



ANNUAL POLICY REPORT 2012

Migration and Asylum in the
Netherlands



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MIGRATION AND ASYLUM
IN THE NETHERLANDS**

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EXECUTIVE SUMMARY

The Annual Policy Report 2012 charts the developments in the Dutch migration and asylum policy from 1 January 2012 to 31 December 2012. The European Migration Network (EMN) compiles a comparative 'European' report on the basis of this report and similar reports published by the other EU Member States. This is done on the basis of four EMN policy briefs (EMN inform). These policy briefs offer a short summary of the main findings relevant to policy.

The Annual Policy Report primarily pays attention to the structure of the asylum and migration policy in the Netherlands. This is followed by the most important developments, which are relevant to asylum and migration. The most important political development in 2012 was the fact that a new government took office, after the fall of the first Rutte government on 23 April 2012 necessitated a general election. After the general election on 12 September 2012, the second Rutte government was installed on Monday 5 November 2012. This cabinet was formed by a coalition of the People's Party for Freedom and Democracy (VVD) and the Labour Party (PvdA).

This Annual Policy Report also serves as progress report for the benefit of the European Council's annual debate about the progress of the Asylum and Migration Policy. Under the scope of the European Pact on Immigration and Asylum concerning immigration and asylum, which was adopted in October 2008, the EU Member States are obliged to provide information about the progress annually to the European Commission for the purpose of discussion in the European Council. Moreover, the Member States are required to report about the commitments that have been made under the scope of the Stockholm Programme that was adopted on 11 December 2009. In December 2012 the authors of this report submitted a list of all the Dutch legislative and policy amendments, concrete actions and governmental plans under the scope of these commitments to the European Commission. The contents of this report section have been included in this Annual Policy Report.

This Annual Policy Report examines the developments in the area of legal migration and mobility, irregular migration and return, asylum, unaccompanied minors, measures against trafficking in human beings and migration and development in national perspective. Finally, this Annual Policy Report sheds light on the implementation of European legislation in 2012. Methodology and definitions are set out in Annex A, and national statistical data are set out in Annex B.

Attention is given to the legislative proposal Modern Migration Policy in Chapter 3 (legal migration and mobility), the implementation of INDIGO and the Programme for Streamlining Admissions Procedures. In addition, the Dutch labour market policy, the tightening up of the requirements for family migration and the purposes of residence study and research are also addressed. Attention is also given to the Dutch integration

policy, along with citizenship and naturalisation. Developments in the area of managing migration and mobility, such as the visa policy, Schengen governance, the intensification of border monitoring and Frontex activities are addressed as well.

Chapter 4 (Irregular migration and return) sets out the government's plan to combat irregular stay. Attention is given to making irregular stay punishable, the implementation of the return directive and return policy. Furthermore, attention is paid to protest actions against the Dutch asylum policy by asylum seekers who have exhausted all legal means.

Chapter 5 (Asylum) addresses changes to the asylum policy in 2012. Attention is also given in Chapter 5 to the Dutch government's policy intentions for more streamlined and efficient admittance procedures, the Common European Asylum System (CEAS), the European Asylum Support Office (EASO) and the resettlement of refugees.

With regard to unaccompanied minors (Chapter 6), it can be reported that the details arising from the review of the specific unaccompanied minors policy have taken shape in 2012.

An explanation is given in Chapter 7 on the extent to which the Dutch government regards human trafficking to be a very serious crime and the approach to human trafficking thereby has priority with the government.

The six policy priorities, which are the basis of the migration and development policy, form the central topic set out in Chapter 8.

Attention is given in Chapter 9 to the implementation of the EU legislation in the area of asylum and migration.

