	26.7%
Moroccan	189,545	203,409	215,442	227,692	239,111	23.9%
German	44,164	45,517	46,844	48,098	49,335	4.9%
British	41,925	42,511	43,000	43,266	43,408	4.3%
Belgian	28,907	29,448	29,908	30,287	30,725	3.1%
Yugoslavian	22,993	23,150	23,129	22,721	22,048	2.2%
Italian	17,453	18,169	18,795	19,433	20,057	2.0%
Polish	15,040	15,652	16,108	16,585	17,021	1.7%
Iranian	15,623	15,877	16,012	16,124	16,259	1.6%
French	14,274	14,851	15,274	15,733	16,115	1.6%
Other nationalities	245,541	255,896	263,539	272,390	279,985	28.0%

Source: Statistics Netherlands, Voorburg/Heerlen 28-5-2008

The subject of dual nationality featured prominently on the political agenda during the formation of the Balkenende IV Cabinet as a result of the announcement on 14 February 2008 of two Ministerial candidates who have dual nationalities: the prospective State Secretary for Social Affairs and Employment Mr Ahmed Aboutaleb, and the prospective State Secretary of Justice Ms Nebahat Albayrak. On 15 February, the further debate of the aforementioned legislative proposal was on the agenda of the House of Representatives. During this debate the Freedom Party (PVV) made it clear that it was strongly opposed to the appointment of either person. The party submitted a motion to make it impossible for Dutch citizens with dual nationality to become a Member of Parliament or of the government.¹²³ This motion was not supported by any other party.

The motion and the debate did result in much media attention and discussion about the subject. This was further reinforced by the announcement in the NRC Handelsblad newspaper on 24 February 2007 of a motion of no confidence against Aboutaleb and Albayrak by PVV party leader Geert Wilders.¹²⁴ This motion, which was submitted during the debate about the government statement of policy of the new Cabinet¹²⁵, was not supported by any of the other parties. VVD party leader Rutte did however argue during the debate that State Secretary Albayrak “missed an opportunity” by not giving up her Turkish nationality¹²⁶ and SP party leader Marijnissen would have found it “a definite plus-point” had both State Secretaries relinquished their second nationalities.¹²⁷

¹²² Legislative proposal for changes to the Netherlands Nationality Act aimed at limiting multiple nationalities and at introducing the loss of Dutch citizenship for causing serious detriment to the essential interests of the Kingdom or one or more of its countries, *Parliamentary Papers II* 2004/05, 2005/06, 2006/07 and 2007/08, 30 166, no. 1-29.

¹²³ *Proceedings II* 2006/07, no. 44, p.2572-2573.

¹²⁴ NRC Handelsblad. (2007, 24 February) *Wilders: Nieuwe stappen tegen bewindslieden* (Wilders: new steps against members of the government).

¹²⁵ *Parliamentary Papers II* 2006/07, 30 891, no. 22 (Motion).

¹²⁶ *Proceedings II* 2006/07, no. 45, p. 2658.

¹²⁷ Kruijt, M. (2007, 3 April) ‘*Dikke extra plus*’ komt Marijnissen duur te staan (Marijnissen pays dearly for ‘a definite plus’). *Volkskrant*, p. 3

However, the majority of parties in the House of Representatives had made it clear during the debate that they had no objection to the new State Secretaries and during the debate surrounding the Government statement of policy, the Prime Minister himself also spoke out against the suggestion that the fact that both members of government each hold dual nationality is undesirable. Both the prime minister and other participants in the debate pointed out the constitutional provision stating that all Dutch nationals are equally eligible for appointment to public service. If the PVV wishes an exception to this for Dutch nationals with dual nationality, it should propose a revision of the constitution, Mr Slob (Christian Union) amongst others argued. The prime minister supported this position. Mr Wilders (PVV) answered, that the dual nationality of both members of government raised the semblance of a conflict of interest and that according to the PVV they should not have been appointed for that reason.¹²⁸

In December 2007, the new Cabinet withdrew the aforementioned legislative proposal for limiting multiple nationalities. It made this decision because it wants to deal with multiple nationality differently. The Cabinet does not feel that the number of exceptions to the obligation to relinquish one's original nationality should be limited. The existing exceptions all serve to enforce the rule that relinquishing the nationality of the country of origin is not required if this cannot reasonably be expected, for instance because it would cause serious financial detriment to the applicant. The Cabinet wants to maintain this basic premise.¹²⁹

However, the Cabinet does plan to introduce an obligation to relinquish one's original nationality for adults who were not born in the Netherlands, but who have lived here since the age of four and who want to avail themselves of the resulting right to become Dutch citizens. This government also plans to introduce the possibility of revoking Dutch citizenship due to serious detriment to essential interests of the Kingdom, for instance if someone is convicted of terrorist crimes or crimes committed with a terrorist purpose.¹³⁰

Introduction of a declaration of commitment

As indicated in the previous report, the previous Cabinet took the initiative in 2005 to introduce a naturalisation ceremony. As a conclusion to this initiative, the obligation to make a declaration of commitment during the ceremony will be introduced as a condition for obtaining Dutch citizenship. The debate on this legislative proposal began in 2006 and at the end of 2007 the debate in the House of Representatives had not yet been finalised.¹³¹

Minors obtaining Dutch citizenship through recognition after birth

In a thorough revision of the Netherlands Nationality Act which came into effect on 1 April 2003, automatic Dutch citizenship for minors who are acknowledged or legalised by their Dutch father *after* birth was abolished. This was intended as a measure against 'fake' acknowledgments by Dutch citizens of children with non-Dutch parents purely in order to get them Dutch citizenship. However, this caused a lot of problems for parents who clearly had no intention of abusing this rule. As a result, the aforementioned legislative proposal for the introduction of the declaration of commitment also includes an amendment with respect to the acknowledgment of minors. If the child is acknowledged at or shortly after its birth, the child automatically becomes a Dutch citizen. If the acknowledgement happens at a later stage, the underage child can become a Dutch citizen if the Dutch father can prove that he is the biological father of the child. As explained above, the legislative proposal is still being debated.

Consequences of the introduction of the Civic Integration Act for the naturalisation test

The new Civic Integration Act came into effect on 1 January 2007 (see § 2.3.8). As a result, the naturalisation test is no longer a requirement for applicants who apply for naturalisation on or after 1 April 2007. From 1 April 2003, it was a requirement to successfully pass the naturalisation test, which

¹²⁸ *Proceedings II* 2006/07, no. 45, p. 2634-2731.

¹²⁹ *Parliamentary Papers II* 2007/08, 30 166, no. 26 (Letter)

¹³⁰ *Parliamentary Papers II* 2007/08, 30 166, no. 25 (Letter)

¹³¹ Legislative proposal for changes to the Netherlands Nationality Act to introduce a declaration of alliance, and to amend the rules for obtaining Dutch citizenship after receiving recognised status, *Parliamentary Papers II* 2005/06 and 2006/07, 30 584, no. 1-10.

evaluates knowledge of the Dutch language and society, to obtain Dutch citizenship, unless the applicant was exempt from this obligation. Since the new Civic Integration Act has a general duty of civic integration that corresponds with the obligation to take the naturalisation test in the case of naturalisation, it is no longer necessary to take a separate test. Instead, foreign nationals who want to become Dutch citizens must successfully pass the civic integration examination. There are also certain categories of people who are exempt from this examination. A transition arrangement has also been provided for.¹³²

3.3.8. Integration

In the Netherlands, the issue of integration relates not only to migrants, but also the descendants of migrants who were born in the Netherlands. In this context, there is a lot of attention for the position of and the problems associated with persons of non-Western foreign heritage. These are people who have at least one parent who was born in one of the countries in the continents of Africa, Latin America and Asia (excluding Indonesia and Japan), or in Turkey. Traditionally, there has been specific attention for persons of foreign heritage from the main countries of origin of Morocco, Turkey, the Netherlands Antilles and Aruba and Surinam.

Table 11: Population by origin group as of 1 January (2004-2008)

Origin group	2004	2005	2006	2007	2008	%
Total population	16,258,032	16,305,526	16,334,210	16,357,992	16,405,399	100.0%
Persons of foreign heritage	3,088,152	3,122,717	3,147,615	3,170,406	3,215,416	19.6%
Persons of native Dutch heritage	13,169,880	13,182,809	13,186,595	13,187,586	13,189,983	80.4%
Total of non-western foreign heritage	1,668,297	1,699,042	1,720,050	1,738,452	1,765,730	10.8%
Total of western foreign heritage	1,419,855	1,423,675	1,427,565	1,431,954	1,449,686	8.8%
Morocco	306,219	315,821	323,239	329,493	335,127	2.0%
Netherlands Antilles and Aruba	130,722	130,538	129,683	129,965	131,841	0.8%
Surinam	325,281	329,430	331,890	333,504	335,799	2.0%
Turkey	351,648	358,846	364,333	368,600	372,714	2.3%

source: Statistics Netherlands, Voorburg/Heerlen 28-5-2008

A lot of attention is given to the issue of integration in the coalition agreement between the CDA, PvdA and Christian Union, with the following priorities being indicated:

- Civic Integration
- Combating of language deficits in children
- Increasing the labour participation
- Responsible citizenship charter
- Dutch imam training
- Combating of discrimination
- The promotion of amateur sports and volunteer work as a means of connecting people

Civic Integration Act in effect

The Civic Integration Act came into effect on 1 January 2007.¹³³ This means there is a general duty of civic integration for - in principle - all foreign nationals, unless they:

- lived in the Netherlands for at least eight years while they were of school age,
- have certain diplomas or certificates or other, similar, documents, and/or,
- have demonstrated that they have sufficient verbal and written Dutch language skills and obvious knowledge of Dutch society.

