



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

Annual Policy Report 2009

Developments in Dutch Migration and Asylum Policy

1 January 2009 - 31 December 2009

March 2010



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 Enforcement (SUB)

IND Information and Analysis Centre (INDIAC)

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

Executive Summary

The 2009 Annual Policy Report provides an overview of the developments in Dutch migration and asylum policy from 01 January 2009 to 31 December 2009. This report is a product of the Immigration and Naturalisation Service Information and Analysis Centre (INDIAC), the Dutch national contact point for the European Migration Network (EMN). The EMN is an initiative of the European Commission. The object of the EMN is to provide the Community, its Member States, and the general public with up-to-date, objective, reliable, and comparable information regarding migration and asylum matters at the European and national level.

Every year, the national contact points for the EMN draw up an Annual Policy Report. This report is intended to provide an overview of the most important 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. In addition, the report takes a detailed look at the implementation of EU legislation in the area of migration and asylum. The European Commission compiles the results of the various countries into a synthesis report.

This year, it will be the first time that the Annual Policy Report will also be used for the annual debate of the European Council about the progress of the migration and asylum policy. By means of this annual debate, the European Council will be in a position to supervise the implementation of this policy by the European Union and the Member States of the Pact (tracking method).¹ In this context, a partial report was issued in December 2009. This partial report currently forms part of the complete 2009 Annual Policy Report.

The Dutch report first focuses on important political and institutional developments. As stated above, the most important developments in the area of legislation and regulations and the associated political and public debates in the area of migration and asylum are discussed in depth. This report also pays attention to integration policy, insofar as this is directly associated with migration. In order to determine which subjects must be included in the report, several criteria were used to define the term 'important developments'.

Subsequently in chapter 4 attention is paid to the Pact-related and other developments in the following sub-areas:

- Control and monitoring of immigration;
- Refugee protection and asylum;
- Unaccompanied minors and other vulnerable groups;
- Economic migration;
- Family reunification;
- Other forms of regular migration;
- Integration;
- Citizenship and naturalisation;
- Illegal immigration;
- Actions to combat trafficking in human beings;
- Return
- External relations/global approach

Finally, in chapter 5 the report devotes attention to the implementation of European legislation in 2009, and a complete overview is provided of the state of affairs in this area.

In its Annual Policy Report, the INDIAC aims at giving the most complete overview possible of the amendments or proposed amendments to legislation and regulations in the different policy areas

¹ Communication from the Commission to the Council and the European Parliament. Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum. COM (2009) 266 Final.

discussed in this report. The report does not aim for completeness with respect to the political and social debates and developments: rather the level of attention devoted to these areas in Parliament and the media is the determining factor. This report does, however, provide a full overview of developments in respect of the implementation of European legislation in the area of migration and asylum. More information about the selection criteria can be found in the appendix on methodology.

It would be taking things too far to give a complete summary of the developments in 2009 in all sub-areas. Instead, we opted for a brief discussion in this Executive Summary of the most notable developments in 2009.

In 2009, the proposed revision of both the asylum policy and the admission policy was elaborated further. In the area of integration as well, the Cabinet set the framework within which, by now, measures have been taken, and which is directional for new policy in the near future.

In October, the Cabinet gave its integral view on the themes of marriage migration and integration of marriage partners in the Netherlands. In order to improve the integration into Dutch society, it presented a number of measures.

On 15 December 2009, the Lower House of Parliament agreed to the bill amending the Aliens Act 2000 (*Vreemdelingenwet 2000*) for the purpose of modifying the asylum procedure. With this bill, the Cabinet has implemented the agreements from the coalition agreement. Its twofold aim is to provide new asylum seekers clarity on the outcome of the procedure more quickly *and* to ensure increased prudence.

In the area of the regular admission policy, the Cabinet was ready – after many years of preparation – to send the bill on Modern Migration Policy to the Lower House of Parliament.

In respect of the protection of refugees, an important policy intention was announced at the end of 2009. The Cabinet announced plans to delete the possibility of group protection of asylum seekers from the Aliens Act within the present Cabinet's term of office. The Cabinet arrived at this conclusion because – in its own words – the European asylum system by now offers sufficient safeguards to also take the overall situation in the country of origin into consideration in the individual assessment of whether someone needs protection.

The second important intention is the Cabinet's plan to realise the abolition of the residence permits for unaccompanied minors. The Cabinet considered this abolition in conjunction with the new asylum procedure to be implemented in 2010.

In 2009 as well, there was considerable attention for the subject of integration. In December, the Cabinet sent the so-called Integration Letter to the House.

Contents

1. Introduction	7
2. Political and Institutional Developments in the Netherlands	9
2.1. The Political System in the Netherlands	9
2.2. The Institutional Context	9
2.3. Institutional Developments	11
3. Political, Legislative, Policy-related, and Institutional Developments in the Netherlands	13
3.1. General Political Developments	13
3.2. Major Discussions in the Area of Legislation and Policy	13
4. Specific Developments in the Area of Migration and Asylum	15
4.1. Supervision and Monitoring of Immigration	15
4.1.1. European Pact on Immigration and Asylum	15
4.2. Refugee Protection and Asylum	20
4.2.1. European Pact on Immigration and Asylum	20
4.2.2. Additional/Supplemental Developments	21
4.3. Unaccompanied Minors and Other Vulnerable Groups	26
4.4. Economic Migration	28
4.4.1. European Pact on Immigration and Asylum	28
4.4.2. Additional/Supplemental Developments	29
4.5. Family Reunification	29
4.5.1. European Pact on Immigration and Asylum	29
4.5.2. Additional/Supplemental Developments	31
4.6. Other Forms of Legal Migration	33
4.6.1. European Pact on Immigration and Asylum	33
4.6.2. Additional/Supplemental Developments	33
4.7. Integration	35
4.7.1. European Pact on Immigration and Asylum	35
4.7.2. Additional/Supplemental Developments	37
4.8. Citizenship and naturalisation	37
4.9. Illegal Immigration	39
4.9.1. European Pact on Immigration and Asylum	39
4.9.2. Additional/Supplemental Developments	40
4.10. Actions to combat trafficking in human beings	41
4.10.1. European Pact on Immigration and Asylum	41
4.10.2. Additional/Supplemental Developments	41
4.11. Return	43
4.11.1. European Pact on Immigration and Asylum	43
4.11.2. Additional/Supplemental Developments	44
4.12. External relations/global approach	45
4.12.1. European Pact on Immigration and Asylum	45
4.13. Other Policy Areas and Topics	47
5. Implementation of European Legislation	49
5.1. Progress in Implementation	49
5.1.1. Immigration	49
5.1.2. Schengen/Sis	49
5.2. Experiences with Implementation	50
Appendix I: Methodology, terms, and definitions	53
Appendix II: Overview of Implementations of EU Directives	55
Bibliography	59

1. Introduction

Every year, the national contact points for the European Migration Network (EMN) draw up an Annual Policy Report. The EMN is an initiative of the European Commission and finds its legal basis in Council Decision 2008/381/EC of 14 May 2008. The objective of the EMN is to meet the information need of the Community institutions as well as authorities and institutions of the Member States in the area of migration and asylum by providing up-to-date, objective, reliable, and comparable information to support policy-making in these areas in the European Union. The EMN also has the task to provide information on these subjects to the general public.

Tracking Method

This year, it will be the first time that the Annual Policy Report will also be used for the annual debate of the European Council about the progress of the migration and asylum policy. By means of this annual debate, the European Council will be in a position to supervise the implementation of this policy by the European Union and the Member States of the Pact (tracking method).²

The European Pact was adopted by the European Council of 15 and 16 October 2008.³

In this Pact, the European Council made five basic commitments, which were developed further in the Stockholm Programme. This Stockholm Programme defines the starting points of the EU in the area of freedom of citizens, security, justice, asylum, and migration for the next five years.

The five basic commitments are (stated succinctly) as follows:

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

As regards the annual debate on progress, in the Pact itself the European Council:

- invited the Commission to present a report to the Council each year, based on Member States' contributions and accompanied, as necessary, by proposals for recommendations on the implementation, by both the European Union and the Member States, of this Pact and of the programme that will follow on from the Hague Programme;
- stated that the debate will also enable the European Council to be kept informed of the most significant developments planned by each Member State in conducting its immigration and asylum policy

Given the nature of the annual debate as described in the Pact, the Commission's annual report will consist of two parts: the first part is a short, summarised political report highlighting the main developments over the reporting period and the most significant developments planned, at both EU and Member State levels, and any recommendations suggested by the Commission. In the Netherlands, this political report will be provided by the Directorate for Migration Policy.

The second part will consist of a longer and more detailed report indicating the main actions taken, and the most significant developments planned, at EU level and at Member State level for each of the commitments made in the Pact.

²Communication from the Commission to the Council and the European Parliament. Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum. COM (2009) 266 Final.

³Conclusions of the Presidency of the European Council, document no. 14368/2008. The Pact itself has been included in document no. 13440/08.

As a source of information for this longer and more detailed report, the Commission decided to use the Annual Policy Reports of the relevant National Contact Points of the European Migration Network (EMN). The Member States may subsequently refer to factual information in the Annual Policy Report. In this context, the Dutch National Contact Point issued a partial report in December 2009. This partial report currently also forms part of the complete 2009 Annual Policy Report. This partial report includes the main actions taken, and the most significant developments planned in the Netherlands for each of the commitments made in the Pact.

Overview of other Developments in the Area of Migration and Asylum

In addition to this partial report, the various Annual Policy Reports drawn up by the national contact points (NCPs) provide an overview of the main developments in the area of migration and asylum in the relevant Member State. These Reports discuss the developments in legislation and regulations and in the administrative practice, including the associated political and public debates. The report also takes a detailed look at the implementation of EU legislation in the area of migration and asylum. The European Commission compiles the results of the various countries into a synthesis report.

The Dutch 2009 Annual Policy Report provides an overview of the developments in Dutch migration and asylum policy from 01 January 2009 to 31 December 2009. This edition of the Dutch Annual Policy Report was drawn up by Dennis Diepenhorst, employed as a policy officer by the IND Information and Analysis Centre (INDIAC). INDIAC is the Dutch national contact point for the EMN. The Implementing Policy Department, the Directorate for Migration Policy, and a number of external cooperating organisations have also contributed to the report this year.

First of all, the Dutch report focuses on important political and institutional developments. Subsequently, the most important developments in the area of legislation and regulations and the associated political and public debates in the area of migration and asylum are discussed in depth. Following this, more detailed attention is paid to the developments in the following sub-areas:

- Control and monitoring of immigration;
- Refugee protection and asylum;
- Unaccompanied minors and other vulnerable groups;
- Economic migration;
- Family reunification;
- Other forms of regular migration;
- Integration;
- Citizenship and naturalisation;
- Illegal immigration;
- Actions to combat trafficking in human beings;
- Return
- External relations/global approach

Finally, the report devotes attention to the implementation of European legislation in 2009, and a complete overview is provided of the state of affairs in this area.

In order to determine which subjects to include in the report, several criteria were used to define the term 'important developments'. In its Annual Policy Report, the INDIAC aims at giving the most complete overview possible of the amendments or proposed amendments to legislation and regulations in the different policy areas discussed in this report. The report does not aim for completeness with respect to the political and social debates and developments: rather the level of attention devoted to these areas in Parliament and the media is the determining factor. This report does, however, provide a full overview of developments in respect of the implementation of European legislation in the area of migration and asylum. More information about the selection criteria can be found in the appendix on methodology.

2. Political and Institutional Developments in the Netherlands

This chapter will discuss the general political developments in the Netherlands in 2009 and the changes in the institutional context. First of all, an account will be given of the political and institutional context of the policy in the area of migration, asylum, and integration in the Netherlands.

2.1. The Political System in the Netherlands

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

The government consists of the Queen and the Ministers. The Cabinet consists of the Ministers and State Secretaries, led by the Prime Minister. The government forms the executive and it also has legislative powers. Each Minister is politically responsible for a specific policy area and may be assisted by State Secretaries, who in turn are allocated specific policy areas. The Prime Minister is chairperson of the Council of Ministers, and in this capacity coordinates government policy. The Council of Ministers, which convenes on a weekly basis, is distinct from the Cabinet which also includes the state secretaries. State secretaries do not attend the Council of Ministers unless they are requested to do so and they do not have voting rights.] The Ministers and State Secretaries are accountable to the Parliament for the policy pursued and to be pursued. If it becomes apparent that the Parliament has lost its confidence in a Minister and/or State Secretary (and possibly the entire Cabinet), this person (or possibly the entire Cabinet) must resign.

The Netherlands, together with Aruba and the Netherlands Antilles (islands in the Caribbean), constitutes the Kingdom of the Netherlands. All three countries in the Kingdom have their own governments and Parliaments. The Charter for the Kingdom of the Netherlands lists a limited number of subjects in which the bodies of the individual countries do not have a say, but in respect of which the powers are vested in the bodies of the Kingdom. These subjects include, for instance, defence, foreign relations, and the regulations pertaining to Dutch nationality. The citizens of the three countries have Dutch nationality.

2.2. The Institutional Context

Migration and Asylum

Within the limits of the policy laid down by the Minister, the State Secretary for Justice is responsible for aliens and asylum policy.⁴ The Minister of Justice is charged with the tasks associated with the Netherlands Nationality Act (naturalisation) and with border control.⁵ The Minister of Foreign Affairs is responsible for the policy on visa applications. The Minister of Foreign Affairs is also responsible for drafting the official country reports, which describe the situation in the most important countries of origin of asylum seekers and which are used to verify facts presented by an asylum seeker or to verify

⁴Ministry of General Affairs. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011* (Working together, living together: Policy programme of Balkenende Cabinet IV 2007-2011), The Hague: Ministry of General Affairs.

⁵Ministry of Justice (2007) *Wat doet Justitie: Taken*. (What does the Ministry of Justice do: Tasks). Extracted from www.justitie.nl on 12 April 2007.

documents with regard to accuracy and authenticity.⁶ Not all foreign nationals who come to the Netherlands are permitted 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 in the area of migration and asylum.⁷ The following is an overview of the most important organisations involved in this policy:

- The Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst, IND*), which is an agency of the Ministry of Justice, is responsible for implementing the Aliens Act and the Netherlands Nationality Act. This agency is charged with assessing all applications of foreign nationals who want to (continue to) reside in the Netherlands or who want to become Dutch citizens. On behalf of the Minister of Foreign Affairs, the IND also plays a role in assessing visa applications.
- The Repatriation & Departure Service (*Dienst Terugkeer & Vertrek, DT&V*), also an agency of the Ministry of Justice, is responsible for promoting the repatriation of foreign nationals who must leave the Netherlands in a humane and professional manner.
- The National Agency of Correctional Institutions (*Dienst Justitiële Inrichtingen, DJI*) is also an agency of the Ministry of Justice. Its responsibilities include enforcing custodial orders for the purpose of removing foreign nationals from the Netherlands, including the custodial detention of foreign nationals (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 Ministry of Justice. The COA is responsible for the reception of asylum seekers.
- UWVWERKbedrijf (the work placement branch of the Employee Insurance Agency) is an independent administrative body that operates on the instructions of the Ministry of Social Affairs and Employment. The Ministry has charged UWVWERKbedrijf with the implementation of tasks such as the issuing of work permits to foreign nationals who want to work in the Netherlands.
- The Legal Aid Council (*Raad voor de Rechtsbijstand*) is an independent administrative body that is fully financed by the Ministry of Justice. The Council supervises and manages the process of organising the provision of state-funded legal aid through the Legal Aid and Advice Centre/ Legal Aid Offices (*Juridisch Loket*), mediators, and lawyers. This organisation is also responsible for organising the provision of legal aid in asylum cases.
- The Royal Netherlands Constabulary (*Koninklijke Marechaussee, KMar*), which is part of the Armed Forces, and the regional police forces play a role in border control and supervision of foreign nationals.
- The municipalities are responsible for providing accommodation to holders of asylum residence permits, and they also play a role in processing applications for naturalisation.

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

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

The Judiciary

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

- The Aliens Division comes under the administrative law section of the District Court in The Hague and exclusively deals with disputes under aliens law. Officially, only the District Court in The Hague deals with disputes under aliens law. The hearings are, however, not only held in The Hague, but also

⁶The National ombudsman. 2007) *Factsheet individuele ambtsberichten in asielzaken* (Fact Sheet on Individual Official Country Reports in Asylum Cases). Extracted from www.ombudsman.nl on 2 March 2007.

⁷European Migration Network (August 2009) *Annual Policy Report 2008*. Rijswijk: (IND), National Contact Point for the European Migration Network.

- in subsidiary places of session. All nineteen District Courts in the Netherlands have Aliens Divisions. The Aliens Division deals with appeals in aliens cases.⁸
- The Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State, AbRvS*) is the highest General Administrative Court in the Netherlands. This is also where appeals in aliens cases are decided.

Integration

The Programme Minister for Housing, Communities and Integration is responsible for integration policy. Programme Ministers are responsible for policy areas that are covered by several Ministries.⁹ The budgets and departments of the different Ministries involved in integration policy have been incorporated 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 (VROM).¹⁰

2.3. Institutional Developments

In 2009, there were no relevant developments in this area worth mentioning.

⁸Book 8, Section 7(2), of the General Administrative Law Act (*Algemene wet bestuursrecht, Awb*); Section 71 of the Aliens Act 2000); Kuijjer, A. (ed.). (2002) *Nederlands vreemdelingenrecht* (Dutch Aliens Law). The Hague: Boom Juridische uitgevers.

⁹Netherlands Government Information Service (NGIS) (*Rijksvoorlichtingendienst, RVD*). (2007) *Begrippenlijst* (*Glossary*): Ministries (*departementen*) (*Ministries*). Extracted from www.regering.nl/Begrippenlijst/M/Ministeries_departementen on 8 November 2007; Parliamentary Papers II 2006/2007, 30 891, no 7 (Letter).

¹⁰RVD. (2007) *Kabinet Balkenende IV: Portefeuilleverdeling*. (*Balkenende IV Cabinet: Assignment of portfolios*). Extracted from www.regering.nl on 8 November 2007.

3. Political, Legislative, Policy-related, and Institutional Developments in the Netherlands

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

3.1. General Political Developments

In 2009, there were no relevant developments in this area worth mentioning. There were no elections and there were not any changes in the composition of the government in 2009.

3.2. Major Discussions in the Area of Legislation and Policy

The Balkenende IV Cabinet continued its course taken in the preceding years to come to a review of the asylum procedure. These intentions were worked out into a bill. On 29 June 2009, the bill amending the Aliens Act 2000 for the purpose of modifying the asylum procedure was presented to the Lower House of Parliament to be debated. The Lower House of Parliament agreed to this bill on 15 December 2009.

In the area of the regular admission policy, the Cabinet was able, after many years of preparations, to send the bill on Modern Migration Policy to the Lower House of Parliament on 9 September 2009.

Two important policy intentions were announced at the end of 2009.

The Cabinet's first intention was to delete the possibility of group protection of asylum seekers from the Aliens Act within the present Cabinet's term of office. The Cabinet arrived at this conclusion because – in its own words – the European asylum system by now offers sufficient safeguards to also take the overall situation in the country of origin into consideration in the individual assessment of whether someone needs protection.

The second important policy intention is the Cabinet's plan, concerning its policy on unaccompanied minors, to realise the abolition of the residence permit for unaccompanied minors. The Cabinet considered this abolition in conjunction with the new asylum procedure to be implemented in 2010.

In 2009 as well, the subject of integration was once more a focus of attention. 'A society in which everyone participates and everyone counts, whatever their origin, tradition, or religion.' This is the society which the Cabinet is striving to establish. This could be read in the Integration Letter sent by the Cabinet to the House in December 2009. In the letter, the Cabinet set out the framework within which measures have, by now, been taken, and which is directional for new policy in the near future.