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1 INTRODUCTION

This Annual Policy Report charts the most important developments in the area of migration and asylum in the Netherlands. The Annual Policy Report is an annual publication on the instructions of the European Migration Network (EMN). Information about migration and asylum is gathered and analysed by the EMN, which was set up on the initiative of the European Commission, by means of social debates, scientific research, statistics, policy and case law. Every National Contact Point (NCP) of the EMN compiles a national summary of the developments in the area of migration and asylum. As national contact point for the EMN in the Netherlands, the Immigration and Naturalisation Service Information and Analysis Centre (INDIAC) of the Directorate for Implementation Strategy and Advice (DUSA) of the Immigration and Naturalisation Service (IND) is responsible for the Dutch report. The EMN will compile a comparative 'European' Annual Policy Report 2012 on the basis of this report and the reports published by the other Member States. This is done on the basis of four EMN policy briefs (EMN inform). These policy briefs offer a short summary of the main findings of an EMN survey or activity that are relevant to policy.

The Annual Policy Report primarily pays attention to the structure of the asylum and migration policy in the Netherlands (Chapter 1). This is followed by the most important developments in the area of asylum and migration (Chapter 2). The report then goes into further detail from the national and European perspectives relating to the developments in the following sub-areas: legal migration and mobility (Chapter 3), irregular migration and return (Chapter 4), asylum (Chapter 5), unaccompanied minors (and other vulnerable groups) (Chapter 6), actions against trafficking in human beings (Chapter 7) and migration and development (Chapter 8). Finally, this Annual Policy Report sheds light on the implementation of European legislation in 2012 (Chapter 9). Methodology and definitions are set out in Appendix A, and national statistical data are set out in Appendix B.

This report offers the most complete review of the (proposed) changes in legislation and regulations in the various different policy areas. In addition, this report also provides a complete review of the implementation of European legislation and regulations in the area of asylum and migration. It has not been attempted to give a fully comprehensive view of the political and social debates and developments, however, since this is determined by the level of attention given by both parliament and the media. More information about the selection criteria can be found in Annex A: Methodologies and definitions.

Structure of the asylum and migration policy

Various different ministries play a role in the Netherlands in the execution of the policy in the area of asylum and migration.¹

1 A thorough description of the organisation of the asylum and migration policy in the Netherlands can be found in INDIAC – NL EMN NCP (2012).

On the arrival of the second Rutte government together with a new coalition agreement in September 2012, various portfolios were transferred from one ministry to another.² At the start of 2012, for example, the Ministry of the Interior and Kingdom Relations was responsible for the admission of foreign nationals into the Netherlands, the tasks relating to the Netherlands Nationality Act (naturalisation) and for the return of foreign nationals who were not allowed to stay in the Netherlands. Within the Ministry of the Interior and Kingdom Relations, the Minister for Immigration, Integration and Asylum was responsible for the sub-area of migration and asylum policy.

After the general election on 12 September 2012, the second Rutte government was installed on Monday 5 November 2012. The Immigration and Naturalisation Service (IND), the Repatriation and Departure Service and the Central Agency for the Reception of Asylum Seekers were moved from the Ministry of the Interior and Kingdom Relations to the Ministry of Security and Justice.³ Since then they are included under the responsibility of the State Secretary for Security and Justice. The Minister of Social Affairs and Employment is responsible for integration and civic integration. The post of Minister for Immigration, Integration and Asylum has ceased to exist.

Not all foreign nationals who come to the Netherlands are permitted to carry out work in the Netherlands. The Minister of Social Affairs and Employment was and still is responsible for the admission of foreign nationals to the Dutch labour market.

The Minister of Foreign Affairs was and is responsible for the visa policy. The Minister of Foreign Affairs is also responsible for the realisation of Official Country Reports, which describe the situation in important countries of origin of asylum seekers, and Official Individual Reports, in light of which the facts or documents presented by an asylum seeker are assessed for correctness and authenticity.