¹³²Nationalities Interim Communication (TBN 2007/2) of the Minister of Justice, *Netherlands Government Gazette* 24, p. 10.

¹³³Legislative proposal in relation to rules in respect of civic integration in Dutch society (Civic Integration Act), *Parliamentary Papers II* 2005/06 and 2006/07, 30 308, no. 1- 122; *Parliamentary Papers I* 2005/06 and 2006/07, 30 881, no. A-I.

Holders of residence permits for a temporary purpose of stay (including employment) and persons who reside in the Netherlands on the basis of the free movement of persons (including on the basis of Directive 2004/38/EC) are also exempt.

Newcomers who passed the basic civic integration examination in the context of the Civic integration Abroad Act before coming to the Netherlands must pass the civic integration examination within three and a half years after their arrival in the Netherlands; for others this is five years. Foreign nationals who already legally resided in the Netherlands on 1 January 2007 (so-called 'settled immigrants') and to whom the duty of integration applies as well, will be told by the Municipal Council in their town of residence when the five-year period commences for them. People with a duty of civic integration are usually individually responsible for preparing for the civic integration examination and for the financial aspects. For certain vulnerable groups, the civic integration is arranged by the municipalities. These are persons without income from employment or benefits, certain groups of people who are entitled to benefits and social assistance, holders of asylum residence permits and ministers of religion.

To be eligible for a permanent residence permit or for an independent residence permit for continued stay,¹³⁴ the duty of civic integration must be complied with. Municipalities can penalise failure to comply with the duty of civic integration with an administrative fine of 500 euros. The municipalities are also responsible for enforcing the Civic Integration Act.

Purpose of the civic integration

The purpose of the civic integration is for foreign nationals to acquire sufficient knowledge of the Dutch language and customs to be able to participate as full members of society. In the area of language skills, the norm for the civic integration examination has been set at level A2 in accordance with the Common European Framework of Reference for Languages (CEFR). Written skills are only required at level A1 for settled immigrants. Because settled immigrants more often have a lower education or may even be illiterate, the requirements for written skills in this group are not as high. Learning to read and write in Dutch would be (too) difficult for them, but they too have to be able to pass the examination.¹³⁵

In addition to language skills, persons with a duty of civic integration must also acquire knowledge about Dutch society. The 'knowledge of Dutch society' part of the examination will be taken at the same level for each person with a duty of civic integration. The following subjects will be dealt with:

- work and income
- etiquette, values and norms
- housing
- health and healthcare
- history and geography
- authorities
- politics and the constitutional state
- education and parenting¹³⁶

Implementation problems

The implementation of the Civic Integration Act came with major implementation problems. As already indicated in the previous Policy Analysis Report, there was a lot of opposition from the side of the municipalities against the quick implementation of the Civic Integration Act. They expressed particular

¹³⁴(Marriage) partners of persons who reside in the Netherlands for a non-temporary purpose of stay can apply for an independent regular temporary residence permit for continued stay after living in the Netherlands for three years on the basis of an dependent residence permit. This is a stronger residence permit because the termination of the marriage, for instance, is no longer reason for revoking the permit (Decision dated 5 December 2006 for the implementation and determination of the effective date of the Civic Integration Act (Civic Integration Decree), *Law Gazette* 2006, 645).

¹³⁵ Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieu (VROM), Directie Inburgering en Integratie. (2008) *Taalvaardigheid* (Language skills), retrieved 31 March 2008 from www.handreikinginburgeringgemeenten.nl.

¹³⁶ Ministerie van VROM, Directie Inburgering en Integratie. (2008) *Kennis Nederlandse samenleving* (Knowledge of Dutch society), retrieved 31 March 2008 from www.handreikinginburgeringgemeenten.nl.

concern about the practicability and financing of the new Act. In the second half of 2007, the number of participants in civic integration courses proved very disappointing. Course providers were experiencing difficulties and municipalities were unable to offer a civic integration course to enough people. Following the signals from providers and municipalities, the Minister for Housing, Communities and Integration therefore implemented a number of substantial changes in a short period of time.¹³⁷ Since 1 November 2007, municipalities have been able to offer a civic integration programme to all persons with a duty of civic integration. Since 1 January 2008, there is also the possibility of offering persons with a duty of civic integration government-financed civic integration provisions at the higher level of the State examination. If people pass at a higher level than the civic integration examination, their chances of actively participating in Dutch society are increased.¹³⁸

Tightening the norms of the Civic Integration Abroad Act

Since 15 March 2006, certain categories of migrants have already had to take a basic civic integration examination in their country of origin in the context of the Civic Integration Abroad Act. This applies to all foreign nationals between the ages of 16 to 65 who require a provisional residence permit and who want to come to the Netherlands in the context of family reunification or family formation, or for residence as a spiritual leader or minister of religion. The examination must be taken at a Dutch diplomatic post abroad and is given by telephone by means of a voice computer. The assessment of the answers is also automated.¹³⁹

To guarantee the quality of the implementation of the Act, the performance of the test technology has been inspected by the independent research institute TNO¹⁴⁰. Firstly, it was evaluated whether there are substantial differences between the automated assessment of the examination results and human assessment. The TNO report dated 11 April 2007 shows that this is not the case, which makes it possible to replace human assessment with automated assessment. The fail/pass border for the language skills test was also evaluated. TNO concluded that, with the current interpretation of the scores, candidates are being allocated a higher level than intended by those who developed the test.¹⁴¹

As a result of these conclusions the Minister for Housing, Communities and Integration announced an increase in the fail/pass border for the Verbal Dutch Test on 29 May 2007.¹⁴² However, at the request of the House of Representatives, the Minister first took further advice about the TNO conclusions. This further advice confirms the conclusion that the border is currently too low, but it has proven difficult to determine the exact fail/pass limit. However, the Minister has decided to increase it effective from 15 March 2008, which means that candidates have to answer more questions correctly in order to pass the test. This is an interim change. Further studies are being conducted into the final determination of the fail/pass border. As a result of the TNO conclusion that the automatic assessment of examination is sufficient, the human re-assessment of candidates who failed the test was terminated as of 1 November 2007.¹⁴³

Cabinet announces Civic Integration Delta Plan

As indicated above, civic integration is one of the spear points in the area of integration for the new Cabinet. A Civic Integration Delta Plan was therefore announced in the coalition agreement. This Plan is aimed at reducing the waiting lists for civic integration and language courses and at enhancing civic integration: the objective is 'participation' in the broadest sense of the word. People who participate,

¹³⁷ *Parliamentary Papers II* 2007/08, 31 143, no. 2 (SO Report).

¹³⁸ Rijksvoorlichtingsdienst (RVD). (2007) *Ministerraad akkoord met vereenvoudiging wet inburgering* (Council of Ministers approves simplification of Civic Integration Act), retrieved 1 April 2008 from www.regering.nl.

¹³⁹ Ministerie van Justitie, *Naar Nederland: Het examen* (Going to the Netherlands: the examination), retrieved 1 April 2008 from www.naarnederland.nl.

¹⁴⁰ See www.tno.nl for further information about this organisation.

¹⁴¹ *Parliamentary Papers II* 2006/07, 29 700, no. 40 (Letter).

¹⁴² *Parliamentary Papers II* 2006/07, 29 700, no. 40 (Letter).

¹⁴³ *Parliamentary Papers II* 2007/08, 29 700, no. 49 (Letter).

truly belong. To this effect, the Cabinet wants to come to agreements with municipalities, social organisations and educational institutes.¹⁴⁴

On 7 September 2007, the Minister for Housing, Communities and Integration submitted the Civic Integration Delta Plan announced in the coalition agreement to the House of Representatives.¹⁴⁵ The Delta plan serves two purposes, namely increasing the quality of civic integration and increasing the number of participants in civic integration programmes. Quality improvement must be achieved through offering more customisation, by taking into account the differences between various target groups, for instance with regard to educational level. It therefore also becomes possible to participate in civic integration at a higher level. For participants without a job, civic integration is linked more to programmes aimed at promoting social and economic participation, for instance by linking the civic integration programme to vocational education. Investments will also be made in the education of those implementing the civic integration programmes.¹⁴⁶

The Cabinet wants to see 250,000 civic integration programmes being provided by 2011. From 2009 the period in which the civic integration examination must be passed will be the same for all groups, namely three and a half years. The Delta Plan also contains the intention to ultimately provide municipalities with the possibility to offer a government-financed civic integration programme to all groups of people to be integrated (whereby the personal contribution of €270 remains in place). As a result of the aforementioned problems among providers of civic integration courses, this option was implemented ahead of schedule on 1 November 2007.