Integration also played an important role in the measures presented by the Cabinet in the area of family migration. In October, the Cabinet gave its integral view on the themes of marriage migration and integration of marriage partners in the Netherlands. An important starting point in the choice of measures announced in this letter is the circumstance that, according to the Cabinet, part of the highly skilled migrants who have come to the Netherlands still do not succeed in becoming integrated into Dutch society. These measures were presented to ensure improved integration into Dutch society.

Earlier in 2009, in July, the debate on the costs of immigration had been provoked by the Freedom Party (*Partij voor de Vrijheid*, PVV). The PVV wanted know exactly how much money the state spent on persons of foreign heritage and how much money they brought in. The PVV requested nearly all Hague

ministries to calculate exactly how much money they spent on persons of foreign heritage, and how much income the group of persons of foreign heritage generated for Dutch society.¹¹ In the debate in the Lower House of Parliament on 10 September 2009, the Minister for Housing, Communities and Integration stated that all available information about the costs of immigration had already been given. In this context, the Minister explained that all information included in the national budget had been given. The Minister also stated that the Cabinet did not want to be involved in calculating the costs of people.¹² A motion of MP Fritsma, in which he requested the Cabinet to arrange for an independent investigation into the financial consequences of mass immigration of non-Western persons of foreign heritage, was rejected.

¹¹ See also: Trouw. (2009, 23 July) *PVV-voorstel stuit op veel principieel verzet; Kostenbatenanalyse allochtonen 'schaadt solidariteit'* (PVV's proposal met with much opposition; Cost-benefit analysis of persons of foreign heritage 'damages solidarity'; NRC Handelsblad. (2009, 22 July), *Allochtoon is voor PVV een kostenpost; Fritsma: Wat kost immigratie?* (Persons of foreign heritage are cost item for PVV; Fritsma: What does immigration cost?)

¹² *Proceedings II 2008/2008*, no 109, pp. 8741-8774.

4. Specific Developments in the Area of Migration and Asylum

The following subsections describe the developments in the different policy areas of migration and asylum in 2009.

In each subsection, the developments are first of all related to the European Pact on Immigration and Asylum, and subsequently a summary is given of the most important other developments.

4.1. Supervision and Monitoring of Immigration

In this section, extensive attention is paid to 7 relevant commitments made in the Pact. Apart from these commitments, there were no relevant developments in 2009 worth mentioning.

4.1.1. European Pact on Immigration and Asylum

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

Commitment II(c): Ensuring the prevention of the risks of irregular migration

Combating illegal immigration is one of the five basic commitments made by the European Council. In 2009, the Netherlands contributed to the intensification of the cooperation among the Member States at the FRONTEX level. Border officials of the Royal Netherlands Marechaussee (KMar) and the Rotterdam-Rijnmond Seaport Police participated in joint operations. The KMar also facilitated FRONTEX courses on document analysis and return policy. The Repatriation & Departure Service (DT&V) took the initiative for several joint European return flights to third countries. In addition to staff contributions, the Netherlands also made capacity available in the sense of equipment. It made, for instance, instruments available for document check for use during the FRONTEX operations. The KMar also used a 'Rigid Hull Inflatable Boat' (RHIB) in the territorial waters of Greece during the Poseidon 2009 FRONTEX operation. The Netherlands furthermore submitted various initiatives to the Management Board of FRONTEX. These initiatives include proposals to give the preparations, implementation, and evaluation of joint operations a more structured and uniform form. Other aspects advocated by the Netherlands include a mechanism for reporting incidents, and courses for border officials in the area of asylum law / human rights. These proposals were included in the draft and final version of the Stockholm programme and the 2010 Work Programme for FRONTEX, respectively.

In order to combat illegal immigration, the Netherlands has maintained an active network of Immigration Liaison Officers (ILOs) for several years in the key countries of origin and of transit. Initially, the focus was primarily on the prevention of entry into the Netherlands of undocumented or incorrectly documented foreign nationals, and the activities were mainly aimed at giving on-site advice to airline companies. The range of duties, however, continued to develop over the course of time. As a result of this, information has been collected on increasingly diverse subjects related to migration; various parties have been trained in the area of document analysis and the Schengen *acquis*; and by now the facilitation and investigation of possibilities of return have become one of the core duties of the ILO. In addition, the Netherlands has participated in EU projects.

The European Council has emphasised in the context of this commitment that illegal immigrants who are found to be present in the territory of the Member State must leave that territory. In this context, it may be noted that, in the Netherlands, the Repatriation & Departure Service (DT&V) has been responsible – since 1 January 2007 – for the return and departure of foreign nationals who are not permitted to stay in the Netherlands. The DT&V is an implementing organisation of the Ministry of Justice.

The DT&V focuses on two target groups:

- Illegal foreign nationals who have been apprehended in the context of domestic control, mobile or otherwise, and foreign nationals who have been refused entry in the context of border controls.

- Asylum seekers who have exhausted all legal remedies and who have to leave the country.

The DT&V coordinates the actual departure of foreign nationals who are not entitled to a residence permit in the Netherlands.¹³

Commitment II(h): Ensuring that an Expulsion Decision taken by one Member State should be applicable throughout the EU

The European Council finds it important to ensure that an Expulsion Decision taken by one Member State should be applicable throughout the European Union.

In this context, it may be noted that, in the Netherlands, Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals was already implemented by current regulations in 2002.¹⁴

The Netherlands does not have a separate Expulsion Decision, nor has it taken any action to implement such a decision. In the legal system of the Aliens Act, the power of expulsion is always the consequence of the decision to refuse the foreign national lawful residence (Articles 27, 45, 61, 62, and 63 of the Aliens Act). Article 6 of Directive 2008/115/EC of 16 December 2008 (the Return Directive) provides that the Directive does not prevent the Member States from following such a procedure.

In accordance with the purpose and scope of the aforementioned Directive, the Netherlands may proceed to expulsion of the foreign national, in respect of whom an Expulsion Decision was taken by another Member State and who is staying on Dutch territory, pursuant to the provisions in the Aliens Act. In this connection, the Netherlands must first establish that the national regulations do not prevent the implementation of an Expulsion Decision taken by another Member State.

In accordance with current Dutch policy, a foreign national for whom another Member State has issued an alert in the Schengen Information System (SIS) and whom in the context of border controls is found on Dutch territory will in principle be refused entry pursuant to Article 13 in conjunction with Article 5(1), opening words and under (d) of the Schengen Borders Code (SBC). Before proceeding to impose an entry ban, the Immigration and Naturalisation Service is contacted if the foreign national has indicated that he or she wants to apply for asylum, or if he or she has stated to be a citizen of the EU, EEA, or Switzerland.

A foreign national for whom an alert has been issued in the SIS may also be discovered in the context of the performance of internal supervision of foreign nationals. In that case, he or she is transferred to a police station or to a brigade of the KMar, after which the foreign national will in principle be expelled from the Netherlands.

If the foreign national for whom an alert has been issued in the SIS has a residence permit for the Netherlands or for one of the other Schengen countries, or if he or she is submitting or has submitted an application for a residence permit, or if he or she wants to extend a residence permit, the obligation to consult the Member State which issued the alert under Article 25 of the Schengen Implementation Agreement applies.

In current Dutch practice, an alert in the Schengen Information System (SIS) by the Netherlands is not issued until a foreign national has been successfully expelled from the Netherlands, i.e. after the actual act.

In 2009, preparations were made for the implementation of the aforementioned Directive 2008/115/EC¹⁵ (Return Directive) on common standards and procedures in Member States for returning third-country nationals who were illegally residing on their territories. This Directive was adopted on 16 December

¹³ Repatriation and Departure Service. Derived from www.dienstterugkeerenvertrek.nl on 16 November 2009.

¹⁴ Implementation Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals, *Government Gazette* 25 October 2002, no. 206 p. 10

¹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

2008, and is to have been implemented before 24 December 2010. The following two decisions that must be implemented in the Netherlands are relevant in this connection.

- The return decision (in conformity with Article 6 of the Directive).
The return decision is an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
- The entry ban, which is covered by Article 11 of the Return Directive.
According to this Directive, the entry ban is an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, which is accompanied by a return decision.

The way in which these decisions are to be established in a law is currently under consideration.

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

Another important commitment in the area of the control and monitoring of immigration made by the European Council concerns the effectiveness of the control of the external borders.

In the Netherlands, the border controls are performed by the KMar and the Rotterdam-Rijnmond Seaport Police. Good training, and the fact that the knowledge level of the staff charged with the border controls is kept up to date, contribute to the effectiveness of the control of the external borders.

In 2009, additional improvements were made, specifically in respect of the Schengen Borders Code, and the implementing staff of the KMar attended a course about the Schengen *acquis* on external border controls.

In the general basic training for KMar staff deployed in border control (the course for investigation officer), various aspects of Alien Law (including border control) are offered in different modules. This is a fixed and obligatory part of the training programme.

In addition to this basic training, there is also a course for the coordinators / team leaders of the different brigades. This course deals in greater depth with subjects such as detention, remedies, and legislation. Additionally, several courses in the area of knowledge of documents, and separate modules on border control (outside the basic training), are also provided.

In 2009, separate theory sessions for staff of the Border Surveillance Brigade were provided regularly at the national Amsterdam Airport Schiphol. During these theory sessions, the participants discussed current and major issues that specifically related to border control. The theme of one of these theory sessions was 'Refresher Course on the Schengen Borders Code'. These courses are provided and organised by a department set up specifically for this purpose.

This year, the Expertise Centre for Identity Fraud & Documents (ECID) of the KMar organised several courses in various third countries on the prevention of illegal immigration.

This year, the Seaport Police invested in improvements in the quality of border control in the Rotterdam harbour. Border officials were given a refresher course on the Schengen Border Code. In addition, the working procedures were held up to the light and, where necessary, updated.

The Port-Related Supervision of Foreign Nationals (HVT), which was established in 2008, was developed in further detail in 2009 by training staff for this specific task. The HVT, which is performed by the Seaport Police, is a form of border control that is related to the supervision of foreign nationals in and around the docks in the harbour, and on the coast line within the jurisdiction of the Seaport Police. The aim of this HVT is to combat illegal immigration (and cross-border crime) at the earliest possible stage, in addition to performing the border control by means of mobile checkpoints. HVT is performed on a project basis and is risk-driven.

By deploying flexible teams to perform the HVT, a maximum contribution can be made to improve the information position of specific transport segments (recreational cruising, fishing, and cruise ships).

Commitment III(b): Generalising the issue of biometric visas, improving cooperation between Member States' consulates and setting up joint consular services for visas

The European Council finds it important that the conditions for issuing visas to persons from outside the EU contribute to the integrated management of external borders control.

When progressively establishing an area of freedom, security and justice, the European Union shall ensure the free movement of persons and a high level of security. In this context, top priority has been given to the development and establishment of the EU Visa Information System (EU-VIS) as a system for the exchange of visa data between Member States, which represents one of the key initiatives within the EU policies aimed at supporting stability and security.

For the purpose of the previously planned roll-out date of 21 December 2009, not only the different missions of the Ministry of Foreign Affairs, but also the other visa authorities, KMar, Seaport Police, and the IND, made the necessary technical and other preparations in 2009 to facilitate the implementation hereof. The Ministry of Foreign Affairs has nearly finished the roll-out of equipment throughout the world and the Dutch Visa Information System (NL-VIS) has been prepared for the EU-VIS. This version of NL-VIS will be taken in production early next year. It is expected that also the other Dutch visa authorities will be able to finish the required preparations for the roll-out of the EU-VIS early in 2010. As things look now, the roll-out of the EU-VIS will take place in December 2010.

Any policy changes related to the EU-VIS will not be implemented until the roll-out of the EU VIS will take place. This will not be in 2009, for the EU-VIS has been delayed until December 2010. Major amendments to the regulations are not foreseeable, as the VIS Regulation (Regulation (EC) 767/2008) and the accompanying Common Consular Instructions on visas (Regulation (EC) 390/2009), which constitute the basis for EU-VIS, have direct effect. The present procedure for short stay visas is covered by the Common Consular Instructions on visas; the Dutch Aliens Act and Aliens Decree consequently hardly include any provisions on short stay.

Commitment III(d): Solidarity with Member States subjected to disproportionate influxes of immigrants

The activities performed in this connection by the Netherlands in 2009 only relate to solidarity with the Member States which are faced with specific and disproportionate pressures on their national asylum . This commitment will be discussed in more detail in section 3.2 that deals with Commitment IV(c) (solidarity with Member States which are faced with specific and disproportionate pressures on their national asylum systems).

Commitment III(e): Deployment of modern technological means for border control

On 13 July 2009, the Border Control Framework Document¹⁶, which sets out the Dutch view in broad outline, was presented to the Lower House of Parliament. This document also included the announcement that a Border Management Renewal Programme had been drawn up, in which the Ministry of Justice, KMar, IND, Customs, Amsterdam Airport Schiphol, and KLM Royal Dutch Airlines seek to achieve smarter, faster, and improved Border control. The Border Control Framework Document proposed measures for the medium and long term. In this connection, the authorities use technology and integrated risk assessment and analyses.

The Border Control Framework Document stated that, since the report of the Netherlands Court of Audit in 2005 on *The Use of Border Controls in Counterterrorism*¹⁷, considerable investments had been made in border control, among other things by implementing the Action Plan for Border Controls.

For the next years, the Cabinet finds it important that a good balance will be brought about in border control between the monitoring and security interests on the one hand and the economic interest of the Netherlands in the smooth and client-oriented handling of flows of persons and goods on the other hand. The Cabinet considers that finding and keeping the right balance is its major challenge.

Within the context of the Border Management Renewal Programme, the following four projects will be executed:

¹⁶ *Parliamentary Papers II* 2008/2009, 30 315, no. 8 (Letter with enclosures)

¹⁷ *Parliamentary Papers II* 2005/2006, 30 315, nos 1-2

Passenger Related Data Exchange (PARDEX Project)

The objective of the PARDEX Project is to develop proposals together as a result of which the organisations involved in the project can – in joint consultation – collect, analyse and disseminate passenger-related data more quickly, more intelligently and more effectively, in order to increase security and mobility in and around passenger traffic. The data collected is provided by different organisations, and is meant to provide a clear picture of the persons that enter the Netherlands on the basis of which a profiling of persons may be obtained.

Advanced Passenger Information (API Project)

The API Project is a pilot project for the use of Advanced Passenger Information. It involves the implementation of Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data. It is the intention to start this project in the autumn of 2009.

Automatic Border Crossing (No-Q Project)

The purpose of the No-Q Project is to realise a fast and sound procedure for automatic border crossing. The most important objective is to offer EU citizens (including Switzerland) who leave the Schengen area through Amsterdam Airport Schiphol the possibility from 2010 onwards to arrange the border crossing personally by means of innovative IT solutions without active intervention of a border control officer. One of the solutions that will be used is biometry. It will be examined in advance which biometric system, or combination of biometric solutions, is sufficiently reliable for use in an automatic border crossing system.

Registered Travellers Programs

Within the context of border management, it is important that the border control authorities have passenger information at the earliest possible stage. One of the ways to achieve this is by creating groups of *bona fide* travellers, for instance, business travellers who frequently travel between specific destinations. By means of a registration on the basis of personal details and a biometric characteristic as well as an examination of a person's antecedents, these travellers may participate in a programme on the basis of which they can cross the border by means of automated border crossing.

In April 2009, a pilot project called FLUX was launched. This FLUX pilot project offers both Dutch and American citizens the option of automated border crossing. Passengers with Dutch nationality who are a member of the Privium service programme of Amsterdam Airport Schiphol can become a member of the American Global Entry programme. The other way around, the same option is offered to American citizens. This programme offers travellers exclusive facilities to facilitate travelling, including automated border crossing. New members are screened carefully; in the Netherlands the system uses iris recognition, the system in the US uses fingerprints. The passengers no longer need to queue for the border control at Amsterdam Airport Schiphol and at twenty international airports in the US.¹⁸

In a letter with enclosure of 13 July 2009 to the Lower House of Parliament¹⁹, the Cabinet stated that the four projects described above will be developed and detailed further in conjunction with the European initiatives on the basis of the management of external borders and the collection of personal data.

Commitment III(f): Intensification of cooperation with the countries of origin and of transit in order to strengthen border control

As pointed out in section 3.1.1., the IND posted Immigration Liaison Officers (ILOs) to a number of important countries of origin and countries of transit. ILOs contribute to an intensification of the cooperation with the countries of placement, including Syria, China, South Africa, and Kenya as well as the neighbouring countries.

In the context of the prevention tasks of the ILOs, courses on document analysis and the Schengen *acquis* are given to, among others, staff of immigration agencies, staff of airline companies, and airport staff. These courses are often provided in cooperation with liaisons from other countries.

¹⁸ <https://www.flux-alliance.eu/home/>

¹⁹ *Parliamentary Papers II 2008/2009*, 30 315, no. 8 (Letter with enclosures)

By building up a relevant network in the area of migration in the region of placement, further cooperation is encouraged. In this context, the ILOs participate in international meetings and conferences and often work together in an international team of liaisons of countries, including EU Member States, Canada, and the United States of America. Non-governmental organisations such as, for instance, the International Organisation for Migration (IOM), are also important discussion partners. At the end of June 2009, the Ghanaian Immigration Service and the Dutch Immigration and Naturalisation Service (IND) signed an agreement in Ghana. This agreement records, among other things, that during the next two years a total of 150 Liberian border control officers will be trained at the 'training school and academy' in Ghana. This training is realised with financing by the Netherlands (Repatriation & Departure Service (DT&V) and with the support of the United Nations (UN) in Liberia.

It concerns cooperation between two West African countries, supported by the UN and the Netherlands, with immigration officials in the region being trained by a partner organisation.

Several government services in the area of migration and border control have already paid a working visit to the Netherlands, including services from South Africa and Nigeria. These visits are also paid within the context of projects which are aimed at the reinforcement of border control or the acquisition of knowledge of the manner in which the Netherlands is dealing with migration issues, such as regular migration or asylum procedures. In addition to the project in Ghana referred to above, there are currently projects in the area of migration in countries including Turkey, South Africa, and Nigeria.

The possibilities of working together at the European level are also being examined. An example of this is the posting of a Dutch ILO to Ethiopia, also on behalf of Germany. This posting was financed as a project by the European External Borders Fund.

4.2. Refugee Protection and Asylum

This section discusses first of all the two commitments made in the Pact that are related to refugee protection and asylum. Subsequently, a description is given of the additional and supplemental developments that took place in the Netherlands.

4.2.1. European Pact on Immigration and Asylum

Commitment IV(c): Solidarity with Member States which are faced with specific and disproportionate pressures on their national asylum systems

Specifically in this context, the State Secretary for Justice visited three southern Member States- Greece, Malta, and Cyprus- who are faced with this phenomenon, in the spring of 2009. She acquainted herself with the problems and emphasised the necessity to show solidarity. In addition, she emphasised that practical cooperation among the European Immigration Services could make a major contribution to solve these problems.

Examples of this practical cooperation in 2009 include the following activities.

In the context of the General Directors' Immigration Services Conference (GDISC), a network of general directors of Immigration Services who develop projects together, the Interpreters' Pool Project was carried out under the direction of the Netherlands. In this project, Immigration Services who are facing a lack of interpreters' capacity in their country are given access to the interpreters' capacity used by other Immigration Services by means of video-conferencing equipment. The Netherlands has taken the lead in setting up a High Level Working Group on Particular Pressures at the GDISC level. This Working Group has taken a number of initiatives concerning the theme of particular pressures²⁰. In this context, the Netherlands and the United Kingdom also carried out a support project in Malta. The Maltese immigration authorities received training on a number of implementation aspects of the asylum process. Malta is, for instance, assisted by Dutch experts in providing medical advice, age testing, language

²⁰ General Directors Immigration Services Conference (GDISC). *Progress report on the GDISC Pilot Project on Particular Pressures*.

analysis, return, and document analysis. The Netherlands carried out a project in Cyprus that was aimed at the reception of asylum seekers and advice on the organisation of an application procedure. Discussions are being held with the Greek authorities in order to launch a project in this context.