Organisations involved

A large number of organisations play a role in the execution of the policy in the area of asylum and migration. The following gives a summary of the most important organisations involved:

- The Immigration and Naturalisation Service (IND) – which was an agency under the Ministry of the Interior and Kingdom Relations until the swearing-in of the current government on 5 November 2012 and which, since then, is an agency under the Ministry of Security and Justice – is responsible for the execution of the Aliens Act and the Netherlands Nationality Act. This service assesses all applications from foreign nationals who (want to) stay in the Netherlands or become Dutch citizens. The Immigration and Naturalisation Service (IND) also plays a role on behalf of the Minister for Foreign Affairs in assessing the applications for a short stay visa. In addition to this, the Immigration and Naturalisation Service (IND) assesses on behalf of the Minister for Foreign Affairs all applications for a Regular Provisional Residence Permit.
- The Repatriation and Departure Service (DT&V) - a task organisation transferred from

2 For further information: see chapter 2.

3 See below for further information about the Immigration and Naturalisation Service, the Repatriation and Departure Service and the Central Agency for the Reception of Asylum Seekers.

the Ministry of the Interior and Kingdom Relations to the Ministry of Security and Justice - is responsible for facilitating the departure of foreign nationals in a humane and professional manner who are required to leave the Netherlands.

- The Custodial Institutions Agency (DJI), and agency under the Ministry of Security and Justice, is responsible for carrying out detention measures in the process of the removal of foreign nationals from the Netherlands, including detention (the so-called aliens detention).
- The Central Agency for the Reception of Asylum Seekers (COA) is an independent administrative body that was funded by the Ministry of the Interior and Kingdom Relations up till 5 November 2012, and which is now funded by the Ministry of Security and Justice. The Central Agency for the Reception of Asylum Seekers (COA) is responsible for the reception of asylum seekers. Under assignment of the State Secretary for Security and Justice, the Central Agency for the Reception of Asylum Seekers (COA) offers people safe accommodation and supports them in preparation for their future either in the Netherlands or elsewhere. This involves predominately asylum seekers and refugees, as well as specific groups such as unaccompanied minors. The Central Agency for the Reception of Asylum Seekers (COA) is an implementing body with reception locations throughout the whole of the Netherlands.
- The Employee Insurance Agency (UWV) is an independent administrative body that works under assignment of the Ministry of Social Affairs and Employment. One of the tasks which it carries out is issuing work permits to foreign nationals who want to work in the Netherlands.
- The Council for Legal Aid is an independent administrative body that is financed entirely by the Ministry of Security and Justice. This organisation is responsible for the organisation of providing legal assistance in asylum cases.
- The Royal Netherlands Marechaussee, which is part of the Ministry of Defence, plays a role in border control and counteracting irregular migration and all forms of migration crime.
- The Aliens Police form a part of the regional police forces. They are concerned with controlling the legitimate residence of foreign nationals.
- The municipalities are responsible for housing those people who hold asylum permits and they also play a role in handling applications for naturalisation.
- The International Organisation for Migration (IOM), an intergovernmental organisation, plays an important role in the voluntary return and/or transit migration of foreign nationals.

There are also a number of non-governmental organisations that are active in the area of asylum and migration. The most important of these are:

- the Dutch Council for Refugees, which offers practical support to asylum seekers;
- Nidos (child protection for refugees), a nationwide guardianship agency working specifically for unaccompanied minor refugees and asylum seekers.

2 OVERVIEW OF ASYLUM AND MIGRATION POLICY DEVELOPMENTS

This chapter looks into the political developments in the area of asylum and migration. The legal and institutional context within which these developments take place is set out in the previous edition of this report.⁴

2.1 Political Developments

After the fall of the first Rutte government and the general election on 12 September 2012, the second Rutte government was installed on Monday 5 November 2012.

Government crisis

From 14 October 2010 to 23 April 2012 the Netherlands was ruled by the first government under the leadership of Prime Minister Mark Rutte (the first Rutte government). It was a minority government, which was formed by a coalition of the People's Party for Freedom and Democracy (VVD) and the Christian Democratic Alliance (CDA). From October 2010 up to April 2012 the first Rutte government received support in the House of Representatives from the Party for Freedom (PVV).