Integration memorandum

In November 2007, the Minister for Housing, Communities and Integration submitted her policy intentions in the area of integration up to and including 2011 to the House of Representatives.¹⁴⁷ In addition to the Civic Integration Delta Plan, the Cabinet focuses on two main themes, social emancipation and social integration, from which the following policy priorities result:

- a common agenda for integration policy with the municipalities, encompassing the combating of segregation and the promotion of social, cultural and economic participation, the importance of individual responsibility and the forceful combating of criminality, radicalism and violation of constitutional rights;
- combating of deficits through education and the combating of segregation in education;
- increased focus on youths of foreign heritage in juvenile care and juvenile facilities with the action plan 'Diversity in youth policy';
- increasing the labour participation of persons of non-western foreign heritage, with an important role played by vocational education and with the aid of agreements between companies, vocational education, reintegration institutes and municipalities;
- a central role for integration in the *Krachtwijken* (empowerment of communities) project: a government project for dealing with forty problem neighbourhoods;
- specific policy aimed at dealing with the disproportionate representation of Antillean and Moroccan youths in criminal life.

In addition, the memorandum also focuses on the integration of the growing group of East Europeans who, as a result of the expansion of the European Union, are settling either temporarily or permanently in the Netherlands in increasing numbers. The Parliamentary debate on the Cabinet's integration plans will take place in 2008.

¹⁴⁴CDA, PvdA and ChristenUnie (7 February 2007) *Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie* (Coalition agreement between the Parliamentary parties CDA, PvdA and Christian Union), The Hague.

¹⁴⁵*Parliamentary Papers II* 2007/08, 31 143, no. 1 (Letter).

¹⁴⁶E-Quality. (2008) *Factsheet Deltaplan Inburgering: Kansen voor emancipatie* (Fact sheet on Delta Plan for Integration: Opportunities for emancipation), retrieved 2 April 2008 from www.e-quality.nl.

¹⁴⁷*Parliamentary Papers II* 2007/08, 31 268, no. 1-2 (Letter/Memorandum).

WRR reports

In 2006 there was commotion about a report from the Netherlands Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid (WRR)*)¹⁴⁸ about Islamic activism (see the 2006 Policy Analysis Report). The report investigates the possible role of Islamic activism in the democratisation and improvement of human rights in Islamic countries. The WRR also gives its view on ways the Netherlands and Europe can support democratisation processes and the improvement of human rights in the Islamic world.¹⁴⁹ However, the commotion in 2006 was mainly about criticism expressed by the WRR in the report and during the presentation of the report regarding the political and public debate in the Netherlands about Islam, whereby, according to the Council, there is 'islamophobia', stigmatisation and a confrontational atmosphere.

As a result of the Cabinet standpoint on the report, there was a debate on this in the House of Representatives on 6 September 2007.¹⁵⁰ The Cabinet was positive about the report, but disagreed with the WRR on a number of points.¹⁵¹ Many of the parties in the House of Representatives criticized the report to a greater or lesser extent because the positive elements of Islamic activism were said to be emphasised too one-sided, a conclusion that was shared by the Cabinet and also by the research agency of the House of Representatives¹⁵². However, the debate was dominated by PVV party leader Wilders, who used the debate to call attention to his vision on Islam. It was this element in particular that garnered a lot of media attention.¹⁵³ In his contribution, Wilders described Islam as an ideology of hatred and violence, whereby he also looked at the differences between Judaism and Christianity on the one hand, and Islam on the other. He argues that there is an increasing 'Islamification' of the Netherlands and Europe that must be stopped. Among other things, he advocates banning the Koran, closing Islamic schools, prohibiting the wearing of burkas and putting a stop to the construction of new mosques. The other parties in the House of Representatives strongly condemned the standpoint of the PVV.

Two weeks after the debate, on 24 September 2007, the WRR presented its report 'Identifying with the Netherlands' (*Identificatie met Nederland*)¹⁵⁴ about the way in which 'the Dutch identity' is used in policy and in the political and public debate. The WRR especially criticises the attempts to define 'the' national identity and use it as a concept that can (once again) function as the core of the Dutch community. The CDA, VVD and PVV responded critically to the WRR report and the readers' opinion pages of various newspapers also criticised the presentation.¹⁵⁵ The speech made on the occasion of the presentation of the report by her Royal Highness Princess Máxima of the Netherlands, herself of Argentinean origin, also

¹⁴⁸The WRR is an independent advisory body for the government. Its objective is to advise the government on future developments that are of major social importance. In this advice, the scientific approach takes priority. For further information, see www.wrr.nl.

¹⁴⁹Wetenschappelijke Raad voor het Regeringsbeleid (WRR). (2006) *Dynamiek in islamitisch activisme: Aankopingspunten voor democratisering en mensenrechten* (Dynamics in Islamic activism: Starting points for democratisation and human rights). Amsterdam: Amsterdam University Press.

¹⁵⁰*Proceedings II* 2007/08, no. 93, p. 5260-5319.

¹⁵¹*Parliamentary Papers II* 2006/07, 30 800 VI, no. 115 (Letter).

¹⁵²The Research and Verification Agency (*Onderzoeks- en Verificatiebureau*) advises and supports the Lower House in its own research and research that is conducted by order of the Lower House, and in the evaluation of research reports submitted to the Lower House. Since 1 December 2007, this agency, together with the staff of the Commission for Government Expenditure (*Commissie voor de Rijksuitgaven*), was incorporated in the Research and Government Expenditure Agency (*Bureau Onderzoek en Rijksuitgaven*) (for further information, see www.tweedekamer.nl).

¹⁵³See, among others, Meerhof, T. (2007, 7 September) En weer domineert Wilders het debat (Yet again Wilders dominates the debate). *Volkskrant*, p. 3; Stokman, D. and Valk, G. (2007, 7 September) *Geert Wilders, koning of nar?* (Geert Wilders, king or jester?) retrieved 9 April 2008 from www.nrc.nl; www.nu.nl (2007, 6 September) *Wilders noemt minister Vogelaar 'knettergek* (Wilders calls Minister Vogelaar 'mad as a hatter'), retrieved 9 April 2008 from www.nu.nl; NOS Journaal (2006, 7 September) *Motie tegen Vogelaar verworpen* (Motion against Vogelaar rejected) retrieved 9 April 2008 from <http://www.nos.nl/nosjournaal/archief/index.html>.

¹⁵⁴WRR (2007). *Identificatie met Nederland* (Identifying with the Netherlands), Amsterdam: Amsterdam University Press.

¹⁵⁵Koopmans, R. (2007, 26 September) Prinses Maxima maakt denkfout (Princess Maxima makes an error of judgment). *NRC Handelsblad*, Opinion; Ankersmit, F. (2007, 29 September) Dit is politiek, geen wetenschap (This is politics, not science), *Trouw*, Letter en Geest (*Letter and Spirit*).

contributed to the commotion. In her speech, the Princess put the existence of 'the' Dutch identity into perspective. Her pronouncement that 'the typical Dutchman' does not exist caused particular commotion. Party leader Wilders in particular responded critically in the media to the comments made by the Princess.¹⁵⁶

Banning the burka

At the end of 2006, the previous Cabinet had announced its intention to formulate a legislative proposal for the purpose of a general ban on face-covering clothing in (semi) public spaces.¹⁵⁷ By doing so, the Cabinet followed a motion presented in the House of Representatives on 20 December 2005 aimed at establishing a ban on burkas in public spaces.¹⁵⁸ The debate on this subject, which had already received a lot of attention in 2006, once again created a lot of commotion in 2007. The coalition agreement stipulates that face-covering clothing may be prohibited for the protection of the public order and safety.¹⁵⁹ However, in 2007 the Cabinet did not formulate a standpoint or concrete proposals on this issue. The Cabinet did, however, report to the House of Representatives that it was working on an investigation into whether further measures for prohibiting face-covering clothing are needed in order to protect the public order and safety in addition to existing legislation.¹⁶⁰

When, shortly after taking office, the Minister for Housing, Communities and Integration stated to the media that she did not have a problem with the wearing of a burka in public, she raised a storm of criticism. The right-wing opposition in particular (VVD and PVV) objected, but party-in-power CDA, also responded very critically to this pronouncement. After all, the intention of the previous Cabinet was a total ban. As a result of this pronouncement and the lack of plans for a total ban on burkas and nikabs in public spaces in the coalition agreement, the PVV submitted its own legislative proposal to this effect in July 2007.¹⁶¹ However, at the end of 2007 the debate on this proposal had not finished.

3.3.9. Illegal Immigration and Legalisation

The settlement of the legacy of the 'old' Aliens Act Scheme (pardon scheme)

One of the concrete intentions of the new Cabinet and a long-cherished wish of the left-wing opposition under the previous government was the realisation of a pardon scheme for asylum seekers who have exhausted all legal remedies and who applied for their asylum under what was still the old Aliens Act (the Aliens Act from before 1 April 2001). When - after heated political debate - a temporary deportation ban had been put in place at the end of 2006 for those categories of foreign nationals who might be eligible for the pardon (see the 2006 Policy Analysis Report), a compromise was reached about a pardon scheme during the coalition negotiations for the Balkenende IV Cabinet, even though the CDA, the largest party in the new government, was not a proponent of such a scheme.¹⁶²

In the coalition agreement, a number of conditions have been imposed on the pardon scheme. Firstly, there must be an agreement between the Central Government and the municipalities, united in the Association of Dutch Municipalities (VNG), about the implementation and consequences of the pardon scheme. The following basic premises apply:

- The municipalities are responsible for the housing and integration of permit holders.
- The municipalities are expected to assist in the return migration of foreign nationals.