Commitment IV(e): Member States are invited to provide the personnel responsible for external border controls with training in the rights and obligations pertaining to international protection

In 2009, specific initiatives were taken in this area. The general training for the KMar also pays attention to the rights and obligations in the area of international protection.

4.2.2. Additional/Supplemental Developments

In 2009, 14,905 asylum applications were registered in the Netherlands. Compared to 2008 (13,399), this is an increase of 11%. The total number of registered asylum applications in 2009 was 16,163. The most important countries of origin for initial asylum applications were Somalia (5,889 applications), Iraq (1,991 applications), and Afghanistan (1,281 applications).

Bill amending the asylum procedure adopted by the Lower House of Parliament

The previous report dealt extensively with the Cabinet's intention to realise a faster and improved asylum procedure. These intentions were worked out into a bill. On 29 June 2009, the bill amending the Aliens Act 2000 in order to modify the asylum procedure was presented to the Lower House of Parliament to be debated.²¹ With this bill, the Cabinet implemented the agreements from the coalition agreement. Its twofold aim is to provide new asylum seekers clarity on the outcome of the procedure more quickly *and* to ensure increased prudence. The bill entails the implementation of a period of rest and preparation of at least six days, a period that precedes the general asylum procedure in the application centre. The duration of the procedure will no longer be expressed in processing hours, but in days, and, in addition, the duration of the procedure will be extended. The procedure is currently 48 processing hours (5 to 6 days) and will, in principle, be extended to a maximum of 8 days.

The Cabinet expressed the hope that the number of repeated asylum applications and regular applications of former asylum seekers would decrease. In addition, asylum seekers whose applications have been refused must actually leave the Netherlands at the end of the procedure.

The Council of State has issued a positive recommendation with respect to the legislative proposal.

The Lower House of Parliament agreed to this bill on 15 December 2009. The Socialist Party (*Socialistische Partij, SP*), the Labour Party (*Partij van de Arbeid, PvdA*), Green Left (*GroenLinks*), Democrats 66 (*Democraten 66, D66*), the Christian Union (*ChristenUnie*), the Dutch Reformed Party (*Staatkundig-Gereformeerde Partij, SGP*), and the Christian Democratic Alliance (*Christen Democratisch Appèl, CDA*) voted for the bill; the other parliamentary parties voted against it. All amendments submitted were rejected. Out of the nine motions put forward, only the motion on processing an asylum application sooner and the motion on the possibilities of reception conditions for a number of specific vulnerable groups were adopted.

The motion on processing an asylum application sooner stated that it was important to prevent situations where the period of rest and preparation lasts longer than strictly necessary. For this reason, a study will be carried out during monitoring and evaluation sessions to determine whether it is possible to start processing asylum applications sooner than after six days in more cases than mentioned in the Aliens Decree.

In the other motion, it was established that municipalities are confronted with asylum seekers who have exhausted all legal remedies and who are entitled to stay in the Netherlands during the continuation of their procedure, but who are not entitled to reception conditions. The MPs who tabled the motion were of the opinion that a suitable solution must be sought for a number of relatively small vulnerable groups. For this reason, the government was requested in the motion to analyse the options for and

²¹ Bill amending the Aliens Act 2000 to modify the asylum procedure, *Parliamentary Papers II 2008/2009*, 31 994, nos 1-4.

consequences of providing reception conditions to those vulnerable groups, and to inform the House within three months about this analysis and – where possible – to submit proposals.

Invited Refugees

As stated in the previous edition of this report, the Cabinet had decided to receive on average 500 refugees to be resettled each year in the period of 2008-2011, with a maximum of 2,000 refugees to be resettled for the entire period. For further information on this issue, please refer to the 2008 Annual Policy Report.

Vulnerable Minority Groups

In the Netherlands, an asylum seeker may be granted a temporary residence permit if he or she has demonstrated that – upon removal – he or she runs a real risk of being treated contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This is a form of subsidiary protection. In this context, the foreign national is to put forward specific distinguishing features evidencing this risk of a treatment contrary to Article 3 ECHR. Since 30 July 2007, following a decision of the European Court of Human Rights (ECHR),²² the country-based asylum policies have designated vulnerable minority groups in respect of which a real and individual risk of being treated contrary to Article 3 ECHR has been assumed earlier. This risk is currently assumed if

- the foreign national belongs to a vulnerable minority group in his/her country of origin; *and*
- the foreign national has demonstrated, with individual indications limited to his or her own case, that in conjunction with these, a threat of a violation of Article 3 ECHR does exist.²³

The following groups were designated as vulnerable minority groups during the whole of 2009:

- Afghanistan: ethnic minorities, religious minorities, and single women;
- Democratic Republic of the Congo: Tutsi;
- Iraq: Christians, Palestinians, Yezidis, and Mandaens;
- Somalia: Reer Hamar.
- Sudan: non-Arab population groups from Darfur.
-

On the basis of the decision of the Administrative Jurisdiction Division of the Council of State of 30 October 2009 in the case of Cabdulahi, Somali asylum seekers belonging to the Reer Hamar will not be required to demonstrate any individual characteristics in order to fall within the scope of protection of Article 3 of the ECHR. This category of asylum seekers consequently qualifies for a residence permit pursuant to Section 29 heading and under (b) of the Aliens Act, subject to the usual contraindications.

Categorial protection

On 19 May 2009, the Lower House of Parliament agreed to the proposed termination of the policy of categorial protection with regard to Central and South Somalia. The categorial protection policy of asylum seekers from Somalia consequently ended on 19 May 2009. Asylum seekers from Somalia who submitted their asylum applications on or after 19 May 2009 therefore no longer qualify for a permit pursuant to Section 29(1)(d) of the Aliens Act.²⁴

This policy change was dictated by the fact that our neighbouring countries did not pursue special policies regarding Somali asylum seekers. The Cabinet also established that, due to fraud and abuse, a situation had arisen whereby it proved to be impossible, in too many cases of Somali asylum applications, to verify whether another country – European country or otherwise – was responsible for the application or whether the applicant originated from another country or from a part of Somalia that did not need protection.

²²ECHR, 11 January 2007, no. 1948/04 (Salah Sheekh/Netherlands), please refer to 2007 Annual Policy Report for more information on this case.

²³Decision of the State Secretary for Justice of 30 July 2007, no 2007/19 amending the Aliens Act Implementation Guidelines 2000, Dutch *Government Gazette* no 148, p. 5.

²⁴Decision of the State Secretary for Justice of 2 July 2009, no 2009/16 amending the Aliens Act Implementation Guidelines 2000, Dutch *Government Gazette* no 11449.

Memorandum Views on Protection

On 11 December 2009, the Cabinet sent its Memorandum entitled Views on Protection (*Visie op bescherming*), in which it explored its position on this subject, to the Lower House of Parliament.²⁵ An important resolution of the Cabinet, referred to above, was to delete the possibility of group protection of asylum seekers (categorical protection) from the Aliens Act in the present Cabinet's term of office. The Cabinet arrived at this conclusion because the European asylum system by now offered sufficient safeguards to also take the overall situation in the country of origin into consideration in the individual assessment of whether someone needs protection. The Cabinet expressed the hope that with this measure the undesirable magnet effect, and cases of fraud, would also be prevented. Apart from this, the Cabinet also submitted substantive legal grounds which rendered the pursuit of a national policy of protection for certain categories no longer necessary. According to the Cabinet, collective elements resulting from the ECHR and EU law play a sufficiently large role in the application of Section 29(1)(b) of the Aliens Act 2000. The Cabinet furthermore stated that – also in view of the harmonisation of European asylum policy – it would be more obvious to aim at common assessment of the situation in the countries of origin, and at common standards for protection.

The Cabinet was of the opinion that after the realisation of a Common European Asylum System, it would even be conceivable in the long term that a European Immigration Service would decide on asylum applications. In addition, it would then be possible to distribute the refugees that were admitted among the Member States. The Cabinet created a scenario of the future in which the verification of asylum applications might eventually even be conducted in the asylum seekers' countries and regions of transit and origin.

These proposals were not extensively debated in 2009.

Responses to the intention to abolish the policy of categorical protection

The Dutch Council for Refugees called the abolition of the categorical protection policy 'irresponsible'.²⁶ The policy of protection for certain categories, with its restrictions, must continue to exist as a national safety net. For reasons of humanity and solidarity, the Netherlands is no longer allowed to send people back to unsafe situations, said the Dutch Council for Refugees. Director Huizing: 'The consequence of this policy is that people will be sent back to life-threatening situations, or they will be out on the streets in the Netherlands.' The Dutch Council for Refugees is of the opinion that there must continue to be a safety net in addition to the individual grounds for protection. 'Some conflicts in the world are so violent that it is inhumane to send people back there. Abolishing the policy of protection for certain categories creates a protection deficit. You can make a parade of the European Qualification Directive, which provides sufficient grounds for protection according to the Ministry of Justice, but in that case this Directive must be applied correctly. As things are now, many refugees will be unjustly rejected.'

The intention to abolish the categorical protection policy also appears to be diametrically opposed to the recommendations of the Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ). Earlier, in 2006, the ACVZ made recommendations in its report 'Categorical Protection Policy: a Necessity' (*Categoriaal Beschermingsbeleid, een noodzaak*), concerning the group-related policy of protection.²⁷ In this report, the ACVZ advocated the continuation of the so-called group-related policy of protection and it established that this policy did not have any demonstrable 'magnet effect'. In the update of this report of 6 May 2009²⁸ the ACVZ established that the variations in influx of asylum seekers in about ten European countries could not be explained on the basis of the – mostly minimum – differences in legislation and regulations in the area of group protection. The differences in

²⁵ *Parliamentary Papers II* 2009/2010, 19 637, no 1314 (Letter).

²⁶ VluchtelingenWerk Nederland (Dutch Council for Refugees). (2009) *Afschaffing categoriaal beschermingsbeleid onverantwoord* (Abolition of policy of protection for certain categories irresponsible). Extracted from www.vluchtelingenwerk.nl. on 10 February 2010.

²⁷ Advisory Commission on Aliens Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) (2006) *Categoriaal beschermingsbeleid, een 'nood zaak'* (Categorical Protection Policy: a Necessity). Extracted from www.vluchtelingenwerk.nl. on 10 February 2010.

²⁸ ACVZ (2009) *Briefadvies: Vervolgstudie categoriaal beschermingsbeleid* (Advisory letter: Follow-up study into the policy of protection for certain categories). Extracted from www.vluchtelingenwerk.nl. on 10 February 2010.

influx – as revealed by the study for the purpose of this update conducted by the International Centre for Migration Policy Development (ICMPD, Vienna) and the European Council for Refugees and Exiles (ECRE) – may be the result of different policy implementations or of other factors, varying from the presence of fellow countrymen, to economic opportunities. The ACVZ was of the opinion that the update did not generate any results that would justify a change in the categorial protection policy, or the one-status system. In its update, the ACVZ furthermore recommended to develop initiatives within the European Union to harmonise the standards under international law so that the group-related policy of protection could assume a European character where legislation and implementation is concerned.²⁹

Asylum seekers who have exhausted all legal remedies, with medical problems

In 2009, the Cabinet announced a policy change for asylum seekers who have exhausted all legal remedies but who have medical problems. Subject to a number of conditions, asylum seekers who have exhausted all legal remedies and who have submitted an application for a residence permit on medical grounds and who are awaiting a decision on that application will be provided with accommodation facilities by the Central Government. This is evident from a letter that was sent by the State Secretary for Justice to the Lower House of Parliament on 7 December 2009.³⁰ This letter dealt with the implementation of the Spekman motion, which was adopted by the Lower House of Parliament on 17 December 2008.³¹

On the basis of this motion, a policy framework and a working procedure had been developed in order to implement the motion. It furthermore appeared from the letter of the State Secretary that a study into the objective, technical verification of the feasibility and practicability of the motion had subsequently been conducted in the summer of 2009. On the basis of the study results, a policy-related and legal analysis was made. This resulted in final proposals.

After an asylum seeker has exhausted all legal remedies, he or she will no longer be entitled to reception conditions. The policy change makes it possible for the foreign national with medical problems to still qualify for reception and accommodation facilities under specific circumstances.

The IND will make an initial assessment regarding the completeness of the medical documents and other documents received. On the basis of this assessment, the Appointments Line of the IND will make an appointment with the foreign national to submit the request officially. The Medical Advice Bureau (*Bureau Medische Advisering, BMA*) will assess the completeness of the relevant medical documents further, and will draw up a medical recommendation report to aid in assessing the application, provided that all required documents are present. If, upon submission of the application, it is not yet possible to decide on the application at that moment, the foreign national may qualify for reception and accommodation through the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang Asielzoekers (COA)*) as long as the decision has not been made on the application.

The regulation will become effective on 1 January 2010. The Cabinet expects that annually approximately 1,200 people will rely on the regulation. In a quarter of the cases, the applicants will probably be granted a residence permit.

Criticism of the asylum policy

In 2009, a number of critical reports were issued on – among other things - the Dutch asylum procedure.

Several points of criticism are mentioned below together with the Cabinet's response to on these points:

UN Human Rights Committee

The final report of the UN Human Rights Committee of 11 August included comments on the accelerated asylum procedure in the Netherlands.³² The Committee considered this a fundamental issue

²⁹ See ACVZ's press release at <http://www.acvz.org/publicaties/20090512%20Persbericht.pdf>.

³⁰ *Parliamentary Papers II* 2009/2010, 30 846, no 16 (Letter and enclosures).

³¹ *Proceedings II* 2008/2009, no 4, pp. 2565-3566.

³² United Nations, Human Rights Committee (2009), Consideration of reports submitted by states parties under article 40 of the covenant. Extracted from www.vluchtelingenwerk.nl. on 14 January 2010.

to be addressed. Under point 9 of the concluding observations, the Committee expressed its concern about the present (accelerated) procedure at the application centre as well as about the new proposal to implement a procedure of eight days. The Committee was of the opinion that the procedure did not give the asylum seekers the opportunity to adequately submit their substantial claims, and this could result in their being removed to a country that constitutes a risk. The Committee recommended that the Netherlands should ensure that a careful and adequate assessment can take place in the asylum procedure by allowing a period in which evidence may be submitted by the asylum seeker. The Netherlands should furthermore respect the principle of non-refoulement in all cases.

In his response to the UN Committee's criticism of the Dutch asylum procedure and the proposal for an 'improved asylum procedure', the Minister of Justice stated that he was confident that 'optimum care was safeguarded in the new asylum procedure' by the bill and the measures forming part of it which he presented on 29 July 2009.³³

Hammarberg (Council of Europe) criticised the human rights situation in the Netherlands

The Netherlands must review its policy for immigrants and asylum seekers further. This is argued by Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in a report on the human rights situation in the Netherlands that was published on 11 March 2009.³⁴

One of the issues Hammarberg addressed in his report was the situation of asylum seekers. Their living circumstances in the Netherlands must improve. It is, for instance, not permitted to have joint shower facilities for male and female asylum seekers. During his visit to a detention centre at Schiphol, he met young asylum seekers who were well looked after but who did not have the faintest idea about what was in store for them. 'This is not how it should be. The children must be informed in an adequate manner and in a language they understand,' said Hammarberg.

Hammarberg was furthermore concerned about the Dutch plans to process more asylum applications in an accelerated asylum procedure. 'A fast procedure is certainly suitable for clear-cut cases, but it is clearly unsuitable for vulnerable groups such as victims of violence and unaccompanied children.'

In his report, Commissioner Hammarberg urged the Dutch authorities to reconsider the decision to no longer provide categorical protection for Iraqi asylum seekers in view of the continued difficult situation in Iraq. He furthermore recommended that gender identity be explicitly recognised as a potential ground for persecution. Hammarberg said that the 'general asylum procedure' of eight days envisaged by the Cabinet should only be allowed to be applied in clear-cut cases. He also paid attention to the position of children (unaccompanied minor foreign nationals, '1F-children'³⁵ and stateless children) in the asylum procedure.

Hammarberg extensively discussed the detention of asylum seekers in his report. With respect to detention on the external border (during and immediately after the 48-hour accelerated procedure at the Schiphol reception centre), he wrote that no evidence had been provided to substantiate the Dutch position that detention would enable an honest and quick assessment of asylum applications.

Hammarberg visited the Netherlands in September 2008. The report on the Netherlands was the last but one in a series in which all 47 countries of the Council of Europe were scrutinised. Hammarberg said that they had not made a list of rankings and he consequently could not say whether the Netherlands is doing better or worse than other countries.

The Dutch government responded to Hammarberg's recommendations on 27 April 2009. This response included, among other things, the promises to investigate the situation of unaccompanied minor foreign nationals, to have a look at the possibility of a residence status for stateless unaccompanied minor foreign nationals, and to confirm the undesirability of locking up victims of trafficking in human beings. The Cabinet stated furthermore in its response that the State Secretary for Justice would order a review of

³³ *Parliamentary Papers II* 2009/2010, 32 123, no 11 (Letter and enclosure).

³⁴ Council of Europe Commissioner for Human Rights (2009), *Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visit to the Netherlands*. On 10 February 2010 extracted from: www.coe.int/tpts://wcd.coe.int/ViewDoc.jsp?id=1417061&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P52_2076

³⁵ Children against whose parents (or either of the parents) article 1F of the Convention on Refugees has been enforced. For more detailed information on article 1F, please refer to the previous edition of this report.

the policy on unaccompanied minor foreign nationals and children in the aliens policy. In this context, the child's interests will be adopted as a starting point.³⁶

4.3. Unaccompanied Minors and Other Vulnerable Groups

This aspect is not explicitly mentioned in the commitments in the Pact.

Memorandum on the review of the policy on Unaccompanied Minor Foreign nationals

On 11 December 2009, the Cabinet presented a memorandum to the Lower House of Parliament about the review of the policy on unaccompanied minor foreign nationals (UMFN).³⁷ The Cabinet had previously made various commitments regarding the aliens policy in which it had also promised that in this review the position of families and children would also be included in the regular aliens policy.³⁸ According to the Cabinet, this review was to result in an improved position of children in the aliens policy, in particular by ensuring that they would be informed quickly and completely about their residence prospects.

It is evident from the memorandum that the regular residence permit for UMFNs will be abolished. The Cabinet is of the opinion that granting the residence permit for UMFNs in accordance with the current policy gives a conflicting signal, not only to the young people themselves, but also to counsellors and aid workers. In the current situation, the UMFNs only qualify for a temporary residence permit under specific conditions. The Cabinet argued in its memorandum that as a result of this permit, this young person would prepare for integration and not for return, whereas the permit concerns a temporary status. Most holders of residence permits for UMFNs must return as soon as they turn eighteen years old.

The Cabinet considered this abolition of the UMFN residence permit in conjunction with the new asylum procedure to be implemented in the middle of 2010. The UMFNs will be allowed a period of rest and preparation of at least three weeks prior to the asylum procedure; this period is longer than that for adults, who will be allowed a period of rest and preparation of at least six days. The reason for the difference is that – in this period of three weeks – the minors have to deal with more organisations than the adults. UMFNs are, for instance, placed under the guardianship of Stichting Nidos, and they are assigned both a representative and a COA mentor, and sometimes it is the first time that they will go to school in the Netherlands. The Cabinet seeks to limit the uncertainty of the prospects for residence, and it will therefore attempt to finalise the procedure within one year, including the appeal procedure. The Cabinet aims at processing the asylum applications submitted by UMFNs up to and including the detailed interview as much as possible in the general procedure of eight days.

The Cabinet takes account of the possibility that UMFNs will not be able to return to the country of origin. A safety net will be created for those cases. In individual cases, the unaccompanied minor may be granted a no-fault residence permit if there is reason to do so. The starting point in this context is that all foreign nationals are able to return to their countries of origin. Special situations may, however, occur in which a foreign national cannot leave the Netherlands through no fault of his or her own because he or she cannot obtain the required travel documents, whereas there is no doubt about the details provided by him about his or her identity and nationality. This may, for instance, be the case if the foreign national is stateless and he or she will not be able to obtain readmission to the country in which he previously had permanent residence.