It became clear, however, on 21 April 2012 that the coalition parties of the People's Party for Freedom and Democracy (VVD) and the Christian Democratic Alliance (CDA) could not reach an agreement with the support partner, the Party for Freedom (PVV), concerning the measures that needed to be taken in order to reduce the budget deficit. After discussions with the cabinet, Prime Minister Rutte offered the resignation of all the Ministers and State Secretaries to the Queen on 23 April 2012 and suggested that calling a general election would be the most obvious outcome. Once the support had been withdrawn, the government was outgoing.

The formal decision for the early dissolution of the House of Representatives was taken by the cabinet on 27 April 2012.

General election

The general election was held on 12 September 2012. The turnout for the general election was 74.6%, which was just less than that in 2010 (75.4%). There were 21 parties which put up candidates in the election, of which eleven were newcomers. The People's Party for Freedom and Democracy (VVD) won the election with a narrow majority. They took 27% of the votes and thereby won 41 seats. The Labour Party (PvdA) took 25% of the votes and thereby won 38 seats. The big loser was the Party for Freedom (PVV),

4 For further information see chapter 2 of the Annual Policy Report 2011, INDIAC-NL EMN NCP (2012).

which lost 9 seats. The Party for Freedom (PVV) thereby won 15 seats in the new House of Representatives. Besides the loss taken by the Party for Freedom (PVV), the Christian Democratic Alliance (CDA) also suffered a heavy loss (losing 8 seats and ending up with 13 seats).

Noteworthy winners in the general election, besides the People's Party for Freedom and Democracy (VVD) and the Labour Party (PvdA), were the Democrats 66 (D66) (8%), the Reformed Political Party (SGP) (2%) and newcomer 50PLUS (2%). Another loser, besides the Party for Freedom (PVV) and the Christian Democratic Alliance (CDA), was the Green Left (which went from 7% to 2%). The Socialist Party (SP), the Christian Union and the Party for the Animals all maintained their numbers of seats.⁵

The newly elected House of Representatives attended parliament for the first time on 20 September 2012.

Formation of a new government

A start was made with forming the new government immediately following the general election of 12 September 2012 and finished after 54 days. Queen Beatrix swore in the new Rutte government on 5 November 2012.⁶ The new government was formed by a coalition of the People's Party for Freedom and Democracy (VVD) and the Labour Party (PvdA). The cabinet comprises 13 Ministers and 7 State Secretaries.

The new government decided to put through a number of institutional changes. This included moving the Immigration and Naturalisation Service, the Repatriation and Departure Service and the Central Agency for the Reception of Asylum Seekers from the Ministry of the Interior and Kingdom Relations to the Ministry of Security and Justice.⁷ Since then they are included under the responsibility of the State Secretary for Security and Justice. The Minister of Social Affairs and Employment is responsible for integration and civic integration. The post of Minister for Immigration, Integration and Asylum then ceased to exist.

2.2 Overall Developments in Asylum and Migration

A number of important developments took place in 2012 in the areas of asylum and migration. The main points of the policy are set out in the coalition agreement of the second Rutte government.

Coalition agreement: 'Building bridges'

In the coalition agreement, called "Building bridges", of the People's Party for Freedom and Democracy (VVD) and the Labour Party (PvdA) the new government has clearly

5 For further information see <http://www.kiesraad.nl/nieuws/officiali%C3%ABle-uitslag-tweede-kamerverkiezing-12-september-2012>.

6 The formation in 2012 was the first one in which Queen Beatrix played no active role. On 27 March 2012 the House of Representatives changed its Standing Orders, which means that from now on the 'informateurs' will be appointed by the House of Representatives instead of by the Queen.