¹⁵⁶NRC Handelsblad (2007, 25 September) *Máxima: 'Nederlandse identiteit nog niet ontdekt'* (Máxima: Dutch identity not yet discovered).

¹⁵⁷*Parliamentary Papers II* 2006/07, 29 754, no. 91 (Letter).

¹⁵⁸*Proceedings II* 2005/06, no. 36, p. 2546.

¹⁵⁹CDA, PvdA and ChristenUnie (7 February 2007) *Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie* (Coalition agreement between the Parliamentary parties CDA, PvdA and Christian Union), The Hague.

¹⁶⁰See, for instance, *Proceedings II* 2006/07, no. 82, p. 4436.

¹⁶¹Legislative proposal of Members of Parliament Wilders and Fritsma for changes to the Dutch Criminal Code in relation to a ban on the wearing of burkas or nikabs in public spaces (burka ban), *Parliamentary Papers II* 2006/07 and 2007/08, 31 108. no. 1-6.

¹⁶²CDA. (2008) *Standpunten: Asielbeleid, generaal pardon* (Standpoints: Asylum policy, general pardon), retrieved 18 February 2008 from www.cda.nl.

- The municipal (funding of) temporary reception facilities for asylum seekers who have exhausted all legal remedies and who are no longer legally residing in the Netherlands must be stopped.
- Secondly, the intention to improve the admission procedure for asylum seekers (see § 2.3.1) and to prevent new arrears being created has been linked to the pardon.¹⁶³

The agreement with the Association of Dutch Municipalities was finally signed on 25 May 2007. After a comprehensive debate in the House of Representatives, the so-called Settlement of the legacy of the “old” Aliens Act scheme ultimately came into effect on 15 June 2007.¹⁶⁴ To be eligible for a residence permit, the foreign national:

- Must have submitted the initial asylum application before 1 April 2001, or must have reported to the IND or Aliens Police with the intention to submit an asylum application before 1 April 2001;
- must have resided in the Netherlands uninterrupted since 1 April 2001¹⁶⁵, and
- where applicable, must have indicated in writing and in advance that the current procedures are irrevocably revoked upon the granting of residence pursuant to the scheme.

If the foreign national constitutes a risk to the public order or national security, a permit on the basis of the scheme will not be granted. If the foreign national has given different, fake identities and nationalities in different procedures, which have proven to be false, the foreign national will not be eligible for a permit on the basis of this one-off scheme either. Others, for whom there are any doubts about their identity details, have two months to provide clarification; otherwise they will not be eligible for a permit either.

Expectations at the beginning of 2007 were that between 25,000 and 30,000 foreign nationals would be eligible for the scheme. On 28 January 2008, the IND had made an offer to approximately 25,000 foreign nationals, to which around 21,000 foreign nationals had responded positively. At that point, it had become clear that around 5,000 foreign nationals would not receive an offer as a result of contra-indications.¹⁶⁶

The right-wing opposition has strongly criticised the scheme. This criticism relates, for instance, to the level of direct and indirect costs of the scheme¹⁶⁷, as well as the possible ‘attraction effect’. The main point for criticism, however, is that this scheme rewards foreign nationals who have broken the law by not leaving the Netherlands in spite of one or more definite rejections of their asylum application(s). In reaction to this reproach, the State Secretary of Justice has argued that the cabinet has decided to make the arrangement in order to be able to optimally engage in the administration of the Aliens Act 2000, to prevent the administration of the act of getting bogged down and to meet a problem which is broadly felt in society. She acknowledged that the difference between aliens who have left the Netherlands after a rejection and those that haven’t can evoke an image of inequality. The cabinet is however of the opinion that the arguments, as mentioned before, in favour of the scheme count heavily. It is also not a matter of actual legal inequality.¹⁶⁸ The left-wing opposition in principle was positive about the scheme, but tried to stretch it even further.¹⁶⁹

¹⁶³ *Parliamentary Papers II* 2006/07, 19 637, no. 1138 (Letter).

¹⁶⁴ Regulation issued by the State Secretary of Justice dated 12 June 2007 relating to a change of the Regulations on Aliens 2000 (sixty-third change), *Netherlands Government Gazette* 111, p. 15; Decision of the State Secretary of Justice dated 12 June 2007, no. 2007/11, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 111, p. 12.

¹⁶⁵ One of the options for demonstrating uninterrupted residence in the Netherlands is a statement from the Mayor of the municipality where the foreign national resides, stating that the foreign national lived there throughout all of 2006.

¹⁶⁶ *Parliamentary Papers II* 2007/08, 31 018, no. 33 (Letter).

¹⁶⁷ The State Secretary reported to the House of Representatives that the direct costs of the pardon scheme amount to about 329 million euros in the period of 2007-2009. On the other hand, there will be a reduction of costs in the long run. The indirect costs (for example because of the provision of social benefits) could not yet be mapped out (*Parliamentary Papers II* 2007/08, 31 018, no. 31 (Letter)).

¹⁶⁸ *Parliamentary Papers II* 2006/07, 31 018, no. 3 (Report Written Consultation).

¹⁶⁹ *Proceedings II* 2006/07, no. 78, p. 4117 – 4147.

Successes in combating human trafficking and people smuggling

The combating of human trafficking and smuggling is a priority of the Dutch police and Justice services. In 2007, a number of successes were achieved in this area, often in collaboration with the authorities in other countries:

- In January, a Somali national was arrested who is suspected of being one of the organisers of a people smuggling ring.
- In February twelve suspects were arrested in the Netherlands and Germany in an investigation into a comprehensive network of internationally operating Turkish women traffickers.
- In October, there were some twenty arrests and house searches in the Netherlands, the United States, England, Belgium, France, Germany and Spain in an investigation into human trafficking relating to minor asylum seekers from Nigeria.
- In November, four suspects were arrested for smuggling Chinese nationals into England.

Medical care for illegal aliens

In July 2007, the Council of Ministers approved a legislative proposal of the Minister of Health, Welfare and Sport (VWS) for streamlining the financing of essential medical care to illegal aliens.¹⁷⁰ The previous Cabinet had already announced this intention to the House of Representatives on 18 December 2006.¹⁷¹ This legislative proposal suggests that the existing finance schemes be replaced by one single scheme. The government submitted the legislative proposal to the House in October 2007.¹⁷² The basic premise remains that persons who are uninsured must bear the costs of the medical care they receive themselves, and this also applies to illegal aliens. If it has been determined that they are unable to do so, the healthcare provider has to be able to recoup the costs from somewhere.

The legislative proposal regulates the provision of contributions from the government to healthcare providers who lose income as a result of providing essential medical care to foreign nationals who do not have access to social security facilities (mainly illegal aliens), who are unable to pay the healthcare provider and who do not have medical insurance. The scheme will be administered by the Care Insurance Board (*College voor zorgverzekeringen (CVZ)*)¹⁷³. Two situations may be distinguished from each other:

- For types of healthcare for which a referral is necessary and that can be scheduled in advance, only healthcare providers who have a contract with the CVZ are eligible for reimbursement. This also applies to pharmacists.
- All first-line healthcare providers (including GPs and obstetricians) can get a contribution from the CVZ for essential medical care given to illegal aliens. The same applies, of course, for essential medical care that must be provided in an emergency, such as a heart attack.

For providers to be eligible for payment, the medical care must be essential.¹⁷⁴ On 19 December 2007, the Klazinga Commission issued advice as to what constitutes essential medical care. This advice is part of the Commission's report in which, at the initiative of the medical professional groups, it has formulated professional standpoints about medical care for ill foreign nationals who are engaged in aliens procedures or reside in the Netherlands illegally.¹⁷⁵ A response to the advice is expected from the Minister of Health, Welfare and Sport in 2008.

¹⁷⁰Rijksvoorlichtingsdienst (RVD). (2007) *Press release by Council of Ministers: Eén regeling voor financiering zorg aan illegalen* (A single scheme for financing healthcare to illegal aliens), retrieved 1 April 2008 from www.regering.nl

¹⁷¹*Parliamentary Papers II* 2006/07, 29 689, no. 126 (Letter).

¹⁷²Legislative proposal for changes to the Care Insurance Act relating to the provision of contributions to healthcare providers who lose income as a result of providing essential medical care to certain groups of foreign nationals and of the Exceptional Medical Expenses Act, with a view to insuring certain groups of minor foreign nationals, *Parliamentary Papers II* 2007/08, 31 249, no. 1-6.

¹⁷³The Care Insurance Board (CVZ) is an independent administrative body that has a number of important tasks in the area of accessibility and content of the health insurance system in the Netherlands. Among other things, the CVZ is responsible for the realisation of facilities and schemes for groups of people who cannot or will not have health insurance for various reasons (retrieved 6 May 2008 from www.cvz.nl).

¹⁷⁴*Parliamentary Papers II* 2007/08, 31 249, no. 3 (Explanatory Memorandum).

¹⁷⁵Commissie Medische zorg voor (dreigend) uitgeprocedeerde asielzoekers en illegale vreemdelingen. (2007). *Arts en vreemdeling* (Physician and foreign national), Utrecht: KNMG, LHV, NVvP, Orde van Medisch Specialisten, Pharos.