In these cases, the foreign national may qualify for a residence permit subject to the restriction 'residence as a foreign national who cannot leave the Netherlands through no fault of his or her own.' The no-fault policy will be reviewed to the extent that this permit will no longer be granted after a minimum period of three years, but that a maximum period of three years will be applicable. The period of three years will no longer commence at the time that the minor's asylum application is rejected – as is currently the case – but from the time that the minor has submitted his or her asylum application. The no-fault residence permit may thus be granted as soon as there is reason to do so in individual cases.

³⁶ *Parliamentary Papers II 2008/2009*, 31 700 V no. 94 (Letter).

³⁷ *Parliamentary Papers II 2009/2010*, 27 062, no 64 (Letter).

³⁸ *Parliamentary Papers II 2008/2009*, 30 573, no 45 (Letter).

This may also be relevant upon or shortly after the rejection of the asylum application, if it is clear in a specific individual case that it is not possible to realise the return to a place that may be qualified as providing adequate reception conditions.

Responses to the intention to review the policy on unaccompanied minor foreign nationals

Following on from the letter about the UMFN policy, Unicef and Defence for Children-ECPAT sent an extensive response to the relevant Cabinet members on 16 December 2009.³⁹ The children's rights organisations were pleased that the Cabinet had been inspired by the International Convention on the Rights of the Child (CRC) in respect of its policy principle for the review. The State Secretary often referred to the CRC and the child's interest, which must be paramount. The Defence for Children-ECPAT and UNICEF, however, disagreed with the State Secretary on its consequences, on a great many points. These organisations, for instance, considered the intended abolition of the UMFN permit not a good idea because it would result in illegal residence. Defence for Children-ECPAT and UNICEF acknowledged that there was also gain for the children's rights: UMFNs will be detained less often, and will obtain clarity about their perspectives sooner than is now the case.

The Dutch Council for Refugees considered return only relevant after a careful procedure had been gone through. The general procedure of eight days is too short for this purpose. The Dutch Council for Refugees was of the opinion that all applications submitted by children should therefore be processed in the extended asylum procedure, which lasts a maximum period of six months. The new UMFN policy furthermore included the statement that the Ministry of Justice will have three years to realise the return of a child. The Dutch Council for Refugees urged the State Secretary to implement a shorter period so as to ensure that the children were not left in uncertainty for so long. In addition, the policy should also include more clarity about when return was actually possible. According to the Dutch Council for Refugees, return would only be an option if it had been demonstrated clearly that this was in the child's interest. If return actually appeared to be justified after careful consideration, it should be examined how to realise this in a safe and dignified manner. Aspects such as permanent accommodation, medical care, and education should be guaranteed in the country of origin.⁴⁰

In an article in NRC Handelsblad of 12 December 2009, Director Tin Verstegen of the guardianship agency Nidos said that providing clarity quickly and acting quickly is fine. 'But if the authorities still do not succeed in removing a child despite maximum efforts – for instance because the country of origin does not want to provide documents – the child must still be granted a permit after one or two years,' said Verstegen. Nidos finds it important that it is certain that the child will be received properly. 'Not all family members who say they will receive the child actually can or want to do so. The child will be roaming the streets again after three weeks; completely uprooted.'⁴¹

In the same newspaper article, director Huizing of Dutch Council for Refugees objected to the processing of asylum application of UMFNs in the general procedure of eight days: 'Additional time for an accurate asylum procedure is really necessary in respect of these children. They are suspicious and tired when they arrive in the Netherlands. You cannot expect from a child in such a situation that it will be able to tell its entire story clearly in eight days.'

In a letter to the editor, placed in NRC Handelsblad of 15 December 2009, Carla van Os (Defence for Children) and Karin Kloosterboer (Unicef Nederland) wrote that many of Albayrak's views agree with the CRC, but that her policy intentions would – perhaps unintentionally – transform a group of children into 'illegal' fellow citizens. According to the writers, the abolition of the temporary residence permits for UMFNs will cause these minors to become children without documents: 'illegal children'. Van Os and Kloosterboer also agreed that children had to return to the country of origin as quickly as possible once it had been established that they did not have a future in the Netherlands. 'But this return must be realised

³⁹ <http://www.defenceforchildren.nl/images/20/1012.pdf>

⁴⁰ The Dutch Council for Refugees (2009) Bescherming kinderen gaat voor terugkeer (Protection of children has priority over return). Extracted from www.vluchtelingenwerk.nl. on 9 February 2010.

⁴¹ NRC Handelsblad, (2009, 12 December) *Jonge asielzoeker snel naar huis; Zekerheid over goede opvang in eigen land van herkomst moeilijk te krijgen.* (Young asylum seeker quickly sent home again; Certainty about proper reception in own country of origin difficult to obtain).

with all required security safeguards. Intensive supervision will be required, both during the preparations for the return and afterwards by people trusted by the child. There must be a plan about where the child will reside, and how social and economic conditions will be secured.' Van Os and Kloosterboer wanted most of all that it would be examined whether those who will receive the child in the country of origin are actually sufficiently capable of doing so. The representative in the Netherlands must agree to the return.

The political debate on the review of the policy on minors will be held in the course of 2010.

4.4. Economic Migration

4.4.1. European Pact on Immigration and Asylum

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

Commitment I(a): Implementation of policies for labour migration

The European Council invites the Member States and the Commission to implement policies for labour migration, with due regard to Community Law and the needs of the labour market.

The Dutch government pursues a modern migration policy. After several years of preparations, the bill on Modern Migration Policy⁴² was sent to the Lower House of Parliament on 9 September 2009. After the Lower House and subsequently the Upper House of Parliament have accepted this proposal, the bill will be enacted, so that the Act is expected to enter into force early in January 2011.

The bill aims to make far-reaching changes in the current admission system. These changes mainly relate to the admission policy on economic migration (highly skilled migrants, regular labour migrants, students, and scientific researchers).

According to the Dutch Cabinet, the current admission system is too complex to realise fast and effective entry. The core of the new policy is a simplification of procedures and a larger responsibility of the party requesting the migrant to come to the Netherlands (e.g. an employer or an educational institution). It is the intention that fewer details need to be submitted in relation to the applications for admission of these economic migrants.

In the Netherlands, too, the labour market is affected by the economic crisis. The crisis did, however, not result in measures in the area of labour migration policy. The current economic crisis appears to influence several forms of economic migration to the Netherlands. In particular in relation to applications for the admission of new highly skilled migrants, the number is clearly lower than last year.

For the time being, the crisis did not give rise to an amendment of the national legislation and policy on highly skilled migrants/employees in the Netherlands. This legislation will, however, be amended in connection with the prevention of abuse.

Commitment I(b)\; Increasing the attractiveness of the European Union for highly qualified workers and further facilitating the reception of students and researchers

For the purpose of pursuing a labour migration policy, various efforts have been made in 2009 to make the Netherlands more attractive to highly skilled employees.

In order to implement the Blue Card Directive 2009/50/EC, preparations are currently being made to amend the national aliens regulations and legislations. After the amendments to the Aliens Act and the Aliens Decree have been implemented, the Aliens Act Implementation Guidelines will be amended. The Labour Act for Foreign Nationals will also be amended as a result of the implementation of the Blue Card Directive. The implementation process must have been completed in June 2011.

⁴² *Parliamentary Papers II 2008/2009*, 32 052, no. 2 (Bill)

At the end of September 2009, the Holland Gateway business centre at Amsterdam Airport Schiphol was opened. Holland Gateway is the result of cooperation among the Ministry of Economic Affairs (Netherlands Foreign Investment Agency, NFIA), the Ministry of Justice (IND), the Employee Insurance Agency (UWV), the Chambers of Commerce, and the Schiphol Group for the reception of foreign companies. The foreign companies are assisted in matters such as handling all kinds of procedures for settlement in the Netherlands. These companies are, for instance, assisted in the bringing highly skilled migrants to the Netherlands. If a company requests in advance to see to the application procedures for employees, the application for a residence permit may have been completed in cooperation with the IND before the employees enter the Netherlands.⁴³

In order to facilitate the reception of students or researchers even further, one of the activities is the development of a scheme for the admission of highly educated migrants. This scheme was published in December 2008 and entered into force on 1 January 2009. For further details about this scheme, please refer to the Annual Policy Report 2008⁴⁴ of the Dutch National Contact Point of the European Migration Network (EMN).

As already mentioned above, the economic crisis also had repercussions on the labour market. For the time being, the economic crisis has not caused the Netherlands to amend its national legislation and its policy on students and researchers.

Commitment I(c): Do not aggravate the brain drain

The efforts made by the Netherlands in 2009 in respect of this commitment will be discussed under Commitment V(d): More effective integration of migration and development policies. This Commitment will be dealt with in section 4.12.1.

4.4.2. Additional/Supplemental Developments

In anticipation of the implementation of the Modern Migration Policy, experience has been gained with the Admission and Residence Procedure since 2009, the so-called TEV procedure. In this procedure, the application for a regular provisional residence permit and the application for a residence permit are processed simultaneously. The result of this is that the total procedure time may be shortened and the administrative burden for the foreign national and the sponsor will be reduced.

4.5. Family Reunification

The reasons for immigrants to come to the Netherlands differ for each person. Important reasons for Western migrants to settle in the Netherlands are work, and to a lesser extent family reunification and family formation. Non-Western migrants primarily come to the Netherlands for family migration (family formation and family reunification) and to a lesser extent for study purposes.⁴⁵

4.5.1. European Pact on Immigration and Asylum

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

Commitment I(d): More effective regulation of family migration

In its letter of 2 October 2009⁴⁶, the Dutch Cabinet presented measures in the area of family migration and integration. In this letter, the Cabinet gives its integrated view on the themes of marriage migration and integration of marriage partners in the Netherlands. An important starting point in the choice for the measures presented in this letter is the circumstance that, according to the Cabinet, a number of the

⁴³<http://www.hollandgateway.nl/>

⁴⁴Annual Policy Report 2008 EMN, August 2009

⁴⁵Nicolaas, H., 2009, *Bevolkingsprognose 2008–2050: veronderstellingen over immigratie* (Population Forecast 2008–2050: Assumptions on Immigration. *Centraal Bureau voor de Statistiek* (Statistics Netherlands, CBS). *Bevolkingstrends* (Population Trends) 57(1), pp. 23–33.

⁴⁶Parliamentary Papers II 2009/2010, 32 175, no. 1 (Letter)

family migrants coming to the Netherlands are still unable to integrate in Dutch society. These measures were presented in order to ensure that this integration proceeds more effectively.

The Cabinet aims to intensify the monitoring and enforcement of the Aliens Act to combat fraud and abuse in respect of marriage migration. In its letter, the Cabinet also pointed to the initiatives of the IND in the context of recognition of and approach to fraud and abuse, including the approach to sham marriages. It is exactly this very element of aliens policy on which that the Cabinet will continue to aim its focus during the next few years. A new system of regular migration will be implemented. This system is the result of the Modern Migration Policy Programme (also referred to under Commitment I(a) on labour migration) and is aimed at combining the restrictive admission policy with selective elements. All this was laid down in the Blueprint for Modern Migration Policy⁴⁷, which was presented to the Lower House of Parliament in July 2008.

After the entry into force of the Modern Migration Policy Act (*Wet modern migratiebeleid*) (expected in early 2011 (see section 3.4.1)), it is the intention that the IND will be able to perform tighter checks on aspects of public order and, where applicable, on applications for social assistance benefits through the use of improved information exchange with other government authorities. At the European level, the Cabinet wants to argue for measures that will make it impossible for a person to have another partner come over from abroad after a criminal conviction.

The Cabinet furthermore presented the following policy intentions in its letter:

Raising the level of the integration and training requirements

Since 15 March 2006, specific migrants have been obliged to pass the civic integration examination abroad in the country of origin pursuant to the Civic Integration Abroad Act.

The Cabinet intends to raise the required level of the Spoken Dutch Test in this examination. The examination will also be supplemented by a written test. In addition, the Cabinet will examine whether it is possible to require additional educational efforts from family migrants after their entry in the Netherlands. The Cabinet will also make an effort at the European level to ensure that the person who wants to bring a partner to the Netherlands must at least have complied with the obligation to participate in a civic integration programme himself or herself. The Cabinet is examining whether the partner in the Netherlands may be held responsible for the entire civic integration and educational programme of the foreign partner.

Strengthening emancipation, and combating forced marriages, marriages between nephews and nieces, and polygamy

In order to combat the undesirable aspects of marriage migration, the Cabinet wants to take various measures, including the following:

- A prohibition on marriages between nephews and nieces;
- An increase in the minimum age for the recognition of marriages concluded abroad from 15 to 18 years of age;
- Abolishment of the Dutch recognition of polygamous marriages concluded abroad;
- Setting the requirement of an independent accommodation for the person bringing a marriage partner to the Netherlands from abroad.

In its letter, the Cabinet also indicated that, in anticipation of the new proposals on family migration by the European Commission in 2010, the Netherlands will endeavour to make agreements with other Member States and the European Commission on matters including the prevention and investigation of sham marriages and sham relationships, the prevention of forced marriages and polygamy – as well as the consequences of this for the residence status, the prevention of abuse of Community Law, and the enforcement of measures against partners who have been guilty of committing domestic violence or other forms of relational violence.

⁴⁷ Parliamentary Papers II 2007/2008, 30 573, no. 10.

On 3 April 2009, in response to the situation involving the high influx of foster children of Somali origin who travel to the Netherlands later on to join the family, the State Secretary for Justice notified the Lower House of Parliament that in addition to the above-mentioned measures, a proposal was being made to take a number of new measures, in order to ensure that only children who already belonged to the family of the alleged foster parent(s) in the country of origin may qualify for joining their foster parent(s). These measures were published in the Government Gazette on 24 July 2009.⁴⁸ This concerns the following measures:

- If the foster child was not mentioned in the asylum interviews of the alleged foster parent(s), it is not considered likely that the foster child actually has belonged to the family of the foster parent(s).
- An increased burden of proof is placed on the applicant and alleged foster parent(s) to prove that they actually belonged to each other's family.
- In respect of foster children, it furthermore applies that the family ties are considered broken if these children were taken into another family after the departure of the alleged foster parent(s).

4.5.2. Additional/Supplemental Developments

Continued Residence on Compelling Humanitarian Grounds

The previous 2008 Annual Policy Report already included a detailed discussion of the Minister of Justice's promise to give further substantiation to the compelling humanitarian grounds on the basis of which continued residence is granted upon termination of a relationship, by marriage or otherwise, within a period of three years.

In his letter of 29 July 2008, the Minister therefore proposed, with respect to women who had been left behind, to refine and increase the number of indicative examples and, in particular, also to include the situation of children who were left behind with the parent.⁴⁹ By decision of the State Secretary for Justice of 26 November 2009, this promise was fulfilled.⁵⁰ For the implementation of the aforementioned compelling humanitarian grounds, the Aliens Act Implementation Guidelines specifies the following directional examples:

- Ties with the Netherlands;
- The question of whether the woman's own family in the country of origin has repudiated her, which seriously interferes with reception in the country of origin;
- The question of whether the case concerns a forced marriage in the country of origin;
- The impossibility under the law of the country of origin to divorce, which would place the woman in a legally difficult position in the absence of the husband (it sometimes happens that the woman cannot divorce, while the husband is remarried in the Netherlands);
- The father's refusal to grant permission to enter the children at a school in the country of origin, while this permission is required to attend education;
- The duration of the child's education in the Netherlands;
- The question of whether the child has Dutch nationality.

One of the compelling humanitarian reasons is domestic violence. Domestic violence in itself constitutes sufficient ground to grant a continued residence permit, if the relationship has been terminated by the victim in connection with this violence within three years of legal residence with their partner.

⁴⁸ Decision of the Ministry of Justice of 24 July 2009 no. 2009/18, for the amendment of the Aliens Act Implementation Guidelines 2000, Government Gazette no. 12691.

⁴⁹ *Parliamentary Papers II* 2007/2008, 19,637, no 1217 (Letter).

⁵⁰ Decision of the State Secretary for Justice of 26 November 2009, no. 2009/28 amending the Aliens Act Implementation Guidelines 2000, Dutch *Government Gazette* no. 18 618.

The options for verification by the implementing body, however, proved to be not entirely satisfactory. In three cases, the policy was substantiated further, i.e. in respect of the medical certificate, in respect of the official report, and in respect of the person who has actually terminated the relationship.

It was evident from consultations with the Royal Dutch Medical Association (*Koninklijke Nederlandse Maatschappij tot bevordering de Geneeskunst, KNMG*) that a physician can only issue a certificate on medical circumstances and that a physician cannot issue a certificate on other factors that may result in the opinion that it is (or was) a matter of domestic violence. Subsequent to this, it was decided to accept more information as evidence of domestic violence, such as, for instance, a declaration from the women's shelter institution where the victim is staying, or declarations from professionals/social workers involved, mental care institutions, local organisations for domestic violence, or the Advice and Support Centre for Domestic Violence (*Advies en meldpunt huiselijk geweld, ASHG*).

Practice has shown that the police do not always give a victim who reported the domestic violence unofficially the opportunity to also report it officially, for instance, because the offence was committed too long ago or because it was committed at a location covered by another regional police force. It was consequently decided to also accept the victim's unofficial report to the police (as accepted in the policy prior to 2003) in addition to the official record of the report or the official declaration, provided that the victim sufficiently demonstrates to the police that the violence was committed.

The core of the policy is that protection must be provided against domestic violence. This is the reason for granting an independent residence permit, so that the victim is given the opportunity to withdraw from the violent relationship. By setting the condition that the victim actually terminates the relationship, no protection was, however, provided in the case that it was the violent partner who terminated the relationship. In that case, the victim was not granted a continued residence permit in connection with domestic violence, but his or her application was only assessed on the presence of special and individual factors, which implied a heavier weighting.

The violence may also occur between parent and child. In this situation, the minor or adult child may not be required to terminate the relationship, whereas a continued residence permit will, in this situation as well, actually enable the child to withdraw from the violent situation. In this connection, the policy currently also provides the possibility in these cases to grant a continued residence permit in connection with domestic violence.

'International family formation subject to restrictions?'

The IND Information and Analysis Centre (INDIAC) and the Research and Documentation Centre (WODC) of the Ministry of Justice conducted a joint study to evaluate the increase in the income and age requirements for migration of foreign partners to the Netherlands.

This study was conducted following the promise of the Ministry of Justice to the Lower House of Parliament in February 2007. The increased income requirement for migration to the Netherlands for the purpose of family formation has resulted in a substantial decrease in the number of partners coming to the Netherlands. The stricter income and age requirements did not result in a clear contribution to the improvement of the socio-economic positions of persons of foreign heritage in the Netherlands.

These conclusions were based on an analysis of the applications for family formation submitted in the period between 1 July 2003 and 1 March 2006 (INDIAC) and interviews with fifty international couples (WODC). In the 16 months following the measures, immigration for the purpose of family formation appeared to have been reduced by 37% compared to the 16 months prior to the measures. The study shows that the increase was – to a significant degree – the result of the increase in the income requirement. The measures did not result in a clear contribution to the improvement of the socio-economic positions of the international couples. Some people with foreign partners improved their socio-economic positions to be able to comply with the higher income requirement. Others earned the higher income only temporarily. Others again sacrificed long-term career opportunities for a short-term increase in income.

The study furthermore revealed that more foreign partners have also tried to find jobs in the Netherlands themselves. The higher age requirement also resulted in the fact that some young foreign partners finished their education or attended a course in the country of origin. However, the higher age

requirement did not, or hardly at all, result in a noticeable increase in continued studies among the partners who already resided in the Netherlands.