7 For further information see chapter 1 of this Annual Policy Report.

expressed that the Dutch immigration policy is restrictive, fair and aimed at integration.⁸ In relation to the immigration policy, the resources of society will be taken into account. For those involved and for society as a whole it is important that migrants can rely on themselves, by providing for their own cost of living through work, by integrating quickly and by helping to build up society. Fellow EU inhabitants and highly skilled migrants also remain welcome on the same basis. For all newcomers alike, command of the Dutch language, knowledge of society and paid work offer the best perspective of successful integration.

The following gives a summary of the most important plans in the areas of asylum, migration and integration.

Asylum

The Dutch admission policy is aimed at the protection of foreign nationals who, on grounds of the international and European protection standards, fear persecution or serious violations of human rights. The national protection standards, including the categorical protection policy, are to be scrapped from the Aliens Act. Admission procedures will be streamlined and shortened as far as possible, particularly when it involves persecution applications and regular applications that are submitted under the scope of the procedure for journeys in connection with family reunification. The tendency and possibility for piling one procedure on top of another will be removed. These measures are aimed to test carefully whether protection is necessary and, in case of rejection, that the perspective is clearly aimed at return.

The government is planning to reunite unaccompanied minor foreign nationals as quickly as possible with their family in their country of origin, or to place them in a reception centre in the country of origin, partly in the interests of the development of the children themselves.

Children of rejected asylum seekers who have stayed for at least five years in the Netherlands before reaching the age of 18 years will be issued with a residence permit. The condition for this is that they apply for a residence permit before reaching the age of 21 years and that they have not spent a long time avoiding the attention of governmental authorities. The same applies to unaccompanied minor foreign nationals who have stayed in the Netherlands for at least five years before reaching the age of 18 years. The family members of children of rejected asylum seekers who are staying in the Netherlands will be issued in such cases with a derivative residence permit.⁹

The above will be contained in a transitional arrangement, which forms part of a permanent arrangement. In the permanent arrangement children of rejected asylum seekers or unaccompanied minor foreign nationals, who have stayed continuously for five years or longer in the Netherlands before reaching the age of 18 years, will only be eligible for a residence permit if they apply for this before reaching the age of 19 years. They must

8 For further information see <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/10/29/regeerakkoord.html>.

9 For further information see chapter 5 of this Annual Policy Report.

then satisfy the conditions, before reaching the age of 18 years, that they have not spent a long time avoiding the attention of governmental authorities, that they have cooperated in their return and proved their identity, partly by handing over documents and/or giving consistent and truthful statements and answers.

An appeal to this arrangement does not offer the right to admission. No permit will be issued on grounds of this arrangement to a foreign national who has committed a serious crime or who is accused of being a war criminal, nor to his/her family members. If before, during or after the application for bringing over one or both of the parents of an unaccompanied minor foreign national, who has been issued with a residence permit on grounds of this arrangement, incorrect details have been given concerning his/her parents, then this will lead to the withdrawal of the residence permit.

The government is planning to increase the Dutch contribution for accommodation of refugees in the provinces.

Family migration

The Netherlands continues to argue the case in the context of the EU for tightening up the guidelines for family reunification. This tightening up concerns an age of at least 24 years, that a person's own cost of living can be provided through income from work, as well as measures to effectively work against sham marriages and forced marriages.

The government emphasises that the core meaning of family migration concerns: a long-lasting, exclusive relationship between partners and those people for whom biological kinship forms part of the ¹⁰ family household. In principle, marriages between first cousins are forbidden.

Irregular migration and return

The government is planning not to issue a residence permit if the applicant has previously stayed in the Netherlands irregularly or has committed fraud. Foreign nationals who have been convicted of a crime must be removed sooner. The government wants to extend the admission period to five years and is planning to apply the standard for recidivists in case of reoffending. The previous government's plans in relation to making irregular stay punishable will be continued. People and private organisations that help irregular staying people will not be punishable.

The return policy will be intensified. Those people who are not permitted to stay in the Netherlands are obliged to leave independently or will be removed. The government will put pressure on countries to take back their citizens whose stay in the Netherlands is not permitted. This can have consequences for the trade and development contacts with these countries.