3.3.10. Return Migration

The return migration policy is a particular priority of the new Cabinet. In the policy programme the objectives are formulated as follows: the Cabinet wants to increase the effectiveness of the return migration policy and of the controlled departure of foreign nationals who are not/no longer legally entitled to stay.¹⁷⁶

The foreign national is encouraged to leave independently, but if necessary an enforced departure will be realised. An important role is allocated to the new Repatriation and Departure Service (DT&V) that was initiated on 1 January 2007 (see also §1.3). The following points for attention are specified:

- A person-based approach (case management) is a key policy of the DT&V.
- The cooperation of municipalities in the implementation of return migration policy must be increased.
- A link to the Ministry of Development Cooperation will also be established to promote the collaboration of the countries of origin.

The Settlement of the legacy of the 'old' Aliens Act scheme (pardon scheme)

The return migration policy was also given particular attention in the formulation and implementation of the Settlement of the legacy of the 'old' Aliens Act scheme, which was discussed comprehensively in the previous paragraph. One of the conditions for the scheme that was formulated in the coalition agreement between the CDA, PvdA and Christian Union was the achievement of consensus with the Association of Dutch Municipalities in respect of the provision of cooperation for the full implementation of the Aliens Act 2000, including return migration.¹⁷⁷

On 25 May 2007, the State Secretary of Justice and the Association of Dutch Municipalities (VNG) signed an administrative contract for the implementation of this scheme. The agreement was that the Repatriation and Departure Service (DT&V) and the municipalities will provide each other with optimum support and information in the implementation of the return migration policy at a local level, with direct points of contact in the DT&V for the municipalities. It was also agreed that the Association of Dutch Municipalities will be involved in the way in which foreign nationals are facilitated in realising their departure. Finally, it was agreed that the municipalities will not cooperate in accommodating foreign nationals who are staying in the Netherlands illegally.

Subsequently, there was a great deal of discussion about a specific aspect of the content of the agreements between the Central government and the municipalities. As a result of pronouncements by the State Secretary of Justice in a debate in the House of Representatives¹⁷⁸, the impression was created that the municipalities were also obliged to pass on the names and addresses of illegal foreign nationals who had reported to the municipality and who the municipality had determined were not eligible for the pardon scheme. This resulted in a lot of confusion, whereby a number of mayors took a public stand against this supposed obligation.¹⁷⁹ Ultimately, this resulted in a new joint statement by the State Secretary and the Association of Dutch Municipalities, in which a reporting duty for the municipalities is not mentioned, but in which agreements in respect of the implementation of the return migration policy are further defined.¹⁸⁰

¹⁷⁶Ministerie van Algemene Zaken. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011* (Working together, living together: 2007-2011 policy programme of the Balkenende IV Cabinet), The Hague: Ministerie van Algemene Zaken.

¹⁷⁷CDA, PvdA and ChristenUnie (7 February 2007) *Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie* (Coalition agreement between the Parliamentary parties CDA, PvdA and Christian Union), The Hague.

¹⁷⁸*Proceedings II* 2006/07, no. 85, p. 4657-4659.

¹⁷⁹Meerhof, R. (2007, 11 July) *Trekken aan het losse draadje* (Tugging on the loose thread). *De Volkskrant*, p. 3.

¹⁸⁰Staatssecretaris van Justitie en Vereniging van Nederlandse Gemeenten (VNG). (2007) *Gezamenlijke verklaring Justitie en VNG over pardonregeling* (Joint statement of the Ministry of Justice and the VNG in respect of the pardon scheme), retrieved 21 March 2008 from www.vng.nl.

Research report on deportation of foreign nationals

In October 2006, the 'Netwerk' television station devoted two programmes to the deportation of foreign nationals by the Royal Constabulary (KMar). According to Netwerk, which based its information, among others, on the statements of former Royal Constabulary employees, an excessive amount of violence was used. On 28 August 2007, the independent Supervisory Commission for Royal Constabulary Deportations (*Commissie van Toezicht Uitzettingen Koninklijke Marechaussee*) presented the results of its study into the allegations made in the television programme. It concludes that there is no 'systematic excessive use of violence'. However, 'occasional improvised violence' is sometimes used in deportations. The Commission has made a number of recommendations for improvements, to which the Cabinet responded positively. A number of the recommendations relate to the preparations for actual deportation. There is also room for improvement in the accommodation and facilities at the deportation centre at Schiphol, so that foreign nationals are made more comfortable. With respect to the use of violence, the Commission advocates a number of supplementary protocols, the purchase of new equipment and further improvement of the training and experience of the personnel. Finally, there must always be attention for best practices, and the videotaping of deportations is recommended, both for control and training purposes.¹⁸¹

Aliens detention of children for the purpose of return migration

The previous Policy Analysis Report dealt comprehensively with the problems associated with the detention of families that have underage children in the context of deportation. In order to prevent the detention of families with young children before their departure as much as possible, the then Minister for Immigration and Integration announced the arrival of a special accommodation facility for families with children who are cooperating in their deportation in a letter to the House of Representatives in June 2006.¹⁸² In January 2007, the Minister of Justice informed the House about the concrete implementation of these plans.¹⁸³

After a negative decision on their asylum application, in principle a departure period of 28 days is given, during which period there is still an entitlement to accommodation. The special accommodation facility is intended for the time after the departure period has expired. Families that have submitted an initial asylum application under the new Aliens Act (in other words, after 1 April 2001) and who, during the departure period, have actively worked on their independent return, are eligible for reception in the special accommodation facility after the expiry of their departure period. An application for a *laissez-passer*¹⁸⁴ must in any case have been submitted and the foreign national must have made contact with the IOM. The maximum duration of the stay in the special accommodation facility is twelve weeks.

Families with children who have not actively cooperated in their departure, families who are forcibly deported, and families who have been found living in the Netherlands illegally may still be placed in aliens detention. However, the policy is aimed at excluding underage children from this type of detention as much as possible. This is also in accordance with the principles expressed in the election manifestos of the three governmental parties CDA, PvdA en Christian Union. Children may temporarily be placed in a foster family and where possible the family is also given the option of only one parent being placed in detention. However, in the following situations the entire family, including underage children, may be placed in aliens detention:

- if admission to the Netherlands has been refused to prevent the foreign national from illegally gaining access to the Schengen area;
- if further identity checks are needed in the context of aliens supervision in the case of foreign nationals who have been found without identity documents;
- in the context of the preparations required shortly before deportation (placement in a deportation centre on the basis of Article 59, second paragraph, of the Aliens Act).

¹⁸¹ *Parliamentary Papers II* 2006/07, 30 176, no. 9 (Letter).

¹⁸² *Parliamentary Papers II* 2005/06, 29 344, no. 57 (Letter).

¹⁸³ *Parliamentary Papers II* 2006/07, 29 344, no. 61 (Letter).

¹⁸⁴ A *laissez-passer* is a travel document issued by a national government or an international treaty organization. When issued by a national government a *laissez-passer* is often for one-way travel to the issuing country (Retrieved 25 July 2008 from <http://en.wikipedia.org/wiki/Laissez-passer>).

In the Explanatory Memorandum to the Ministry of Justice budget for 2008, the Cabinet announced that alternatives to detention will be looked at even more explicitly than before, particularly with regard to families with children. This will be part of a reflection on the return migration policy by the Cabinet, the results of which are expected from 2008.¹⁸⁵

Readmission and/or reconduction agreements

In 2007, three readmission and/or reconduction agreements were submitted to the House of Representatives for its tacit approval. These are the Readmission Agreement signed between the EC and Albania on 9 June 2005 (ratified by the Netherlands 19 July 2007), the Readmission Agreement signed between the Benelux and Macedonia on 30 May 2006 (ratified 31 July 2007), and the Readmission and Reconduction Agreement signed between the Benelux and Bosnia-Herzegovina on 19 July 2006 (not yet ratified in 2007).¹⁸⁶ None of these agreements have come into effect in 2007.

¹⁸⁵ *Parliamentary Papers II* 2007/08, 31 200 chapter VI, no. 2 (Explanatory Memorandum).

¹⁸⁶ *Parliamentary Papers I/II* 2006/07, 31 063, no. A/1; *Parliamentary Papers III* 2006/07, 31 002, no. A/1; *Parliamentary Papers III* 2006/07, 30 963, no. A/1.

4. Implementation of EU Legislation

This chapter outlines the developments that have taken place in Dutch legislation and regulations as a result of the implementation of EU legislation. The developments described are those that occurred in the reference period.

4.1. Implementation in 2007

4.1.1. Asylum

Directive no. 2005/85/EC of the Council of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005, L 326/13).

- Implementation deadline: 1 December 2007.
- Actual implementation date: 19 December 2007.
- Implementation by means of changes to the Aliens Act 2000¹⁸⁷, the Aliens Decree 2000¹⁸⁸, the Regulations on Aliens 2000¹⁸⁹ and the Aliens Act implementation guidelines 2000¹⁹⁰.