The State Secretary for Justice presented the report to the Lower House of Parliament on 16 April 2009.⁵¹

4.6. Other Forms of Legal Migration

In addition to the policy on economic migration and the policy on family reunification, the Dutch regular (non-asylum) migration policy includes several other components, such as admission for a stay on religious or medical grounds or for study purposes. A number of conditions for admission essentially apply to all forms of legal residence. After the relevant commitments from the Pact, this section describes issues that relate to more than one form of regular admission. Next, the developments in 2009 regarding the purposes of stay that do not come under economic migration or family reunification will be described.

4.6.1. European Pact on Immigration and Asylum

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

Commitment (f): Improvement of information on the possibilities and conditions of legal migration

As already pointed out in section 3.4.1, the business centre Holland Gateway was opened in the World Trade Centre at Amsterdam Airport Schiphol on 28 September 2009. Holland Gateway is a business centre with the aim to welcome foreign companies and highly skilled migrants.

Holland Gateway fits in with the policy of the Cabinet to make the Netherlands more appealing to highly skilled migrants.

On 23 June 2009, the Residence Wizard⁵² was officially put into use by the IND. With this Residence Wizard, the IND aims to improve its services. The Residence Wizard provides information on staying in the Netherlands and on residence permits. The improvement can be found in the fact that the information is focused more than previously was the case on the specific situation of the applicant. As a result of this, the applicant knows exactly what to do in order to be able to submit an application to the IND. The applicant can also customise an application set (an application form and the relevant annexes) by means of the Residence Wizard, so that the applicant only needs to fill in the details required in his or her case.

4.6.2. Additional/Supplemental Developments

Penalty Payments (Failure to Give Timely Decisions) Act

On 1 October 2009, the Penalty Payments (Failure to Give Timely Decisions) Act (*Wet dwangsom en beroep niet tijdig beslissen*) entered into force.⁵³ In operation, the Penalty Payments (Failure to Give Timely Decisions) Act contains two regulations for those cases in which an administrative body does not give a timely decision. First of all, the Act contains a regulation on the basis of which an administrative body may incur a periodic penalty payment for each day that the decision remains forthcoming. It furthermore also contains a regulation on the basis of which an appeal may be instituted against the administrative body for the failure to give a timely decision, without the requirement that an objection is submitted first.

In respect of alien affairs, a special transitional provision was included. This means that in respect of decisions made pursuant to the Aliens Act 2000 or the Sovereign Decree (*Soeverein Besluit*) of 12 December 1813, the mandatory regulation has been delayed to 1 October 2012. In respect of aliens

⁵¹ *Parliamentary Papers II* 2008/09, 30 573, no. 43 (Letter with enclosure).

⁵² <http://www.ind.nl/EN/verblijfwijzer/> (consulted on 16 November 2009)

⁵³ <http://www.justitie.nl/onderwerpen/wetgeving/wet-dwangsom-en-beroep-bij-niet-tijdig-beslissen/>

affairs, the regulation of the new part 8.2.4.A of the General Administrative Law Act, however, entered into force on 1 October 2009.

Au Pair Laboratory

In anticipation of the implementation of the Modern Migration Policy (see Section 4.4.1), the IND introduced the 'Au Pair Laboratory' (*Proeftuin 'Au Pair'*) to gain experience with the au pair agencies and their envisaged future role as recognised sponsors under the Modern Migration Policy. Please refer to the 2008 Annual Policy Report for a description of the sponsor system under the Modern Migration Policy.

Effective from 30 October 2009, the Aliens Act Implementation Guidelines also gives au pair agencies that participate in the Au Pair Laboratory the opportunity to enter into an agreement with the IND on specific conditions to take advantage of the accelerated Regular Provisional Residence Permit procedure.⁵⁴ Until then, this procedure only applied to foreign nationals who applied for a residence permit for study purposes and to the Highly Skilled Migrant Programme.

The purpose of this agreement is to gain experience with the future sponsor system in cooperation with the au pair agencies that participate in the laboratory, in anticipation of the entering into force of the Modern Migration Act.

The Regular Provisional Residence Permit Requirement

The 2008 Annual Policy Report mentioned the intention of State Secretary for Justice to change the policy on the Regular Provisional Residence Permit requirement on a number of points. These changes entered into force on 2 May 2009. It concerned the following categories:

Family members of an asylum seeker who has been admitted

By an amendment to the Aliens Decree, family members with different nationalities from the principal person with an asylum status will be exempt from the Regular Provisional Residence Permit requirement under specific circumstances.

Article 8 of the ECHR

Case law of the ECHR dictates that Dutch Aliens Policy and implementation practice must remain within the framework set by Article 8 of the ECHR. Verification against Article 8 of the ECHR was already carried out, but to keep in line with the case law referred to above a new paragraph was added to the relevant article of the Aliens Decree.

Minor foreign nationals who have actually had a residence permit for three years

In respect of minors of 12 years of age or older or minors who were not born in the Netherlands and who have resided here for a considerable time, enforcing the Regular Provisional Residence Permit requirement may result in unreasonable situations. It applies to this category that they may also be exempt from the Regular Provisional Residence Permit requirement subject to certain circumstances, including three years of principal residence immediately prior to the application.

The Association with Turkey

Turkish employees and their family members already had the option to rely on the exemption from the Regular Provisional Residence Permit requirement pursuant to the Association Treaty between the European Economic Community and Turkey.

Case law of the ECHR dictates that self-employed persons will also be able to rely on such an exemption in the future.

⁵⁴Decision of the State Secretary for Justice of 19 October 2009, no. 2009/23 amending the Aliens Act Implementation Guidelines 2000, Dutch *Government Gazette* no. 16242.

4.7. Integration

On 1 January 2009, 1.8 million non-Western migrants had taken up residence in the Netherlands. This is 11% of the total population.⁵⁵ Two thirds of the non-Western migrants originate from the large countries of origin, namely Turkey, Morocco, Surinam, and the Netherlands Antilles. The group of first-generation migrants has decreased, while the group of second-generation migrants has increased. By now, nearly half of the members of these groups were born in the Netherlands. Among refugee groups, the group of second-generation refugees has also increased more rapidly than the group of first-generation refugees.

4.7.1. European Pact on Immigration and Asylum

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

Commitment I(g): Promotion of harmonious integration in line with the common basic principles

The subject of integration receives much attention in the Netherlands. On 17 November 2009, the Integration Letter⁵⁶ was sent to the Lower House of Parliament. In its letter, the Cabinet outlined the framework for the measures which have meanwhile been taken and which provided direction to the new policy in the near future. The Cabinet is of the opinion that integration requires that the foreign national makes a choice for the Netherlands. According to the Cabinet, this implies that the foreign national should start following a civic integration programme, should start participating in society, should seize available opportunities and thus preferably create his or her own opportunities.

The Commitment 'Promotion of harmonious integration in line with the common basic principles' is put into effect in the following policy domains.

Civic integration

On 1 January 2009, the first Act to improve and simplify the Civic Integration Abroad Act entered into force.⁵⁷

The initial problems of the new Civic Integration Abroad Act have been tackled by amending the Act, giving municipalities and providers more time, and improving the possibilities of registration. Despite this approach, a number of facilities are still behind the forecast. For this purpose, additional measures were taken in 2009 as well, including additional resources, more effective procedures to approach persons who want to follow a civic integration programme voluntarily, and a campaign.⁵⁸

Education

In order to improve the educational disadvantages of migrants and their children, a number of measures were taken in 2009. One of these measures is, for instance, the support of language skills by means of early childhood education. There was also an increased commitment to reduce the drop-out rate, among other things by means of the following programme: "Tackling the School Drop-Out Rate"⁵⁹

Labour market

The labour market policy does not have any elements specifically aimed at migrants. The general policy is also aimed at helping migrants and their children. In addition, measures⁶⁰ were taken to actively combat discrimination⁶¹, to assist migrants in finding work and in developing skills, to encourage the diversity policy of employers, and an investigation was conducted into the effectiveness of reintegration programmes for foreign nationals.⁶²

⁵⁵Social and Cultural Planning Office. (2009) *Jaarrapport Integratie 2009* (2009 Annual Integration Report). The Hague: Social and Cultural Planning Office.

⁵⁶ *Parliamentary Papers II* 2009/2010, 31 268, no. 25 (Letter with enclosures)

⁵⁷ *Parliamentary Papers II* 2008/2009, 31 143, no. 38 (Letter)

⁵⁸ *Parliamentary Papers II* 2008/2009, 31 143, nos. 38 and 67

⁵⁹ *Parliamentary Papers II* 2008/2009, 26 695, no. 61 (Letter with enclosures)

⁶⁰ *Parliamentary Papers II* 2006/2007, 29 544, no. 99 (Letter with enclosure)

⁶¹ *Parliamentary Papers II* 2007/2008, 29 544, no. 149 (Letter)

⁶² *Parliamentary Papers II* 2008/2009, 28 719, no. 60 (Letter with enclosures)

In order to diminish the consequences of the economic crisis, the Youth Unemployment Action Plan was launched in the spring of 2009.⁶³ This plan focuses particularly on the high unemployment rates among young migrants.

Integration policy for specific groups

In general, the policy on integration has a generic approach. Additional policy measures are only required in cases of special circumstances or situations.

According to the Cabinet, additional policy measures were required in respect of 'problem groups' consisting of Antillean⁶⁴ and Moroccan-Dutch young people.⁶⁵ This year, the Cabinet sent two letters to the Lower House of Parliament on the approach to these groups.

An investigation was conducted into the situation of migrants from Central and East European countries (the CEE countries⁶⁶).⁶⁷ In view of the expectations that a considerable part of the labour migrants from Central and East Europe will stay in the Netherlands for a longer period of time, the Cabinet considers it important to make active efforts in the area of civic integration. It is, however, not possible to impose the obligation to follow a civic integration programme on EU citizens. A letter from the Minister for Housing, Communities and Integration defining the Cabinet's position on this subject was sent to the Lower House of Parliament on 23 November 2009.⁶⁸ In this letter, the Minister discussed the most important results of the investigation and mainly focused on the results that were relevant to the subjects that relate to the policy on integration and housing of CEE citizens.

'Language skills are an essential part of the success of the open European society', wrote the Minister in his letter and this is, therefore, also a subject which demands attention, also from the European Commission. As is evident from the letter, this subject will be brought forward during the next EU meeting of Integration Ministers in Spain in April 2010.

Citizenship

The intended establishment of the House for Democracy and the Rule of Law, which is aimed at all citizens of the Netherlands, is one of the contributions made to achieve the objectives of active citizenship.⁶⁹ The purpose of this House is, concisely stated, to transfer knowledge of the democratic rule of law, and to increase competencies of citizenship and democratic citizenship. The Cabinet considers knowledge of and support for democracy and rule of law among citizens in our society fundamentally important to the future of the Netherlands. The preparations are aimed at establishing the House in the first quarter of 2010.

Commitment I(h): Promotion of information exchange on best practices in terms of reception and integration

To improve cohesion between the activities of the central government and the municipalities in the area of integration, the common integration agenda *What binds us*⁷⁰ was drawn up. As a part of this agenda, meetings were held and will be organised on the basis of different integration themes such as civic integration, education, employment, housing, social integration, active citizenship, emancipation/participation of migrant women, safety, and health.

⁶³ *Parliamentary Papers II* 2008/2009, 29 544, no. 189 (Letter with enclosures)

⁶⁴ *Parliamentary Papers II* 2009/2010, 26 283, no. 52 (Letter with enclosures)

⁶⁵ *Parliamentary Papers II* 2008/2009, 31 268, no. 13 (Letter with enclosure)

⁶⁶ In this context, CEE citizens are persons with nationalities of the 8 Central and East European countries that joined the European Union in May 2004 (Poland, Hungary, Czech Republic, Slovakia, Slovenia, Latvia, Lithuania, and Estonia) and Bulgaria and Rumania.

⁶⁷ J. de Boom, S. Rezai, A. Weltevrede, (2009) *Arbeidsmigranten uit Midden- en Oost-Europa; een profielschets van recente arbeidsmigranten uit de MOE-landen*. Rotterdam: Risbo. J. de Boom, A. Weltevrede, S. Rezai, G. Engbersen (2008) *Oost-Europeaanen in Nederland; een verkenning van de maatschappelijke positie van migranten uit Oost-Europa en voormalig Joegoslavië*. Rotterdam: Risbo.

⁶⁸ *Parliamentary Papers II* 2009/2010, 29 407, no. 103 (Letter)

⁶⁹ *Parliamentary Papers II* 2008/2009, 31 475, no. 6 (Letter with enclosure)

⁷⁰ *Parliamentary Papers II* 2007/2008, 31 268, no. 8 (Letter with enclosure)

In 2009, the Netherlands received a dozen delegations from different EU Member States to exchange views on 'good practices'.

In the context of civic integration, regular consultations are held with the Flemish government, in addition to intensive cooperation between the central government and the municipalities.

The Ministry for Housing, Communities and Integration finances the knowledge centre 'FORUM'. This was also the case in 2009. FORUM is an independent knowledge institute in the area of multicultural problems from the perspective of the democratic rule of law, social cohesion, and shared citizenship. FORUM's objective is to gather knowledge in the broad area of integration, to make this knowledge available, and to translate it into practical methods and products.⁷¹ One of the publications of FORUM that was also published in 2009 is the *Forum Monitor*, which reported, among other things, on the labour market situation of migrants.

4.7.2. Additional/Supplemental Developments

Integration Barometer

In 2009, the Dutch Council for Refugees published the Integration Barometer 2009 (IntegrationBarometer 2009). This is a periodical survey into the degree of integration of refugees. An important conclusion from this survey is that integration takes time. The longer the refugees are here, the better they speak Dutch, make Dutch friends, and finish their educations. Most refugees see their future in the Netherlands and are strongly focused on the Netherlands as permanent place of residence. In general, they feel secure and comfortable here. There is a great need to naturalise as quickly as possible. Refugees reside in municipalities spread across the entire country as a result of a specific decentralisation policy of the government, but they more frequently reside in the large towns. This applies particularly to migrants from Sudan, China, and Sierra Leone.⁷²

Link between civic integration and obtaining a residence permit

As announced in the previous edition of the Annual Policy Report, the link between the Civic Integration Act (*Wet inburgering*) and the permanent residence permit will enter into force on 1 January 2010. This implies that – as from 1 January 2010 – the foreign nationals who wish to take up permanent residence in the Netherlands must prove that they meet the civic integration requirement or that they have been exempted or released from this requirement.

This applies to foreign nationals who have submitted an application for a continued residence permit (after having stayed with a person with a temporary residence permit for three years, for instance 'stay with a Dutch spouse') or who wish to qualify for a permanent regular residence permit or a permanent asylum residence permit.

The reasoning behind this link is that it may be expected from foreign nationals who wish to take up permanent residence in the Netherlands that they have sufficient knowledge of the Dutch language and of Dutch society. The new policy has been published by now and will enter into force on 1 January 2010.⁷³

4.8. Citizenship and naturalisation

Statement of Allegiance

The 2008 Annual Policy Report announced the introduction of the Statement of Allegiance. As from 1 March 2009, anyone who wants to be considered for the acquisition of Dutch citizenship must declare himself or herself willing to make a Statement of Allegiance. By making the Statement of Allegiance, he or

⁷¹ FORUM. Derived from <http://www.forum.nl> on 24 November 2009

⁷² Dutch Council for Refugees. (2009) *Integratiebarometer 2009* (Integration Barometer 2009). Amsterdam: Dutch Council for Refugees.

⁷³ Decision of the State Secretary for Justice of 16 December 2009, no. 2009/30 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* no. 20192.

she states to respect the freedoms and rights attached to Dutch citizenship. Making the Statement of Allegiance is a statutory condition to acquire Dutch citizenship.⁷⁴

Stricter requirement regarding the submission of documents

On 1 May 2009, the requirement regarding the submission of documents establishing nationality and identity was tightened.⁷⁵ This boils down to the fact that in the context of the acquisition of Dutch citizenship, holders of any regular residence permit – irrespective of whether exemption from the passport requirement was granted during the procedure under Aliens Law or not – will in principle be no longer exempted from the submission of a valid foreign travel document (passport) and a foreign birth certificate (authenticated or provided with an apostille stamp).

This policy change is linked to the fact that the holder of a regular residence permit, who has been exempted from the passport requirement during the procedure under Aliens Law, may be successful in relying on the exemption from the renunciation of the original nationality if he or she demonstrates in the prescribed manner on submission of his request that he or she cannot or can no longer be provided a valid foreign travel document.

Acknowledgement of minor children

From 1 March 2009 onwards, minor children who are acknowledged by a Dutch citizen after birth and who are younger than 7 years of age will acquire Dutch citizen immediately, just as this was the case prior to 1 April 2003. The same applies to minor children who are legitimised by a Dutch citizen without acknowledgement. The requirement of three years of caring and education has consequently ceased to apply, because the legislator assumes that sham acknowledgements that are only aimed at the acquisition of Dutch citizenship relate to older minors. The automatic acquisition had been abolished in 2003 to avoid false acknowledgements, but this led to many problems for parents. In respect of acknowledgement by a Dutch citizen of minor children who are 7 years of age or older, it was opted for not to subject this acknowledgement to nationality legislation until the person recognising the child demonstrates his biological paternity upon acknowledgement or within a year after acknowledgement. Biological paternity is demonstrated by submission of DNA evidence from a laboratory in this country or abroad.⁷⁶ This DNA evidence must satisfy strict standards.

Memorandum of Understanding between the Netherlands and Surinam

In practice, individuals with either the Surinam or Dutch nationality feel a great need for the provision of information on how to acquire or regain either the Dutch or Surinam nationality. On account of its colonial past, the Netherlands has special ties with Surinam. This provision of information is necessary to apply the own nationality legislation properly. The exchange of this information will be effected on the basis of the statutory regulations concerning nationalities applicable in the Netherlands and Surinam, respectively. The Ministry of Justice, the Minister of the Interior of Surinam, and the Minister of Justice and Police of Surinam have opted for arranging this in a Memorandum of Understanding.⁷⁷

1F and the acquisition of Dutch nationality

By the Decision amending Nationalities (*Wijzigingsbesluit Nationaliteiten*) of 19 October 2009, the Netherlands Nationality Act Application Manual (*Handleiding voor de toepassing van de Rijkswet op het Nederlanderschap*) includes policy rules which will enter into force on 1 January 2010 for the assessment of applications for naturalisation from individuals in respect of whom there are serious reasons to suspect that they have committed crimes as referred to in Article 1F of the Convention on Refugees. If there is such a suspicion, the application for naturalisation may be rejected.⁷⁸

⁷⁴ Nationalities Interim Communication (TBN 2008/8), Dutch *Government Gazette* no. 233.

⁷⁵ Nationalities Interim Communication (TBN 2009/1), Dutch *Government Gazette* no. 2248.

⁷⁶ Nationalities Interim Communication (TBN 2008/8), Dutch *Government Gazette* no. 233.

⁷⁷ Nationalities Interim Communication (TBN 2009/2), Dutch *Government Gazette* no. 32.

⁷⁸ Decision amending Nationalities of 19 October 2009 (WBN 2009/4) (Dutch *Government Gazette* of 28 October 2009).

4.9. Illegal Immigration

This section will discuss issues relating to illegal immigration, including any policy changes regarding illegal entry and residence. Attention will also be paid to the state of affairs in respect of the Settlement of the Legacy of the Former Aliens Act (*Regeling afwikkeling nalatenschap oude Vreemdelingenwet*). The section will start with the relevant commitments from the Pact.

4.9.1. European Pact on Immigration and Asylum

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

Commitment II(a): Only case-by-case regularisation

By letter of 18 November 2009⁷⁹, the State Secretary for Justice updated the Lower House of Parliament on the state of affairs in relation to the implementation of the Settlement of the Legacy of the Former Aliens Act. On the basis of this Settlement and subject to specific conditions, residence permits were granted to asylum seekers and former asylum seekers who had submitted asylum applications before the implementation of the current Aliens Act (1 April 2001) and who did not yet have lawful residence. Current policy is that regularisation is only applied in individual cases. The Settlement of the Legacy of the Former Aliens Act also included an individual assessment. This settlement was discussed extensively in the Annual Policy Report 2007.

The question of whether the regularisation policy in the Netherlands has changed as a result of the economic crisis can be answered in the negative.

Commitment II(g): Enforcement of rigorous measures against those who exploit illegal immigrants, utilising strict penalties as deterrents.

In 2009, there were not any policy changes or initiatives in this area.

The Netherlands has a demand-driven labour migration policy. Pursuant to the Labour Act for Foreign Nationals (*Wav*), an employer is prohibited from engaging a foreign national (or a third-country foreign national) to perform work in the Netherlands without a work permit.⁸⁰ In the Netherlands, a transitional regime applies with respect to the free movement of Rumanian and Bulgarian employees. Employees from these Member States are still obliged to have a work permit. A work permit is not required for highly skilled migrants; they do not fall under the scope of the *Wav*, but under the scope of the Highly Skilled Migrant Scheme that entered into force on 1 October 2004.

From 1 January 2005, the *Wav* has been enforced under administrative law (before that date, criminal law applied).⁸¹ An employer who employs a foreign national without a work permit will receive a penalty of € 8,000 for each illegal foreign national (private persons will receive a penalty of € 4,000).

The *Wav* is enforced by the Labour Inspection. The Labour Inspection performs approximately 10,000 inspections a year with 200 inspectors. These inspections are performed on the basis of a risk analysis and particularly in risk sectors. The percentage of companies that upon inspection are found to have breached the law has fallen considerably during the last few years, from 23% in 2006 to 16% in 2008.⁸² This decrease is mainly ascribed to the introduction of the administrative penalty, the termination of the transitional regime for the free movement of employees in May 2007 for employees from Member States that joined the EU in 2004, and an increased number of inspections.

⁷⁹ *Parliamentary Papers II*2009/2010, 31 018, no. 54 (Letter)

⁸⁰ The major ground for refusing a work permit is the availability of enough labour supply that has priority; in other words, labour supply from the Netherlands or from other EU/EEA countries.

⁸¹ The Act of 2 December 2004 to amend the Labour Act for Foreign Nationals in connection with the implementation of administrative enforcement (Aliens Employment (Administrative Penalty) Act).

⁸² Arbeidsinspectie. Ministry of Social Affairs and Employment. Annual Report 2008. *Safe, healthy and legal to work* (Veilig, gezond en legaal aan het werk).

In addition to repressive enforcement, the Dutch authorities provide information to employers to ensure that they do not breach the law unintentionally. In the cases that illegal employment coincides with employment-related exploitation, these cases are handed over to the Public Prosecution Service.

4.9.2. Additional/Supplemental Developments

Extension of powers of aliens supervision

Following a promise during the General Consultation with the Lower House of Parliament on 8 October 2008 about the response to the *Illegal Residence in the Netherlands* (Illegaal verblijf in Nederland) study conducted by the Research and Documentation Centre (WODC), the State Secretary for Justice informed the Lower House of Parliament also on behalf of the Minister of Justice on 27 March 2009 about the intended extension of the powers in the context of aliens supervision.⁸³

In order to ensure that the police and the Royal Netherlands Marechaussee can perform their tasks in respect of the identification of foreign nationals more efficiently and effectively, the Cabinet deemed it necessary to formulate at least three legislative amendments. Below a short explanation is given to the intended legislative amendments.

Entering a house

According to the Cabinet, foreign nationals who reside in the Netherlands illegally know that they run a higher risk of quick expulsion if they carry the documents proving their identity with them. This would after all facilitate and expedite their identification and deportation. The Cabinet therefore deemed it necessary, in cases where a foreign national is stopped and questioned in a house which the authorities have entered legally, to create a power to search the house, without permission from the foreign national, for identity documents for the purpose of the identity investigation and the preparations for departure. The Aliens Act 2000 will be amended to this end.

Entering a dwelling belonging to a company

The police have experienced furthermore that it occurs with some regularity, during controls in rooms adjacent to a company or rooms in the company itself, that these rooms often appear to be used as housing accommodation by the people working in the company. On the basis of the Aliens Act, there was no power to search for identity documents if the foreign national is stopped and questioned during working hours in the company. The Cabinet considered this an undesirable situation. A Bill that is being prepared by the Cabinet will also provide for the possibility to search the housing accommodation of a foreign national who is residing there illegally for identity documents if he or she is stopped and questioned during working hours. This may be effected without the permission of the occupant, if there are reasonable grounds for suspicion that the foreign national is using that room as housing accommodation.

Investigative activities during detention

If a foreign national has been transferred for questioning and he or she is held for investigation into his or her identity, nationality, and residence status, various investigative activities may be performed to establish the foreign national's identity. These activities include 'reading' data carriers (digital or otherwise), such as mobile phones. With respect to carrying out such activities during aliens detention, such an explicit statutory power does not exist. In order to eliminate any doubt that it is also possible to perform investigative activities in these cases, the Cabinet will also propose an amendment to the Aliens Act to this end.

According to the Cabinet, the intended legislative amendments aim at a more effective and more efficient performance of the alien supervision and return policy.

⁸³Parliamentary Papers II 2009/2008, 19 637, no. 1260 (Letter)

4.10. Actions to combat trafficking in human beings

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

4.10.1. European Pact on Immigration and Asylum

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

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

Since 2000, the Netherlands has had a National Rapporteur on Trafficking in Human Beings⁸⁴. The *Seventh Report of the Dutch National Rapporteur on Trafficking in Human Beings*⁸⁵ revealed that, in 2008, a total of 215 criminal cases of trafficking in human beings had been registered with the Public Prosecution Service in the Netherlands. These cases, however, also concern cases from previous years. It cannot be deduced from these cases how many traffickers in human beings were arrested in 2008. This is also due to the fact that the figures relate to 'cases' and not to 'persons'. In addition, the figures of the year 2008 are only available to a limited extent. The number of convictions for trafficking in human beings (in the court of first instance) was 79 in 2008.

Concerning the cooperation with countries of origin, the following activities may be mentioned. A bilateral project to strengthen the investigation and prosecution in Nigeria was launched in July 2009. The management of the Nigerian agency to combat trafficking in human beings (NAPTIP) visited the Netherlands in the week of 13 July 2009 to start the cooperation project. The project provides a series of intensive training courses for both NAPTIP personnel and for personnel of a number of other Nigerian agencies involved. A Dutch delegation led by the Expertise Centre for Trafficking in human beings and Human Smuggling paid a study visit to Nigeria in October 2009. Following on this visit, a NAPTIP delegation paid a study visit to the Netherlands from 15 to 28 November 2009. From January 2010, intensive training sessions will be organised in Nigeria. Given the similarities between the British and Nigerian rule of law, the British Public Prosecution Service is also involved in some parts of the project.⁸⁶

4.10.2. Additional/Supplemental Developments

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

During the General Consultation with the Lower House of Parliament on trafficking in human beings in November 2008, it was announced that the time to think the matter over for victims or possible victims of trafficking in human beings who enter the Netherlands through Amsterdam Airport Schiphol will be extended. This was realised by decision of 14 April 2009. By this amendment, the victims or possible victims detected by the Royal Constabulary and in respect of whom there is sufficient indication of trafficking in human beings will be given a maximum period of rest of 3 months to think about whether or not to render cooperation or to report the offence to the police.⁸⁷

⁸⁴ The Rapporteur's main task is to report on the nature and extent of trafficking in human beings in the Netherlands, and on the effects of the anti-trafficking policy pursued. The reports contain information on relevant regulations and legislation, as well as information on prevention, criminal investigations regarding trafficking in human beings, prosecution of perpetrators, and victim support. They also contain policy recommendations aimed at improving the efforts to combat trafficking in human beings. (Derived from <http://english.bnrm.nl/> on 10 November 2009)

⁸⁵ Bureau of the Dutch National Rapporteur on Trafficking in Human Beings (2009). *Seventh Report of the Dutch National Rapporteur on Trafficking in Human Beings*. Derived from <http://english.bnrm.nl/> on 10 November 2009)

⁸⁶ Task Force to Combat Trafficking in human beings, Progress Report on State of Affairs, September 2009.

⁸⁷ Decision of the State Secretary for Justice of 14 April 2009, no. 2009/8 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* no. 78.

Two Reports: *Exploited and in the Nick!* and *The Human Being Protected and Trafficking Combated*

On 13 January 2009, Bonded labour in the Netherlands (BLinN) presented the report entitled *Uitgebuit en in de bak!* (Exploited and in the Nick).⁸⁸ BLinN's main conclusion is that the detection of victims in detention must be improved. BLinN also concluded that victims of trafficking in human beings should never be placed in a detention centre.

By letter of 29 April 2009, the Cabinet responded to the findings and recommendations made by BLinN.⁸⁹ In this letter, the Cabinet also responded to the recommendations included in the advice of 10 February 2009 of the Advisory Commission on Aliens Affairs (ACVZ) in its report *De mens beschermd en de handel bestreden* (The Human Being Protected and Trafficking Combated).⁹⁰

In its response to the BLinN's report, the Cabinet announced that this aspect had the Cabinet's continued attention, although it had taken many measures since 2005 to improve the detection of victims. The ACVZ recommended that the current link between the residence permit – and with that reception conditions and guidance – and reporting to the police should be abandoned. Broadly speaking, the Cabinet did not consider this desirable, partly in view of the criminal prosecution of the phenomenon of trafficking in human beings.

The Cabinet furthermore announced in its response that the actions to combat trafficking in human beings were a key objective of national policy. The Cabinet supported, among other things, the recommendation to assess whether trafficking in human beings was involved in a standard fashion before placing undocumented foreign nationals in a detention centre.

Criticism on SAT

The previous Annual Policy Report included a description of the pilot project with so-called Swift Action Teams in Nigeria. This method of operation received criticism in 2009.

'By deploying Swift Action Teams (SATs), the problem of trafficking in human beings is not tackled at the source. To the contrary, the only thing that is realised is that it is made more difficult for traffickers in human beings to let their victims travel through the Netherlands. This does not prevent minors from becoming victims of trafficking in human beings.'⁹¹ This is written by the organisation Defence for Children / ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) in a response of 31 March 2009 to ACVZ's advice *The Human Being Protected and Trafficking Combated*.

Defence for Children stated that the ACVZ is right to be critical of the effectiveness of the SAT pilot project. By deploying those Swift Action Teams in Nigeria, State Secretary for Justice, Albayrak, tries to prevent traffickers in human beings from bringing their victims to the Netherlands. With this, Defence for Children also responded to an interview of the State Secretary for Justice in NRC Handelsblad of 21 March 2009 about the victims of trafficking in human beings.⁹²

Karin Kloosterboer of UNICEF, together with Carla van Os and Theo Noten of Defence for Children, wrote a letter to the editor in response to Albayrak's statements in NRC Handelsblad.⁹³ In their letter they argued that they did not agree with the State Secretary's view that it is in the child's interest to return to the country of origin as quickly as possible. 'Research has shown that this view is too simple. In those cases, the victims are often exploited again, in a new line of business or through a different route. In addition, there is a risk that the child returns to the source of the problem: to the parents who 'sold' the child. There is no standard solution.'

⁸⁸http://www.humanistischverbond.nl/doc/actueel/uitgebuit_en_in_de_bak.pdf

⁸⁹ *Parliamentary Papers II* 2007/2009, 28 638, no. 41 (Letter).

⁹⁰ <http://www.acvz.org/publicaties/Advies-ACVZ-NR28-2009.pdf>

⁹¹ <http://www.defenceforchildren.nl/p/1/1578/mo45-mc52>

⁹² NRC Handelsblad, (2009, 21 March), *Bendes hinderen is niet lastig* (Obstructing Gangs Not Difficult).

⁹³ NRC Handelsblad, (2009, 28 March), *Albayraks onbegrijpelijke aanpak van mensenhandel* (Albayrak's Incomprehensible Approach to Trafficking of Human Beings).

4.11. Return

4.11.1. European Pact on Immigration and Asylum

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

Commitment II(b): Conclusion of readmission agreements at EU or bilateral level

The Netherlands does not only conclude return and readmission agreements at the European level, but also at the Benelux level. In the latter case, an implementation protocol is concluded simultaneously with the agreement that is an integrated part hereof. In the case that a return and readmission agreement is concluded at the European level, negotiations are subsequently conducted on an implementation protocol at the Benelux level. Implementation protocols were concluded with Albania and Russia. Negotiations are being held or will be initiated with Bosnia-Herzegovina, Macedonia, Moldavia, Montenegro, Ukraine, Pakistan, Serbia, and Sri Lanka. No implementation protocols were concluded with Hong Kong and Macau.⁹⁴

On 3 June 2009, the Agreement between the Benelux States and the Republic of Armenia on the readmission of unlawfully residing persons was signed in Brussels. A similar treaty was recently concluded with Macedonia (30 May 2006) and with Bosnia-Herzegovina (19 July 2006). In the meantime, these last two countries also concluded EU agreements.⁹⁵

Commitment II(f): Creation of incentive systems to assist voluntary return and to keep each other informed

The EMN report *Assisted Voluntary Return and Reintegration Programmes in the Netherlands of October 2009*⁹⁶ discussed this Commitment extensively.

This report, for instance, mentioned the fact that in addition to return facilities that have existed for a longer period of time, such as *Return and Emigration of Aliens from the Netherlands (REAN scheme)* and the Repatriation Act, which both provide a reimbursement for the travel and transport expenses and the payment of a specific amount of money, new programmes and projects have been established that may provide additional assistance to returnees. These projects are often aimed at specific target groups, such as unaccompanied minor foreign nationals, victims of trafficking in human beings, and people with health problems. There is an understanding that these groups (if necessary, in addition to an amount of money) often need other assistance to enable them to return, such as training, reception, or assistance in finding accommodation and employment. An example of such a return project is the IOM *Return Initiate Irregular Migrants (RIM) project*, which was continued in the *Assisted Voluntary Return-Native Counsellors (AVR-NC)*, in which project difficult target groups, such as illegal foreign nationals, homeless people and/or addicts are reached by working with native counsellors. In the Netherlands, many government and civic society organisations are active in the assisted voluntary return.

The above-mentioned EMN report furthermore mentioned the establishment of the *Platform for a Lasting Return*. This Platform – in which ten organisations want to set up a joint front office that refers clients to the organisation that provides the most effective help and coordination of return processes – has been established to create more uniformity in the different return initiatives. The State Secretary for Justice informed the Lower House of Parliament during general consultations on 2 April 2009⁹⁷ that she was examining how the projects of the *Platform for a Lasting Return* could be supported.

To stimulate migrants to make a clear choice for a future in the Netherlands for themselves and for their children the Cabinet however has plans to restrict the Repatriation Act.⁹⁸

⁹⁴European Migration Network (2009) *Assisted Voluntary Return and Reintegration Programmes in the Netherlands*. Rijswijk :IND Nationaal Contactpunt voor het Europees Migratie Netwerk

⁹⁵http://www.minbuza.nl/nl/Onderwerpen/Verdragen/Actueel/Nieuwsberichten_2009/ (consulted on 10 November 2009)

⁹⁶European Migration Network (2009) *Assisted Voluntary Return and Reintegration Programmes in the Netherlands*. Rijswijk :IND Nationaal Contactpunt voor het Europees Migratie Netwerk

⁹⁷*Parliamentary Papers II* 2008/2009, 19 637, no. 1266.

⁹⁸*Parliamentary Papers II* 2009/2010, 31 268 no. 25 (Letter with enclosures)

4.11.2. Additional/Supplemental Developments

The state of affairs concerning return

On 14 April 2009, the Cabinet reported to the Lower House of Parliament about the state of affairs concerning return-related measures.⁹⁹ In this letter, the Cabinet also responded to the annual report of the Commission for Comprehensive Supervision of Return (*Commissie Integraal Toezicht Terugkeer, CITT*).¹⁰⁰

According to the Cabinet, the subject of return must feature prominently in Aliens Policy. In its own words, it therefore invested in a Cabinet-wide approach to the problem of return and took new measures. It mentioned the further structuring and professionalisation of the Repatriation & Departure Service (*Dienst Terugkeer & Vertrek, DT&V*). According to the Cabinet, the investments at the strategic and operational level in the relationships with the major countries of origin also contribute to an increase in the effectiveness of return policy, all this in consultation with, in particular, the Ministers of Foreign Affairs and Development Cooperation.

The Cabinet was of the opinion that these investments paid off. The letter, for instance, mentioned an increase in the number of individuals that demonstrably departed from the Netherlands following the departure procedure of the DT&V. There was also an observable increase in the number of migrants that had independently departed from the Netherlands with the support of the International Organisation for Migration (IOM). It became evident from the letter that the Cabinet gave high priority to the departure of foreign nationals with criminal records.

The Cabinet committed itself to improve the possibilities to make foreign nationals return and it made commitments to this end in the following five areas:

- To reinforce the cooperation with the countries of origin in the area of return;
- To improve the cooperation with local authorities and civil society organisations in the area of return;
- To adopt a more effective approach to the individual foreign national to induce him or her to departure;
- To extend the possibilities of the cooperating organisations concerned to effectively work at realising the foreign national's return;
- To set a high priority for measures to deal with criminal foreign nationals.

Annual Report of the Commission for Comprehensive Supervision of Return

In its 2008 Annual Report mentioned above, the Commission for Comprehensive Supervision of Return (CITT) concluded that the recommendations of the CITT and the 2007 Royal Constabulary Deportations Supervisory Committee (*Commissie van Toezicht Uitzettingen KMar*) had been adopted and, where the recommendations were not – or not yet – adopted, it stated the reasons or promised a more detailed investigation by the responsible Cabinet members.

The CITT expressed its appreciation of the way in which the return process is substantiated at the implementation level. The CITT in particular respected the escorts of the Royal Netherlands Marechaussee, who must often perform their task under mentally stressful circumstances. On a few points, the implementation of the deportation process was lacking progress. This was evident, among other things, from the high number of flight cancellations, which cancellation may be made up to the day of departure.

Critical Report on Detention

The previous edition of the Annual Policy Report mentioned several critical reports on detention. A report that was not mentioned is the report of the Committee on civil liberties, justice and home affairs of the European Parliament. The Rapporteur was Simon Busutil.¹⁰¹

⁹⁹Parliamentary Papers II 2009/2008, 19 637, no. 1263 (Letter).

¹⁰⁰<http://www.commissieterugkeer.nl/>

¹⁰¹European Parliament, Committee on civil liberties, justice and home affairs. Extracted from http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/741/741496741496en.pdf on 19 January 2010.

The Cabinet responded to this report on 9 March 2009.¹⁰² In its response, the Cabinet remarked that the greater part of the conclusions and recommendations in the report are in line with the conclusions and recommendations from previous reports of Amnesty International and the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor de Strafrechtstoepassing en Jeugdbescherming, RSJ*). These reports and the Cabinet's responses were discussed in the 2008 Annual Policy Report.

In response to the critical comments in Busuttil's report on the conditions on the detention boats, the Cabinet stated that the boats in Rotterdam were no longer in use. In respect of the recommendation about separate detention facilities for women, the Cabinet remarked that a separate wing had been designated for the detention of women in the Zeist detention centre. The Schiphol detention centre also had separate accommodations. The Zestienhoven deportation centre also had a separate wing, according to the Cabinet.

Rapporteur Busuttil also made the recommendation that individuals must be considered minors and detained as minors as long as they have a dispute about their age with the authorities. In its response, the Cabinet let it be known that utmost restraint is exercised in the use of custodial orders in respect of minors. In cases of doubt about the minority of the person concerned, however, a custodial order may be imposed on the minor to be detained in border accommodations. This is necessary to prevent adult foreign nationals from gaining unlawful entry to Dutch territory by posing as minors.