The implementation resulted in the following changes to the Aliens policy:

- Further to Article 10, first paragraph, under a, of the Directive, a brochure was introduced that gives the asylum seeker the information he must be provided with pursuant to this Article.
- Article 19, second paragraph, of the Directive refers to the option of terminating the processing of an asylum application if it is revoked, without making a decision. This option has been taken up in the policy.
- Article 27 of the Directive imposes conditions on the use of the notion of a ‘safe third country’. In Dutch legislation and regulations, this notion is used in the context of the compulsory ground for rejection stipulated in Article 30, first paragraph, under d, of the Aliens Act 2000. Pursuant to this Article, an asylum application is rejected if the foreign national previously stayed in a safe third country and will be sent back to this country on the basis of a Readmission and/or Recondition Agreement with the country in question. The notion is also used in the optional ground for rejection stipulated in Article 31, second paragraph, under h, of the Aliens Act 2000. Pursuant to this Article, a foreign national’s stay in a safe third country will be taken into consideration in the evaluation of the application unless the foreign national is able to demonstrate that it does not meet its obligations on the basis of the Geneva Convention, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention against Torture towards him. Article 27, second paragraph, under a, of the Directive requires that conditions be incorporated in the legislation and regulations to make it possible to assess in which cases there is such a connection between the asylum seeker and the third country concerned that it would be reasonable for the asylum seeker to go to this country. These stipulations have now been included in Dutch legislation and regulations.
- Article 27, fourth paragraph, of the Directive obligates the member states to provide access to the procedure if the foreign national is refused entry to the third country after his application has been rejected. This obligation has also been included in national legislation and regulations.

¹⁸⁷Decision dated 10 December 2007 for the determination of the effective date of the Act of 15 November 2007 with respect to changes to the Aliens Act 2000 for the implementation of Directive no. 2005/85/EC of the Council of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326), *Law Gazette* 2007, 511.

¹⁸⁸Decision dated 29 November 2007 with respect to changes to the Aliens Decree 2000 in respect of Directive no. 2005/85/EC of the Council of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326), *Law Gazette* 2007, 484.

¹⁸⁹Regulation issued by the State Secretary of Justice dated 7 December 2007, no. 5521298/07, relating to a change of the Regulations on Aliens 2000 (seventy-third change), *Netherlands Government Gazette* 240, p. 9.

¹⁹⁰Decision of the State Secretary of Justice dated 7 December 2007, no. 2007/38, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 240, p. 10.

- And finally, Article 29 of the Directive introduces a minimum common (European) list of safe third countries of origin. Pursuant to Article 31 of the Directive, member states must reject the application of asylum seekers from one of these countries under certain conditions. This has been included in national legislation and regulations as a new ground for rejection.

The legislative proposal was adopted by the House of Representatives on 28 June 2007 without debate and without a vote. The Senate unanimously adopted the proposal on 13 November 2007.

Directive no. 2004/83/EC of the Council 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 (OJ 2004, L 304/12).

- Implementation deadline: 10 October 2006.
- Actual implementation date: expected early in 2008.
- The Directive is implemented in the Aliens Act 2000, the Aliens Decree 2000, the Regulations on Aliens 2000 and the Youth Care Act Implementation Decree (*Uitvoeringsbesluit Wet op de jeugdzorg*). The Aliens Act implementation guidelines 2000 will also be amended.

As explained in the 2006 Policy Analysis Report, the Advisory Commission for Aliens Affairs (ACVZ) (on 30 March 2006) and the Council of State (on 20 December 2006) issued advice on the draft legislative proposal for changes to the Aliens Act 2000 for the implementation of the Directive submitted by the Minister for Immigration and Integration. On 3 January 2007, the proposal for changes to the Aliens Act was submitted to the House of Representatives. On 16 February 2007, the Minister of Justice submitted the draft Decree for changes to the Aliens Decree 2000 and the Youth Care Act Implementation Decree for the implementation of the Directive to the House of Representatives. On 13 November 2007, the House of Representatives approved the legislative proposal. That same day the legislative proposal was submitted to the Senate. However, at the end of 2007 the debate on this proposal had not been finalised.

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The Directive results in the following changes to the existing legislation and regulations:

- In national policy, the stipulations in Article 4, second to fifth paragraph, Articles 5 to 10 inclusive and Article 12, third paragraph, are currently still regulated in policy rules (Aliens Act implementation guidelines 2000) and/or existing case law. The national policy will not change substantively, but the stipulations will be transferred to a general binding instruction, whereby the inherent powers of deviation (Article 4:84 of the General Administrative Law Act)¹⁹², for instance, become ineffective.
- Article 8 of the Directive provides the option to determine that an asylum seeker is not in need of international protection if, in part of the country of origin, there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. This option already exists in Dutch policy (a domestic refuge and/or settlement alternative), but is currently still regulated in the Aliens Act implementation guidelines 2000. This will be incorporated in a general binding instruction.
- Article 14, first paragraph, of the Directive stipulates that, if the ground for renewal no longer exists, refugee status *must* be revoked. Article 19, first paragraph, of the Directive stipulates the same with respect to subsidiary protection. This compulsory revocation will also be incorporated in Dutch legislation and regulations.
- Articles 14, third paragraph, part b and 19, third paragraph, part b, of the Directive, stipulate that the residence status of the foreign national must be terminated if he or she has misrepresented or omitted facts, or used false documents, and this was decisive for granting refugee status/subsidiary protection status. These are optional grounds for revocation in the existing legislation and regulations, so no changes to the Aliens Act are needed.

¹⁹¹Legislative proposal in respect of changes to the Aliens Act 2000 (implementation of Directive 2004/83/EC), *Parliamentary Papers II* 2006/07-2007/08, 30 925, no. 1- 11; *Parliamentary Papers I* 2007/08, 30 925, no. A-D.

¹⁹²Pursuant to Article 4:84 of the General Administrative Law Act an administrative body can deviate from a policy rule if, due to special circumstances, following the rule would have consequences for one or more interested parties that would be disproportional in relation to the purposes served by the policy rule.

- As explained in the previous Policy Analysis Report, a lot of attention was given during the implementation process to the scope of Article 15 of the Directive. Article 15 regulates the conditions of eligibility for subsidiary protection. This corresponds with Article 29, first paragraph, under b, of the Aliens Act, pursuant to which a residence permit can be granted to foreign nationals who have been able to demonstrate that they have well-founded reasons for assuming that, upon deportation, they would be at real risk of being subjected to torture, inhuman or humiliating treatment or punishment. There was some debate on the relationship between this Article and parts a and c of Article 15 of the Directive. To clarify this matter an appropriate stipulation will be incorporated in the Aliens Decree 2000 (Vb 2000). The text of Article 15, under c, of the Directive will also be copied completely.
- Pursuant to Article 17, first paragraph, and Article 19, third paragraph, of the Directive, subsidiary protection status must be refused/revoked if there are serious reasons to assume that the foreign national has committed a serious crime, or if the foreign national constitutes a danger to the community or to national security. This was an optional ground for refusal/revocation in the existing legislation and regulations. This must be changed.
- Article 30 of the Directive imposes conditions on the representation and housing of unaccompanied minors who have been granted refugee status or subsidiary protection. This results in a number of changes to the Youth Care Act Implementation Decree with respect to the qualifications of the legal representative and with respect to the housing of the minor.

In October 2007 the lack of clarity about the scope of Article 15, under c, of the Directive resulted in the Administrative Law Division of the Council of State asking preliminary questions in the European Court in Luxembourg in the case of an Iraqi couple.¹⁹³ The key question is whether Article 15, under c, of the Directive is intended to offer additional protection to foreign nationals compared to the existing protection pursuant to Article 3 of the ECHR. This would mean that the Directive contains a new ground for the granting of a permit.

4.1.2. Immigration

Directive 2005/71/EC of the Council of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ 2005, L 289/15)

- Implementation deadline: 12 October 2007.
- Actual implementation date: 12 October 2007.
- Implementation by means of changes to the Aliens Decree 2000, the Aliens Employment Act Implementation Decree (BuWav), the Civic Integration Decree¹⁹⁴ and the Regulations on Aliens 2000¹⁹⁵.

Before the implementation of the Directive, research was not a separate purpose of stay in Dutch legislation and regulations. With the implementation of the Directive, research within the meaning of the Directive has been added as a purpose of stay. Researchers within the meaning of the Directive are exempt from the duty of civic integration. The Directive also resulted in the following changes to Dutch legislation and regulations:

- Article 5 of the Directive only allows admission to research institutes which have been approved beforehand. As a result, a system for the recognition of research institutes was introduced. The further details of the recognition of private research institutes have to be worked out by ministerial regulation. The Netherlands avails itself of the option offered by the Directive in Article 5, seventh paragraph, to revoke a residence permit if the approval of the research institute expires.

¹⁹³Administrative Law Division of the Council of State (AbRvS), 12 October 2007, no. 200702174/1.

¹⁹⁴Decision dated 26 September 2007 for changes to the Aliens Decree 2000, the Aliens Employment Act Implementation Decree and the Civic Integration Decree in relation to the implementation of Directive 2005/71/EC of the Council of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289), *Law Gazette* 2007, 366.

¹⁹⁵Regulation issued by the State Secretary of Justice dated 16 October 2007, relating to a change of the Regulations on Aliens 2000 (seventy-first change), *Netherlands Government Gazette* 202, p. 24.