4.12. External relations/global approach

In this section, attention is paid to the Dutch efforts in the area of integrating of the migration and development policies.

4.12.1. European Pact on Immigration and Asylum

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

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

There are no factual actions to be reported on in the area of this commitment.

Commitment V(b): Creation of opportunities for the legal immigration of the nationals of partner countries to the East and South of Europe

In relation to this Commitment, it may be noted that no separate opportunities for legal immigration are offered to nationals of partner countries to the East and South of Europe. They may, of course, take advantage of the general opportunities to migrate to Netherlands legally.

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

In respect of this Commitment, reference is made to section 3.1.1, and more in particular to Commitment III(f): Intensification of cooperation with the countries of origin and of transit in order to strengthen border control.

Commitment V(d): More effective integration of migration and development policies

On 4 July 2008, the Cabinet presented the memorandum *International Migration and Development* to the Lower House of Parliament.¹⁰³

This policy memorandum announced, among other things, the launch of a pilot project on circular migration. By letter of 20 November 2009, the Minister of Foreign Affairs informed the Lower House of Parliament of the progress made in this pilot project.¹⁰⁴

¹⁰² *Parliamentary Papers II* 2007/2009, 29 344, no. 71 (Letter).

¹⁰³ *Parliamentary Papers II* 2007/2008, 30 573, no. 11 (Letter)

For the purpose of this pilot project, a small group of labour migrants trained at secondary educational level will come from Indonesia and South Africa (a maximum of 80 persons from each country) to work and learn ('learning on the job') in the Netherlands for a maximum period of two years. The migrants will perform regular labour in occupations in respect of which there are currently shortages on the Dutch labour market.

According to the Cabinet, return is essential for the success of the pilot project. Core element in the approach to return and reintegration is the development of new competencies and skills which circular migrants cannot learn in their countries of origin and which they can convert into cash upon return. In addition, there is support from the homeland in the form of a broad and workable economic and social network, in combination with investment possibilities, training, and reintegration support (employment mediation or assistance in setting up a business of one's own).

With the work experience gained in the Netherlands, the migrants may improve their professional position or start a business of their own upon return, and in this way they contribute to a sustainable development of their country of origin. The long-term strength will be in combating poverty by building up capacity and preventing brain drain.

The memorandum *International Migration and Development* also stated that, since 2004, the Netherlands has supported organisations which carry out projects in the area of outsourcing migrants to the developing country they originally came from on a temporary basis by granting subsidies. An example of a project that has been carried out for some time is the MIDA Ghana Health Project. This Project enables Ghanaians in the Netherlands and other EU countries, who work in the healthcare sector, to transfer their skills, knowledge and other forms of capital to the Ghanaian healthcare sector by means of temporary return programmes. In addition, Ghanaians are given the opportunity to follow training programmes in the Netherlands.

The Cabinet considers the promotion of circular migration as a tool to implement the strengthening of the positive contribution of migrants and migration to development. In addition, it is a tool to broaden the migration cooperation with other countries. By means of these two forms of circular migration, temporary labour migration to the Netherlands and temporary outsourcing from the Netherlands to the country of origin, brain gain may be promoted.

Commitment V(e): Promotion of co-development actions and support instrument for transferring migrants' remittances

An example to provide support to instruments that promote the transfer of savings of migrants is the introduction of the website <http://www.geldnaarhuis.nl/english/home.aspx>. On this website of the IntEnt foundation, migrants can compare which financial institution is most favourable when they wish to transfer money to their homeland. The purpose of this website is to provide transparency in the costs and possibilities for private money transfers abroad, (remittances). Initially the site provided details about six countries; 28 countries were added in 2009, including Afghanistan, Iraq, Romania, Cape Verde, and China. As a result of this, the site currently addresses the majority of the migrants in the Netherlands. The website is supported by the Ministry of Foreign Affairs. Increased transparency means that more competition may arise as a result of which the costs could be reduced and more money would arrive at the place of destination.¹⁰⁵

¹⁰⁴ *Parliamentary Papers II* 2009/2010, 30 573, no. 52 (Letter)

¹⁰⁵ http://www.geldnaarhuis.nl/pages/page_nieuwsbericht.aspx (consulted on 16 November 2009)

4.13. Other Policy Areas and Topics

New procedure for TB test

By decision of 20 January 2009, the TB test procedure has been adjusted.¹⁰⁶ In the old situation, the permit could not be granted until the foreign national had undergone the TB test and the IND had received the original TB declaration. This procedure delayed the issue of the residence permit. The new procedure makes it possible to already issue the residence permit on the basis of the foreign national's preparedness to undergo a medical examination, which is evidenced by a declaration to this end on the TB form. The residence permit is, of course, not issued until it is evident that the other applicable conditions have also been fulfilled.

¹⁰⁶ Decision of the State Secretary for Justice of 12 February 2009, no. 2009/3 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* no 29.

5. Implementation of European Legislation

This chapter outlines the developments that have taken place in Dutch legislation and regulations as a result of the implementation of European legislation within the reference period.

5.1. Progress in Implementation

Early in 2009, all Directives that had to be implemented were actually implemented. In respect of a number of more recent Directives, preparations for implementation were started.

5.1.1. Immigration

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

- Ultimate implementation date: 24 December 2010 (In respect of article 13(4): 24 December 2011)/
- Status: Bill under preparation¹⁰⁷

A bill implementing this Directive is under preparation.

Council Directive 2009/50/EC of 25 May 2009 on a specific procedure for admitting third-country nationals for the purpose of scientific research (OJEU 155, L 17/15)

- Ultimate implementation date: 19 June 2011.

A bill implementing this Directive has not yet been announced. The implementation of the Directive has, however, been anticipated in the bill amending the Aliens Act 2000 and several other Acts to strengthen the position of the sponsor in regular Aliens Law and to accelerate the procedure under Aliens Law (Modern Migration Policy Act) – discussed above in Section 3.4.¹⁰⁸

In addition, the proposed decision period in the bill amending the Aliens Act 2000 in connection with the national visa and several other subjects has been changed from three months to 90 days, in line with the decision period in the Directive.¹⁰⁹

Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ EU L348/24)

- Ultimate implementation date: 20 July 2011
- Status: Bill under preparation¹¹⁰

A Bill to implement this Directive is under preparation.

5.1.2. Schengen/Sis

Switzerland and Schengen

As from 12 December 2008, Switzerland has applied the Schengen acquis as a result of which the border controls with other Schengen countries have been lifted. In addition to this, Regulation 343/2003

¹⁰⁷ *Parliamentary Papers II* 2009/10, 21 109, no 3 (Letter).

¹⁰⁸ *Parliamentary Papers II* 2009/10, 32 052, no 3 (Explanatory Memorandum).

¹⁰⁹ *Parliamentary Papers II* 2009/10, 31 549, no 7 (Second memorandum of alterations).

¹¹⁰ *Parliamentary Papers II* 2009/10, 32 144, no 1 (Letter).

(successor to the Dublin Agreements) also became effective in Switzerland on 12 December 2008. As from 29 March 2009, the border controls for air traffic with Switzerland have also been lifted.

This has resulted in an amendment of the Aliens Act Implementation Guidelines 2000 on 28 January 2009.¹¹¹

5.2. Experiences with Implementation

By now, much experience has been gained by means of the European legislation that has already been implemented. In 2008, several issues regarding European conventions and legislation on migration and asylum received particular attention.

Directive No 2004/83/EC of the Council of 29 April 2004 on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJEU 2004, L 304/12).

Directive 2004/83/EC (hereinafter the 'Qualification Directive') was implemented on 25 April 2008. The Directive includes criteria that must be fulfilled to be in a position to refuse the extension of a residence permit pursuant to Section 29(1) under (a) or (b) of the Aliens Act 2000 or to revoke a residence permit granted pursuant to one of these grounds for admission. On the basis of this Directive, a Convention refugee may be refused an asylum residence permit if he or she has been convicted without appeal of a particularly serious crime *and* he or she constitutes a danger to the community. For the same reason, an asylum residence permit that has already been granted to a Convention refugee may be revoked. It concerns an optional provision, which consequently leaves room for individual assessment.

With respect to a foreign national who runs a real risk of being treated within the meaning of Section 29(1)(b) of the Aliens Act 2000 upon return, it applies that – insofar as currently of importance – the residence permit must be refused if there are serious reasons to suspect that the foreign national has committed a serious crime. For the same reason, a residence permit that has already been granted to a foreign national must be revoked. In this case, it concerns a mandatory provision, which consequently does not leave any room for individual assessment.

For the purpose of implementation practice, the qualifications 'particularly serious crime' and 'serious crime' used in the Directive were specified in further detail. This was effected by means of a decision of the State Secretary for Justice of 2 March 2009 amending the Aliens Act Implementation Guidelines 2000.¹¹²

According to this decision, a particularly serious crime is involved if

- the foreign national has been sentenced to imprisonment by final judgement or has received a custodial measure;
- the unconditional part of the sentences or measures to be enforced is at least 24 months; and
- at least one of the sentences is related to a crime which in nature constitutes a danger to the community, such as crimes related to drugs, sex and violence; arson; trafficking in human beings; trafficking in arms, ammunition, and explosives; and trafficking in human organs and tissues.

A serious crime is involved if

- the foreign national has been sentenced to imprisonment or has received a custodial measure;
- the unconditional part of the sentences or measures to be enforced is at least 18 months; and
- at least one of the sentences is related to a crime which in nature constitutes a danger to the community, such as crimes related to drugs, sex and violence; arson; trafficking in human beings; trafficking in arms, ammunition, and explosives; and trafficking in human organs and tissues.

¹¹¹ Decision of the State Secretary for Justice of 28 January 2009, no 2009/4 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* no 2256.

¹¹² Decision of the State Secretary for Justice of 2 March 2009, no 2009/5 amending the Aliens Act Implementation Guidelines 2000, *Government Gazette* no 57.

Article 15(c) of the Directive

In the previous edition of this Annual Policy Report, due attention was paid to the discussion in the Netherlands about the scope of Article 15 of the Directive. The core question in this context was whether Article 15(c) of the Directive was intended to provide additional protection to foreign nationals compared to the already existing protection pursuant to Article 3 of the ECHR. This would give the Directive a new ground for granting a residence permit, and it would consequently have a wider scope than Section 29(1)(b) of the Dutch Aliens Act.

On 17 February 2009, the Court of Justice of the European Communities (hereinafter 'the Court') rendered a judgement – in the proceedings of Mr and Mrs Elgafaji versus the State Secretary for Justice – for a preliminary ruling from the Dutch Council of State.¹¹³ The Court observed, *inter alia*, that Article 15(b) of the Directive corresponds, in essence, to Article 3 of the ECHR, that the content of Article 15(c) of the Directive is different from that of Article 3 of the ECHR, and that the interpretation must, therefore, be carried out independently, although with due regard for fundamental rights, as they are guaranteed under the ECHR. The Court furthermore observed that the interpretation of Article 15(c) of the Directive may create its own scope.

On 25 May 2009, the Administrative Jurisdiction Division of the Council of State (hereinafter 'the Division') rendered a decision in the individual case that was the basis of the Court judgement.¹¹⁴ One of grounds is that, according to the interpretation given in the Court's judgement of 17 February 2009, the substantive scope of Article 15(c) of the Qualification Directive is not broader than that of Article 3 of the ECHR. According to the Division, Article 29(1)(b) of the Aliens Act consequently already deals with the protection that Article 15(c) of the Qualification Directive seeks to provide.

It was, nevertheless, suggested by a Bill published on 8 July 2009 to implement 15(a) and (c) of the Qualification Directive by incorporating these paragraphs in the Aliens Act 2000. In the light of the observations in the Court judgement, the implementation chosen at the level of the Aliens Decree 2000 in explanation of the existing ground for assessment in Article 29(1)(b) of the Aliens Act is less appropriate. It was emphasised again that the manner of implementation currently proposed is by no means a substantive amendment. In situations as referred to in Article 15(a) and (c) of the Directive, it is currently also possible to grant a temporary asylum residence permit.¹¹⁵

Dublin: Transfer of Asylum Seekers to Greece

The previous edition of the Annual Policy Report already included a detailed discussion of the debate on the transfer of asylum seekers from the Netherlands to Greece in the context of the Dublin II Regulation. In 2009 as well, the Parliament paid due attention to this issue, among other things, as a result of a number of decisions of the European Court of Human Rights (ECHR). In 2009, the ECHR imposed interim measures on the Netherlands in several individual cases suspending the transfer of the asylum seekers 'until further notice'. The Cabinet continues to hold the view that suspension of the transfers to Greece is not under discussion, particularly because the ECHR also rejected the request for interim measures in several cases.¹¹⁶

Family Reunification: the use of Community Law by family migrants from third countries (the Europe route)

In a letter to the Lower House of Parliament in December 2009, the State Secretary for Justice published the results of a study into the use of Community Law by family migrants from third countries.¹¹⁷ The study had been conducted by the Research and Documentation Centre (WODC) of the Ministry of

¹¹³ Administrative Jurisdiction Division of the Council of State, 12 October 2007, no 200702174/1.

¹¹⁴ The representation of this Division Decision is based on its analysis in the letter from State Secretary for Justice to the Lower House of Parliament of 29 June 2009 (Lower House of Parliament, session year 220/2009, 19 637, no. 1292).

¹¹⁵ Explanatory Memorandum to the Bill amending the Aliens Act 2000 to amend the asylum procedure, published on 8 July 2009 (Lower House of Parliament, session year 2008-2009, 31 994, no 2).

¹¹⁶ *Parliamentary Questions II* 2008/09, no 3129 (Answer).

¹¹⁷ *Parliamentary Papers II* 2009/2010, 32 175, no 6 (Letter).

Justice and the IND.¹¹⁸ The study revealed that in three quarters of the cases, family migration on the basis of Community Law concerned citizens of another Member States residing in the Netherlands (in particular Germans, Englishmen, and Portuguese). The use of Community Law for family migration purposes strongly increased in the period from 2005 up to and including 2008. Although the report did not include any firm conclusions about the frequency of the abuse of Community Law, the study did indicate that this might be the case in a number of instances, and in particular with sponsors from other EU Member States. Indications in this context are the striking combinations of nationalities that occurred relatively frequently; the relatively short duration of the relationship prior to the submitting the application; and the fact that several procedures had been gone through prior to submitting the application.

In response to the results of this report, the State Secretary for Justice announced a number of measures in her letter. Applications for verification against Community Law will, for instance, be subjected to investigations into sham relationships more frequently. In January 2009, it had already been established policy that in respect of non-nuptial relationships of EU nationals, it no longer sufficed to accompany an application for verification against Community Law by a written statement that it concerned a permanent relationship. The relationship will be considered permanent if the partners have cohabited for a period of at least six months or if a child has been born from this relationship. In addition to this, the package of measures included improved registration and stricter control of the relationships if consular marriages were concerned.¹¹⁹ The State Secretary also emphasised the importance of cooperation with other European Member States for making agreements at the European level about registration and notification of the use of the Europe route.

¹¹⁸Schreijenberg, A., Klaver, J.F.I., Soethout, J. E., Lodder, G.G., and Vleugel, M.J. (2009) *Gemeenschapsrecht en gezinsmigratie – Het gebruik van gemeenschapsrecht door gezinsmigranten uit derde landen* (Community Law and Family Migration – The use of Community Law by family migrants from third countries). Amsterdam/The Hague: WODC; Regional Plan Policy Research; Institute of Immigration, Leiden University; IND Information and Analysis Centre (INDIAC).

¹¹⁹A consular marriage is a marriage that is contracted at an embassy or a consulate of the country of origin of either spouse, with neither of the spouses having Dutch or dual nationality.

Appendix I: Methodology, terms, and definitions

Information about the development of legislation and regulations and about parliamentary debates originates from official sources. For this purpose, 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 of legislation and regulations in the Treaty Series, the Dutch Bulletin of Acts and Decrees, and the Dutch Government Gazette.

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

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

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

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

Criteria for the Importance of Amendments to Legislation and Regulations

In its Annual Policy Report, the INDIAC aims at giving the most complete overview possible of the amendments or proposed amendments to legislation and regulations in the different policy areas discussed in this report. All amendments, whether intended or implemented, that actually imply a substantive modification of this legislation and regulations are included in the report. Only minimal amendments are left out (e.g. the annual increase in certain income requirements).

Criteria for the Importance of Political and Social Debates

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

The 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 covered the matter.

Implementation of European Legislation

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

Appendix II: Overview of Implementations of EU Directives

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

EU legislation	Corresponding national legislation and regulations (status)
<p>Directive 2001/51/EC (Schengen Implementation Agreement)</p>	<p><i>Ultimate implementation date: 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>Act of 13 May 2004 to bring the Aliens Act 2000 in line with Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.</i>
<p>Directive 2001/55/EC (Temporary protection of displaced persons)</p>	<p><i>Ultimate implementation date: 31 December 2002</i> <i>Status: implemented on 15 February 2005</i> <i>Aliens Act 2000, the Aliens Decree 2000, and Aliens Act Implementation Guidelines 2000</i></p> <ul style="list-style-type: none"> – <i>Act of 16 December 2004 amending the Aliens Act 2000 to implement Council Directive No 2001/55/EC of 20 July 2001 on minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJEU L 212), Dutch Bulletin of Acts and Decrees 2004, 691.</i> – <i>Decision of 12 January 2005 to amend the Aliens Decree 2000 for the purpose of implementing Directive No 2001/55/EC, Dutch Bulletin of Acts and Decrees 2005, 25.</i> – <i>Regulation of the Minister for Alien Affairs and Integration of 24 February 2005 amending the Regulations on Aliens 2000 (thirty second amendment), Dutch Government Gazette 53, p. 17.</i>
<p>Directive 2003/9/EC (Reception of asylum seekers)</p>	<p><i>Ultimate implementation date: 6 February 2005</i> <i>Status: implemented on 3 February 2005</i> <i>Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2000 (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005)</i></p> <ul style="list-style-type: none"> – <i>Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2005, Dutch Government Gazette 2005 24, p. 17.</i>
<p>Directive 2003/86/EC (Family reunification)</p>	<p><i>Ultimate implementation date: 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 of 29 September 2004 to amend Aliens Decree 2000 in connection with the implementation of Directive 2003/86/EC, Dutch Bulletin of Acts and Decrees 2004, 496.</i>
<p>Directive 2003/109/EC (Third-country nationals who are long-term residents)</p>	<p><i>Ultimate implementation date: 23 January 2006.</i> <i>Status: implemented on 1 December 2006.</i> <i>Aliens Act 2000, Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, Aliens Employment Act Implementation Regulations (Uitvoeringsregels Wet arbeid vreemdelingen), and the Netherlands Nationality Act Application Manual.</i></p> <ul style="list-style-type: none"> – <i>Act of 23 November 2006 amending the Aliens Act 2000 for the purpose of implementing Council Directive No 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 2004, L16). Dutch Bulletin of Acts and Decrees 2006, 584.</i> – <i>Decision of 23 November 2006 to amend the Aliens Decree 2000 in connection with the implementation of Directive No 2003/109/EC, Dutch Bulletin of Acts and Decrees 2006, 585.</i> – <i>Regulation of the Ministry of Justice of 7 January 2007 amending the Regulations on Aliens 2000 (fifty-sixth amendment) Dutch Government Gazette 11, p. 6.</i> – <i>Decision of the State Secretary for Justice of 16 April 2007, no 2007/04 amending the Aliens Act Implementation Guidelines 2000, Government Gazette no 78, p. 11.</i> – <i>Regulation of the State Secretary for Social Affairs and Employment of 21 December 2006, Labour Market Department amending the Aliens Employment Act Implementation Regulations relevant to the Aliens Employment Act Delegation and Implementation Decree, Dutch Government Gazette 1, p. 10.</i>