- The option offered in Article 13, third to fifth paragraph, of demanding a new hosting agreement and residence permit after a stay in another member state exceeding three months, is not taken up.
- The Directive does not allow for a work permit to be required any longer. To simplify access to the labour market for family members of scientists, they will also be exempt from the work permit requirement.

In the implementation of the optional stipulations of the Directive, the least restrictive option was chosen wherever possible.

A number of changes to secondary legislation still need to take place in 2008.

Directive 2004/114/EC of the Council of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ 2004, L375/12)

- Implementation deadline: 12 January 2007.
- Actual implementation date 11 November 2006.
- Implementation by means of changes to the Aliens Decree 2000, the Regulations on Aliens 2000 and the Aliens Act implementation guidelines 2000.

As explained in the previous Policy Analysis Report, changes were made to the Aliens Decree for the implementation of this Directive. In order to conclude the implementation of this Directive, the Aliens Act implementation guidelines were amended in January 2007, in line with the changes described in the previous report.¹⁹⁶ Consequently, the Directive has now been fully implemented in all legislation and regulations.

Directive 2003/109/EC of the Council of the European Union of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004, L16).

- Implementation deadline: 23 January 2006.
- Actual implementation date: 1 December 2006.
- Implementation by means of changes to the Aliens Act 2000, the Aliens Decree 2000, the Regulations on Aliens 2000¹⁹⁷, the Aliens Act implementation guidelines 2000¹⁹⁸, the implementation rules for the Aliens Employment Act¹⁹⁹ and the Manual for the application of the Netherlands Nationality Act²⁰⁰.

After the Directive had been implemented in the Aliens Act and the Aliens Decree as of 1 December 2006 and the new residence status as (economically non-active) long-term resident came into being, changes were still needed to incorporate the consequences of the introduction of the new residence status in secondary legislation. These changes were implemented in the first half of 2007.

4.1.3. Return migration and the fight against illegal immigration

Directive 2004/82/EC of the Council of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261).

- Implementation deadline: 5 September 2006
- Actual implementation date: 1 September 2007

¹⁹⁶Decision of the Minister of Justice dated 3 January 2007, number 2007/01, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 38, p. 7.

¹⁹⁷Regulation issued by the Minister of Justice dated 7 January 2007 relating to a change of the Regulations on Aliens 2000 (fifty-sixth change) *Netherlands Government Gazette* 11, p. 6.

¹⁹⁸Decision of the State Secretary of Justice dated 16 April 2007, no. 2007/04, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 78, p. 11.

¹⁹⁹Regulation issued by the State Secretary for Social Affairs and Employment dated 21 December 2006, Labour Market department, for changes to the Implementation rules for the Aliens Employment Act associated with the Aliens Employment Act Delegation and Implementation Decree, *Netherlands Government Gazette* 1, p. 10.

²⁰⁰Nationalities Interim Communication (TBN 2007/5) of the Minister of Justice, *Netherlands Government Gazette* 67, p. 7.

- Implementation by means of changes to the Aliens Act 2000²⁰¹ and subsequently the Aliens Decree 2000²⁰², the Regulations on Aliens 2000²⁰³ and the Aliens Act implementation guidelines 2000²⁰⁴.

In order to implement this Directive, there must be a legal foundation that makes it possible to obligate transport companies to collect data and pass it on to the authorities that are in charge of border control. This was achieved by means of changes to the Aliens Act 2000.

With respect to the way in which the Directive was implemented, the following aspects deserve further attention:

- Article 2 of the Directive defines a number of terms. The definition of ‘external borders’ in the Directive differs from the definition used in the Schengen Convention, which was also incorporated in the Aliens Act 2000. The Directive defines the external border as the border between member states of the Union and third countries, whereas the Aliens Act 2000 refers to the borders of the Schengen area. The definition in the Aliens Act 2000 will not be changed. In order to prevent a situation whereby, in violation of the Directive, the obligation to collect and pass on passenger data would also apply to transport from one of the member states not belonging to the Schengen area, an exception is stipulated in secondary legislation.
- The Netherlands has chosen not to limit the obligation of collecting and passing on data (Article 3 of the Directive) in the Aliens Act 2000 to air carriers, but to apply it to all carriers (Article 4, third paragraph, of the Aliens Act 2000). In doing so, coordination is sought with the obligations already documented in the Aliens Act for all types of carriers through whose intervention foreign nationals are transported to an external border or brought within the territory of the Netherlands. It was decided for the time being to limit the scope of this obligation to air carriers by means of the Aliens Decree 2000.
- Article 4 of the Directive instructs the member states to take the necessary measures to impose dissuasive, effective and proportionate sanctions on carriers which, as a result of fault, have not transmitted data or have transmitted incomplete or false data. The Directive allows for two options: a minimum fine of €3,000 or a maximum fine of at least €5,000. Since the Dutch system for monetary penalties does not have minimum fines, it was decided to impose a maximum fine. In line with the existing sanctions for carriers that do not comply with their obligations, a maximum fine of €16,750 was decided upon, the third heaviest category of the six categories of fines laid down in Article 23, fourth paragraph, of the Dutch Criminal Code.

²⁰¹Legislative proposal for changes to the Aliens Act 2000 (implementation of Directive 2004/82/EC), *Parliamentary Papers II* 2006/07, 30 897, no. 1- 11; *Parliamentary Papers I* 2006/07, 30 897, no. A-D.

²⁰²Decision dated 27 July 2007 for adjustments to the Aliens Decree 2000 in line with Directive no. 2004/82/EC of the Council of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261), *Law Gazette* 2007, 283.

²⁰³Regulation issued by the Minister of Justice dated 16 August 2007 relating to a change of the Regulations on Aliens 2000 (sixty-fifth change) *Netherlands Government Gazette* 163, p. 9.

²⁰⁴Decision of the State Secretary of Justice dated 25 September 2007, number 2007/27, relating to a change of the Aliens Act implementation guidelines 2000, *Netherlands Government Gazette* 194, p. 10.

Table 12: Status of the Implementation of EU legislation as of 31 December 2007

EU legislation	Comparable national legislation and regulations (status)
<p>Directive 2001/51/EC (Schengen Convention)</p>	<p><i>Implementation deadline: 10 February 2003</i> <i>Status: implemented on 15 September 2004</i> <i>Aliens Act 2000</i></p> <ul style="list-style-type: none"> - <i>Legislative proposal for changes to the Aliens Act 2000 in line with Directive 2001/51/EC, Parliamentary Papers II 2002/03-2003/04, 29 016, no. 1-5; Parliamentary Papers I 2003/04, 29 016, no. A.</i>
<p>Directive 2001/55/EC (Temporary protection of displaced persons)</p>	<p><i>Implementation deadline: 31 December 2002</i> <i>Status: implemented on 15 February 2005</i> <i>Aliens Act 2000, Aliens Decree 2000 and Regulations on Aliens 2000</i></p> <ul style="list-style-type: none"> - <i>Legislative proposal for changes to the Aliens Act 2000 for the implementation of Directive 2001/55/EC, Parliamentary Papers II 2002/03-2003/04, 29 031, no. 1-13; Parliamentary Papers I, 2003/04-2004/05, no. A-E.</i> - <i>Decision dated 12 January 2005 for changes to the Aliens Decree 2000 for the implementation of Directive no. 2001/55/EC, Law Gazette 2005, 25.</i> - <i>Regulation issued by the Minister for Immigration and Integration dated 24 February 2005 in respect of changes to the Regulations on Aliens 2000 (thirty-second change), Netherlands Government Gazette 53, p. 17.</i>
<p>Directive 2003/9/EC (Reception of asylum seekers)</p>	<p><i>Implementation deadline: 6 February 2005</i> <i>Status: implemented on 3 February 2005</i> <i>Regulation for facilities for asylum seekers and other categories of foreign nationals 2005</i></p> <ul style="list-style-type: none"> - <i>Regulation for facilities for asylum seekers and other categories of foreign nationals 2005, Netherlands Government Gazette 2005 24, p. 17.</i>
<p>Directive 2003/86/EC (Family reunification)</p>	<p><i>Implementation deadline: 3 October 2005</i> <i>Status: implemented on 1 November 2004</i> <i>Aliens Decree 2000</i></p> <ul style="list-style-type: none"> - <i>Decision dated 29 September 2004 for changes to the Aliens Decree 2000 in relation to the implementation of Directive 2003/86/EC, Law Gazette 2004, 496.</i>
<p>Directive 2003/109/EC (Third-country nationals who are long-term residents)</p>	<p><i>Implementation deadline: 23 January 2006.</i> <i>Status: implemented on 1 December 2006.</i> <i>Aliens Act 2000, Aliens Decree 2000, Regulations on Aliens 2000, Aliens Act implementation guidelines 2000, Implementation rules for the Aliens Employment Act and the Manual for the application of the Netherlands Nationality Act.</i></p> <ul style="list-style-type: none"> - <i>Legislative proposal for changes to the Aliens Act 2000 in line with Directive 2003/109/EC, Parliamentary Papers II 2005/06, 30 567, 1-9; Parliamentary Papers I 2006/07, A-D.</i> - <i>Decision dated 23 November 2006 for changes to the Aliens Decree 2000 in relation to the implementation of Directive no. 2003/109/EC, Law Gazette 2006, 585.</i> - <i>Regulation issued by the Minister of Justice dated 7 January 2007 in respect of changes to the Regulations on Aliens 2000 (fifty-sixth change) Netherlands Government Gazette 11, p. 6.</i> - <i>Decision of the State Secretary of Justice dated 16 April 2007, no. 2007/04, in respect of changes to the Aliens Act implementation guidelines 2000, Netherlands Government Gazette 78, p. 11.</i> - <i>Regulation issued by the State Secretary for Social Affairs and Employment dated 21 December 2006, Employment Market (Arbeidsmarkt) department, for changes to the Implementation rules for the Aliens Employment Act associated with the Aliens Employment Act Delegation and Implementation Decree, Netherlands Government Gazette 1, p. 10.</i> - <i>Nationalities Interim Communication (TBN 2007/5) of the Minister of Justice, Netherlands Government Gazette 67, p. 7.</i>