	<ul style="list-style-type: none"> – <i>Nationalities Interim Communication (Tussentijds Bericht Nationaliteiten, TBN 2007/5) of the Ministry of Justice, Dutch Government Gazette 67, p. 7.</i>
Directive 2003/110/EC (Removal by air)	<p><i>Ultimate implementation date: 6 December 2005</i> <i>Status: implemented on 22 December 2005</i> <i>Aliens Act Implementation Guidelines 2000</i></p> <ul style="list-style-type: none"> – <i>Decision of the Ministry of Justice of 08 December 2005, no 2005/59 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 247, p. 35.</i>
Directive 2004/38/EC (Free movement of EU citizens and their family members)	<p><i>Ultimate implementation date: 30 April 2006</i> <i>Status: implemented on 29 April 2006</i> <i>Work and Social Assistance Act (Wet werk en bijstand), Student Finance Act 2000 (Wet studiefinanciering 2000), Fees and Educational Expenses (Allowances) Act (Wet tegemoetkoming onderwijsbijdrage en schoolkosten), Aliens Act 2000, Aliens Decree 2000, and the Netherlands Nationality Act Application Manual</i></p> <ul style="list-style-type: none"> – <i>Act of 7 July 2006 amending the Work and Social Assistance Act, the Student Finance Act 2000, the Fees and Educational Expenses (Allowances) Act, and the Aliens Act 2000 in connection with the coming into effect of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, as well as the approval of a reservation associated with the European Treaty on social and medical assistance, Dutch Bulletin of Acts and Decrees 2006, 373.</i> – <i>Decision of 24 April 2006 to amend the Aliens Decree 2000 in connection with the implementation of Directive 2004/38/EC, Dutch Bulletin of Acts and Decrees 2006, 215.</i> – <i>Nationalities Interim Communication (TBN 2006/3), Dutch Government Gazette 109, p. 25.</i>
Directive 2004/81/EC (Human trafficking)	<p><i>Ultimate implementation date: 6 August 2006</i> <i>Status: implemented on 1 February 2006</i> <i>No amendments to legislation and regulations</i></p>
Directive 2004/82/EC (Passenger data)	<p><i>Ultimate implementation date: 5 September 2006</i> <i>Status: implemented on 1 September 2007</i> <i>Aliens Act 2000, Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, and Aliens Act Implementation Guidelines 2000</i></p> <ul style="list-style-type: none"> – <i>Act of 9 July 2007 to bring the Aliens Act 2000 in line with Council Directive No 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJEU L 261), Dutch Bulletin of Acts and Decrees 2007, 252.</i> – <i>Decision of 27 July 2007 to bring the Aliens Decree 2000 in line with Directive No 2004/82/EC, Dutch Bulletin of Acts and Decrees 2004, 283.</i> – <i>Regulation of the Ministry of Justice of 16 August 2007 amending the Aliens Act Implementation Guidelines 2000 (sixty-fifth amendment) Dutch Government Gazette 163, p. 9.</i> – <i>Decision of the State Secretary for Justice of 25 September 2007, no 2007/27 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 194, p. 10.</i>
Directive 2004/83/EC (Qualification Directive)	<p><i>Ultimate implementation date: 10 October 2006.</i> <i>Status: implemented on 25 April 2008.</i></p> <ul style="list-style-type: none"> – <i>Act of 3 April 2008 amending the Aliens Act 2000 to implement Council Directive No 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJEU L 304) Dutch Bulletin of Acts and Decrees 2008, p. 115.</i> – <i>Decision of 9 April 2008 to amend the Aliens Decree 2000 and the Youth Care Act Implementation Decree to implement Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJEU L 304), Dutch Bulletin of Acts and Decrees 2008, 116.</i> – <i>Regulation of the State Secretary for Justice of 8 May 2008 amending the Regulations on Aliens 2000 (eightieth amendment), Government Gazette no 97, p. 16.</i> – <i>Decision of the State Secretary for Justice of 10 November 2008, no 2008/27 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 728.</i>

Directive 2004/114/EC (Student Directive)	<p><i>Ultimate implementation date: 12 January 2007</i> <i>Status: implemented on 11 November 2006</i> <i>Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, and the Aliens Act Implementation Guidelines 2000.</i></p> <ul style="list-style-type: none"> – <i>Decision of 2 October 2006 to amend the Aliens Decree 2000 to implement Directive No 2004/114/EC, Dutch Bulletin of Acts and Decrees 2006, 458.</i> – <i>Decision of the Minister for Alien Affairs and Integration of 26 April 2006 amending the Regulations on Aliens 2000 (forty-sixth amendment), Dutch Government Gazette 84, p. 15.</i> – <i>Decision of the Ministry of Justice of 3 January 2007, no 2007/01 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette 38, p. 7.</i>
Directive 2005/71/EC (Research Directive)	<p><i>Ultimate implementation date: 12 October 2007.</i> <i>Status: implemented on 12 October 2007.</i> <i>Aliens Decree 2000, Aliens Employment Act Implementation Decree, Civic Integration Decree, Aliens Act Implementation Guidelines 2000, and the Aliens Act Implementation Guidelines 2000.</i></p> <ul style="list-style-type: none"> – <i>Decision of 26 September 2007 to amend the Aliens Decree 2000, the Aliens Employment Act Implementation Decree, and the Civic Integration Decree in connection with the implementation of Directive No 2005/71/EC, Dutch Bulletin of Acts and Decrees 2007, 366.</i> – <i>Regulation of the State Secretary for Justice of 16 October 2007 amending the Regulations on Aliens 2000 (seventy-first amendment), Dutch Government Gazette 202, p. 24.</i> – <i>Decision of the State Secretary for Justice of 21 January 2008, no 2008/07 amending the Aliens Act Implementation Guidelines 2000, Government Gazette no 21, p. 9.</i>
Directive 2005/85/EC (Refugee status)	<p><i>Ultimate implementation date: 1 December 2007.</i> <i>Status: implemented on 19 December 2007.</i> <i>Aliens Act 2000, Aliens Decree 2000, Aliens Act Implementation Guidelines 2000, and the Aliens Act Implementation Guidelines 2000.</i></p> <ul style="list-style-type: none"> – <i>Act of 15 November 2007 amending the Aliens Act 2000 to implement Council Directive No 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (OJEU L 32), Dutch Bulletin of Acts and Decrees 2007, 450.</i> – <i>Decision of 29 November 2007 to bring the Aliens Decree 2000 in line with Directive No 2005/85/EC, Dutch Bulletin of Acts and Decrees 2007, 484.</i> – <i>Regulation of the State Secretary for Justice of 7 December 2007 amending the Regulations on Aliens 2000 (seventy-third amendment), Dutch Government Gazette 240, p. 9.</i> – <i>Decision of the State Secretary for Justice of 7 December 2007, no 2007/38 amending the Aliens Act Implementation Guidelines 2000, Government Gazette no 240, p. 10.</i>
Directive 2008/115/EC (Human trafficking)	<p><i>Ultimate implementation date: 24 December 2010. In respect of article 13(4): 24 December 2011</i> <i>Status: Bill under preparation¹²⁰</i></p>
Directive 2009/50/EC (Blue Card)	<p><i>Ultimate implementation date: 19 June 2011</i> <i>Status: Bill under preparation</i></p>
Directive 2009/52/EC (Combating illegal labour)	<p><i>Ultimate implementation date: 20 July 2011</i></p>

¹²⁰ Parliamentary Papers II 2009/10, 21 109, no 3 (Letter).

Bibliography

- Advisory Commission on Aliens Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) (2006) *Categoriaal beschermingsbeleid, een 'noodzaak'* (The Policy of Categorical Protection: a Necessity). The Hague: also to be consulted at www.acvz.org
- ACVZ. (2009) *Briefadvies: Vervolgstudie categoriaal beschermingsbeleid* (Advisory letter: Follow-up survey into the policy of protection for certain categories). Extracted from www.vluchtelingenwerk.nl on 10 February 2010.
- Health and Safety Inspectorate. Ministry of Social Affairs and Employment. Jaarverslag Arbeidsinspectie 2008 (Health and Safety Inspectorate Annual Report 2008). *Veilig, gezond en legaal aan het werk* (Working safely, healthy, and legally).
- Boom, J. de, et al (2008) *Oost-Europeaanen in Nederland; een verkenning van de maatschappelijke positie van migranten uit Oost-Europa en voormalig Joegoslavië* (East Europeans in the Netherlands; an exploration into the social position of migrants from Eastern Europe and from Yugoslavia). Rotterdam Risbo.
- Bureau of the National Rapporteur on Trafficking in Human Beings (Bureau Nationaal Rapporteur Mensenhandel) (2009). *Zevende Rapportage Nationaal Rapporteur Mensenhandel* (Seventh report of the Dutch National Rapporteur on Trafficking in Human Beings). Extracted from www.bnrm.nl on 10 November 2009.
- The National ombudsman. (2007) *Factsheet individuele ambtsberichten in asielzaken* (Fact Sheet on Individual Official Country Reports in Asylum Cases). Extracted from www.ombudsman.nl on 2 March 2007.
- European Migration Network (August 2009) *Annual Policy Report 2008*. Rijswijk: (IND), National Contact Point for the European Migration Network.
- EMN (2009) *Gefaciliteerde terugkeer- en herintegratieprogramma's in Nederland* (Facilitated Return and Reintegration Programmes in the Netherlands). Rijswijk: IND, National Contact Point for the European Migration Network.
- European Parliament, Committee on civil liberties, justice and home affairs. Extracted from http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/741/741496 on 19 January 2010.
- General Directors Immigration Services Conference (GDISC). *Progress report on the GDISC Pilot Project on Particular Pressures*. Extracted from www.gdisc.org on 8 February 2010.
- IND (2009) *Residence Wizard*. Extracted from <http://www.ind.nl/EN/verblijfwijzer/> on 16 November 2009.
- Ministry of General Affairs. (2007) *Samen werken, samen leven: Beleidsprogramma Kabinet Balkenende IV 2007-2011* (Working together, living together: Policy programme of Balkenende Cabinet IV 2007-2011), The Hague: Ministry of General Affairs.
- Ministry of Justice (2007) *Wat doet Justitie: Taken*. (What does the Ministry of Justice do: Tasks). Extracted from www.justitie.nl on 12 April 2007.
- Ministry of Foreign Affairs. *Verdragen* (Treaties). Extracted from http://www.minbuza.nl/nl/Onderwerpen/Verdragen/Actueel/Nieuwsberichten_2009 on 10 May 2009.
- Nicolaas, H., 2009, *Bevolkingsprognose 2008–2050: veronderstellingen over immigratie* (Population Forecast 2008-2050: Assumptions on Immigration). *Bevolkingstrends* (Population Trends) 57(1), pp. 23–33.
- NRC Handelsblad. (2009, 22 July), *Allochtoon is voor PVV een kostenpost; Fritsma: Wat kost immigratie?* (Persons of foreign heritage are cost item for PVV; Fritsma: What does immigration cost?)
- NRC Handelsblad, 12 December 2009, *Jonge asielzoeker snel naar huis; Zekerheid over goede opvang in eigen land van herkomst moeilijk te krijgen*. (Young asylum seeker returned home quickly; Certainty over good reception in country of origin difficult to obtain).
- NRC Handelsblad, (2009, 21 March), *Bendes hinderen is niet lastig* (Obstructing Gangs Not Difficult).
- NRC Handelsblad, (2009, 28 March), *Albayraks onbegrijpelijke aanpak van mensenhandel* (Albayrak's Incomprehensible Approach to Trafficking of Human Beings).
- Public Prosecution Service (2009) Task Force Aanpak Mensenhandel (Measures Combating Human Trafficking Task Force). *Voortgangsrapportage stand van zaken september 2009* (Progress Report on

- the State of Affairs September 2009). Extracted from www.om.nl/publish/pages/103119/rapport_mensenhandel.pdf on 10 November 2009.
- Council of Europe Commissioner for Human Rights (2009), *Report by the Commissioner for Human Rights, Mr Thomas Hammarberg on his visit to the Netherlands*. Also to be consulted through <https://wcd.coe.int/>
- Netherlands Government Information Service (NGIS) (Rijksvoorlichtingendienst, RVD). (2007) *Begrippenlijst* (Glossary): *Ministeries* (departementen) (Ministries). Extracted from www.regering.nl/Begrippenlijst/M/Ministeries_departementen on 8 November 2007
- RVD. (2007) Kabinet Balkenende IV: *Portefeuilleverdeling* (Balkenende IV Cabinet: Allocation of Portfolios) Extracted from www.regering.nl on 8 November 2007.
- Schreijenberg, A., Klaver, J.F.I., Soethout, J. E., Lodder, G.G., and Vleugel, M.J. (2009) *Gemeenschapsrecht en gezinsmigratie – Het gebruik van gemeenschapsrecht door gezinsmigranten uit derde landen* (Community Law and Family Migration – The use of Community Law by family migrants from third countries). Amsterdam/The Hague: WODC; Regional Plan Policy Research; Institute of Immigration, Leiden University; IND Information and Analysis Centre (INDIAC).
- Sociaal en Cultureel Planbureau (Social and Cultural Planning Office). (2009) *Jaarrapport Integratie 2009* (2009 Annual Integration Report). The Hague: Social and Cultural Planning Office.
- Trouw. (2009, 23 July) *PVV-voorstel stuit op veel principieel verzet; Kostenbatenanalyse allochtonen 'schaadt solidariteit'* (PVV's proposal met with much opposition; Cost-benefit analysis of persons of foreign heritage 'damages solidarity')
- United Nations, Human Rights Committee (2009). *Consideration of reports submitted by states parties under article 40 of the covenant*. Also to be consulted through <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.NLD.CO.4.pdf>
- The Dutch Council for Refugees (VluchtelingenWerk Nederland). (2009) *Integratiebarometer 2009* (Integration Barometer 2009). Amsterdam: Dutch Council for Refugees.
- The Dutch Council for Refugees (2009) *Bescherming kinderen gaat voor terugkeer* (Protection of children has priority over return). Extracted from www.vluchtelingenwerk.nl. on 9 February 2010.
- The Dutch Council for Refugees (2009) *Afschaffing categoriaal beschermingsbeleid onverantwoord* (Abolition of policy of protection for certain categories irresponsible). Extracted from www.vluchtelingenwerk.nl. on 9 February 2010.
- Weltevrede, A.M., J. de Boom, S. Rezai, L. Zuiderwijk, G. Enbersen (2009) *Arbeidsmigranten uit Midden- en Oost-Europa; een profielschets van recente arbeidsmigranten uit de MOE-landen* (Labour Migrants from Central and Eastern Europe; A profile of recent labour migrants from CEE countries). Rotterdam: Risbo.

Case Law

- ECHR, 11 January 2007, no. 1948/04 (Salah Sheekh/Netherlands).

Parliamentary Papers of the Lower House of Parliament

- Parliamentary Papers II 2005/2006, 30 315, nos.1-2
- Parliamentary Papers II 2006/2007, 29 544, no 99 (Letter).
- Parliamentary Papers II 2006/2007, 30 891, no 7 (Letter).
- Parliamentary Papers II 2007/2008, 19 637, no 1217 (Letter).
- Parliamentary Papers II 2007/2008, 29 544, no 149 (Letter).
- Parliamentary Papers II 2007/2008, 30 573, no 11 (Letter).
- Parliamentary Papers II 2007/2008, 31 268, no 8 (Letter with enclosure).
- Parliamentary Papers II 2008/2009, 19 637, no 1260 (Letter).
- Parliamentary Papers II 2008/2009, 19 637, no 1263 (Letter).
- Parliamentary Papers II 2008/2009, 19 637, no 1266.
- Parliamentary Papers II 2008/2009, 26 695, no 61 (Letter with enclosures).
- Parliamentary Papers II 2008/2009, 28 638, no 41 (Letter).
- Parliamentary Papers II 2008/2009, 28 719, no 60 (Letter with enclosures).
- Parliamentary Papers II 2008/2009, 29 344, no 71 (Letter).
- Parliamentary Papers II 2008/2009, 29 544, no 149 and 189 (Letter with enclosures).
- Parliamentary Papers II 2008/2009, 30 315, no 8 (Letter with enclosures).
- Parliamentary Papers II 2008/2009, 30 573, no 43 (Letter with enclosures).
- Parliamentary Papers II 2008/2009, 30 573, no 45 (Letter).
- Parliamentary Papers II 2008/2009, 31 143, no 38 (Letter).

- Parliamentary Papers II 2008/2009, 31 143, no 67.
- Parliamentary Papers II 2008/2009, 31 268, no 13 (Letter with enclosures).
- Parliamentary Papers II 2008/2009, 31 475, no A6 (Letter with enclosures).
- Parliamentary Papers II 2008/2009, 31 700 V, no 95 (Letter).
- Parliamentary Papers II 2009/2010, 19 637, no 1314 (Letter).
- Parliamentary Papers II 2009/2010, 21 109, no 3 (Letter).
- Parliamentary Papers II 2009/2010, 26 283, no 52 (Letter and enclosures).
- Parliamentary Papers II 2009/2010, 27 062, no 64 (Letter).
- Parliamentary Papers II 2009/2010, 29 407, no 103 (Letter).
- Parliamentary Papers II 2009/2010, 30 573, no 52 (Letter).
- Parliamentary Papers II 2009/2010, 30 846, no 16 (Letter and enclosures).
- Parliamentary Papers II 2009/2010, 31 018, no 54 (Letter).
- Parliamentary Papers II 2009/2010, 31 268, no 25 (Letter and enclosures).
- Parliamentary Papers II 2009/2010, 31 549, no 7 (Second Notice of Amendment).
- Parliamentary Papers II 2009/2010, 32 052, no 3 (Explanatory Memorandum).
- Parliamentary Papers II 2009/2010, 32 123 VI, no 11 (Letter with enclosure).
- Parliamentary Papers II 2009/2010, 32 144, no 1 (Letter).
- Parliamentary Papers II 2009/2010, 32 175, no 1 (Letter).

Proceedings of the Lower House of Parliament

- *Proceedings II 2008/2008*, no 109, pp. 8741-8774.
- *Proceedings II 2008/2009*, no 4, pp. 3565-3566.

Bills

- Bill amending the Aliens Act 2000 to amend the asylum procedure, Parliamentary Papers II 2008/2009, 31 994, nos. 1-4.
- Bill amending the Aliens Act 2000 and several other Acts to strengthen the position of the sponsor in regular Aliens Law and to accelerate the procedure under Aliens Law (*Wet modern migratiebeleid*) (Modern Migration Policy Act); Parliamentary Papers II, 2008/2009, 32 052, nos.1-4.

Dutch Government Gazette

- Decision of the State Secretary for Justice of 12 February 2009, no 2009/3 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 29.
- Decision of the State Secretary for Justice of 14 April 2009, no 2009/8 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 78.
- Decision of the State Secretary for Justice of 2 July 2009, no 2009/16 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 11449
- Decision of the State Secretary for Justice of 30 July 2007, no 2007/19 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 148, p. 5.
- Decision of the Minister of Justice of 24 July 2009, no 2009/18 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 12691.
- Decision of the State Secretary for Justice of 19 October 2009, no 2009/23 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 16242.
- Decision of the State Secretary for Justice of 26 November 2009, no 2009/28 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 18618.
- Decision of the State Secretary for Justice of 16 December 2009, no 2009/30 amending the Aliens Act Implementation Guidelines 2000, Dutch Government Gazette no 20192.
- Implementation Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals, Dutch Government Gazette of 25 October 2002, no. 206, p. 10.
- Nationalities Interim Communication (TBN 2008/8), Dutch Government Gazette no. 233.
- Nationalities Interim Communication (TBN 2009/1), Dutch Government Gazette no. 2248.
- Nationalities Interim Communication (TBN 2009/2), Dutch Government Gazette no. 32.
- Decision amending Nationalities of 19 October 2009 (WBN 2009/4) (Dutch Government Gazette of 28 October 2009).

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)

March 2010