Directive 2003/110/EC (Removal by air)	<p><i>Implementation deadline: 6 December 2005</i> <i>Status: implemented on 22 December 2005</i> <i>No changes to legislation and regulations</i></p>
Directive 2004/38/EC (Free movement of citizens of the Union and their family members)	<p><i>Implementation deadline: 30 April 2006</i> <i>Status: implemented on 29 April 2006</i> <i>Work and Social Assistance Act, Study Finance Act 2000 (IWet studiefinanciering), Course Fees and School Costs Allowance Act (Wet tegemoetkoming onderwijsbijdrage en schoolkosten), Aliens Act 2000, Aliens Decree 2000, Manual for the application of the Netherlands Nationality Act</i></p> <ul style="list-style-type: none"> – <i>Legislative proposal for changes to the Work and Social Assistance Act and other laws in relation to the EC Directive on free movement and stay of citizens of the European Union, Parliamentary Papers II 2005/06, 30 493, 1-6, Parliamentary Papers I 2005/06, 30 493, A-B.</i> – <i>Decision dated 24 April 2006, in respect of changes to the Aliens Decree 2000 in relation to the implementation of Directive 2004/38/EC, Law Gazette 2006, 215.</i> – <i>Nationalities Interim Communication 2006/3, Netherlands Government Gazette 109, p. 25.</i>
Directive 2004/81/EC (Trafficking in human beings)	<p><i>Implementation deadline: 6 August 2006</i> <i>Status: implemented on 1 February 2006</i> <i>No changes to legislation and regulations</i></p>
Directive 2004/82/EC (Passenger data)	<p><i>Implementation deadline: 5 September 2006</i> <i>Status: implemented on 1 September 2007</i> <i>Aliens Act 2000, Aliens Decree 2000, Regulations on Aliens 2000 and Aliens Act implementation guidelines 2000</i></p> <ul style="list-style-type: none"> – <i>Legislative proposal for changes to the Aliens Act 2000 in line with Directive no. 2004/82/EC, Parliamentary Papers II 2006/07, 30 897, no. 1- 11; Parliamentary Papers I 2006/07, 30 897, no. A-D.</i> – <i>Decision dated 27 July 2007 in respect of changes to the Aliens Decree 2000 in line with Directive no. 2004/82/EC, Law Gazette 2007, 283.</i> – <i>Regulation issued by the Minister of Justice dated 16 August 2007 in respect of changes to the Regulations on Aliens 2000 (sixty-fifth change) Netherlands Government Gazette 163, p. 9.</i> – <i>Decision of the State Secretary of Justice dated 25 September 2007, number 2007/27, in respect of changes to the Aliens Act implementation guidelines 2000, Netherlands Government Gazette 194, p. 10.</i>
Directive 2004/83/EC (Qualification Directive)	<p><i>Implementation deadline: 10 October 2006.</i> <i>Status: legislative proposal for changes to the Aliens Act 2000 under debate.</i></p> <ul style="list-style-type: none"> – <i>Legislative proposal for changes to the Aliens Act 2000 for the implementation of Directive 2004/83/EC, Parliamentary Papers II 2006/07-2007/08, 30 925, 1- 10; Parliamentary Papers I 2007/08, 30 925, no. A-D.</i> – <i>Decision dated 29 November 2007 in respect of changes to the Aliens Decree 2000 in line with Directive no. 2005/85/EC, Law Gazette 2007, 484 (not effective until after legislative change comes into effect).</i>
Directive 2004/114/EC (Student Directive)	<p><i>Implementation deadline: 12 January 2007</i> <i>Status: implemented on 11 November 2006</i> <i>Aliens Decree 2000, Regulations on Aliens 2000 and Aliens Act implementation guidelines 2000.</i></p> <ul style="list-style-type: none"> – <i>Decision dated 2 October 2006 for changes to the Aliens Decree 2000 for the implementation of Directive 2004/114/EC, Law Gazette 2006, 458.</i> – <i>Decision of the Minister for Immigration and Integration dated 26 April 2006 in respect of changes to the Regulations on Aliens 2000 (forty-sixth change), Netherlands Government Gazette 84, p. 15.</i> – <i>Decision of the Minister of Justice dated 3 January 2007, number 2007/01, in respect of changes to the Aliens Act implementation guidelines 2000, Netherlands Government Gazette 38, p. 7.</i>

<p>Directive 2005/71/EC (Researcher Directive)</p>	<p><i>Implementation deadline: 12 October 2007.</i> <i>Status: implemented on 12 October 2007.</i> <i>Aliens Decree 2000, Aliens Employment Act Implementation Decree, Integration Decree and Regulations on Aliens 2000</i></p> <ul style="list-style-type: none"> – <i>Decision dated 26 September 2007 for changes to the Aliens Decree 2000, the Aliens Employment Act Implementation Decree and the Integration Decree in relation to the implementation of Directive 2005/71/EC, Law Gazette 2007, 366.</i> – <i>Regulation issued by the State Secretary of Justice dated 16 October 2007 in respect of changes to the Regulations on Aliens 2000 (seventy-first change), Netherlands Government Gazette 202, p. 24.</i>
<p>Directive 2005/85/EC (Refugee status)</p>	<p><i>Implementation deadline: 1 December 2007.</i> <i>Status: implemented on 19 December 2007.</i> <i>Aliens Act 2000, Aliens Decree 2000, Regulations on Aliens 2000 and Aliens Act implementation guidelines 2000.</i></p> <ul style="list-style-type: none"> – <i>Legislative proposal for changes to the Aliens Act 2000 for the implementation of Directive no. 2005/85/EC, Parliamentary Papers II 2006/07, 30 976, no. 1-6; Parliamentary Papers I 2006/07-2007/08, no. A-D.</i> – <i>Decision dated 29 November 2007 in respect of changes to the Aliens Decree 2000 in line with Directive no. 2005/85/EC, Law Gazette 2007, 484.</i> – <i>Regulation issued by the State Secretary of Justice dated 7 December 2007 in respect of changes to the Regulations on Aliens 2000 (seventy-third change), Netherlands Government Gazette 240, p. 9.</i> – <i>Decision of the State Secretary of Justice dated 7 December 2007, no. 2007/38, in respect of changes to the Aliens Act implementation guidelines 2000, Netherlands Government Gazette 240, p. 10.</i>

Appendix A: Methodology

Information about the development of legislation and regulations and about parliamentary debates originates from official sources. The following types of documents were consulted:

- Parliamentary Papers of the House of Representatives and the Senate;
- Proceedings of the House of Representatives and the Senate;
- official publications in respect of legislation and regulations in the *Treaty Series*, the *Law Gazette* and the *Netherlands Government Gazette*.

All these documents can be found in the database of official publications on the www.overheid.nl website. This website is maintained by the Ministry of the Interior and Kingdom Relations.

In order to obtain information on organisations and their standpoints, the websites of the organisations in question were consulted. The asylum and migration-related publications of different organisations were also mostly obtained from their websites. The websites of political parties were also visited in order to take an inventory of their standpoints with regard to asylum and migration.

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 asylum and migration-related topics received a lot of attention in the media. In addition to a general stock-taking of asylum and migration-related topics, the media attention given to specific topics that were addressed in parliamentary debate was also looked into.

The purpose of the Annual Policy Report is to provide an overview of all important developments in the area of migration and asylum. A number of criteria were formulated to distinguish the important developments from the less important developments, whereby a distinction is made between changes in legislation and regulations on the one hand and political and social debate on the other.

Criteria for the importance of changes to legislation and regulations

The objective of the Annual Policy Report is to provide the most complete possible overview of the changes and proposed changes in legislation and regulations for the different policy areas discussed in this report. All changes that result in actual substantive modification of this legislation and regulations are included in the report. Only minimal changes are left out (for instance the annual increase in certain income requirements).

Criteria for the importance of political and social debates

The report has not aimed for completeness with respect to political and social debates and developments. The objective of the Annual Policy Report is to give an impression of the main subjects of discussion in the area of asylum and migration in the Netherlands. The following criteria are 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 subject matter has been raised in Parliament;
- the subject matter has been 'in the news' for an extended period of time. Several news media organisations must have reported on the matter.

Implementation of European legislation and regulations

The annual Policy Report provides a complete overview of developments with regard to the implementation of European legislation and regulations in the area of asylum and migration. For this reason, all developments in this area are included in the report.

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