Civic integration and integration

The demands for civic integration will be tightened up in both the Netherlands as well as abroad. Preparation for the civic integration examination is the responsibility of the¹¹ person involved him/herself. The government emphasises that efforts towards civic integration must be monitored consistently from the start. Foreign nationals who do not make sufficient effort may lose their residence permits, excluding foreign nationals with an asylum residence permit. However, it is still expected of the latter group that they make the effort to remove any impediments in relation to work, such as not speaking and understanding the Dutch language. The government wants to implement strict requirements in being eligible for receiving social security benefits: those people who do not speak the Dutch language will not receive social security benefits. The government is planning to apply this principle consistently: for foreign nationals from third countries, EU citizens as well as Dutch citizens.

The Dutch foreign national policy rewritten.

The Dutch foreign nationals policy is set out in the Guidelines for Foreign Nationals, which comprises parts A (admission, supervision and return), B (regular migration), C (asylum). The Guidelines for Foreign Nationals are extensive and complex and the three parts have therefore now been rewritten. This in no way means a change in policy. The parts A and C were fixed in a decree dated 19 December 2012. The new Guidelines for Foreign Nationals (parts A and C) came into force on 1 April 2013.

The parts A and C were rewritten in a 'minimum' style. This means that the texts only include policy regulations. Repetitions of legislation and regulations and examples of previous texts by way of explanation have been scrapped. The use of language has been simplified and made more accessible and unambiguous. The use of language is therefore also more directive and clear. The Guidelines for Foreign Nationals now comprises around 240 pages, which is one third of the original text. Part B (regular) of the Guidelines for Foreign Nationals had been rewritten at an earlier stage. This part comes into force at the same time as the Modern Migration Policy Act.

11 For further information see paragraph 3.5 of this Annual Policy Report.

3 LEGAL MIGRATION AND MOBILITY

The Dutch parliament agreed to the legislative proposal Modern Migration Policy in 2010. Modern Migration Policy mainly concerns the regular purposes of residence such as work, study and the reunification¹² of families. The new Act would come into force on 1 January 2011. However, due to implementation of a new computer system at the Immigration and Naturalisation Service (IND), INDiGO, a delay ensued in its coming into force. This computer system is a precondition to the implementation of the Modern Migration Policy.

An important aim of the Modern Migration Policy is making the admission procedures quicker and more efficient partly by combining the application procedures for the Regular Provisional Residence Permit and the residence permit and the accelerated procedure for recognised sponsors.¹³ This means that many foreign nationals and sponsors no longer need to go through a double application procedure with a double verification now. Another advantage is that residence permits need to be extended or changed. The reason for this is that residence permits in the Modern Migration Policy will usually be granted for a longer period and the possibility exists of changing within certain purposes of residence without necessitating a new residence¹⁴ permit. The Modern Migration Policy leads to quicker procedures and less administrative tasks for citizens and businesses. In addition to this, the Modern Migration Policy gives the sponsor a stronger role in the admission procedures and greater responsibilities and obligations under the scope of supervision. This enables more effective supervision and visible enforcement. Besides the existing supervision of foreign nationals, a system of supervision of sponsors is also implemented with the Modern Migration Policy. An administrative fine is introduced in the law concerning foreign nationals as well. Citizens and businesses that do not keep to the rules will be subject to greater attention and may incur administrative fines.

In anticipation of the Modern Migration Policy coming into force, the Immigration and Naturalisation Service (IND) has started with a number of experimental projects in which the principles of the Modern Migration Policy have been processed.¹⁵ The way in which these experimental projects are set up gives both the Immigration and Naturalisation Service (IND) as well as the clients the chance to gain experience with the new elements of the Modern Migration Policy, including the (recognised) sponsorship, the Entry and Residence Procedure, the changed rights and obligations of sponsors and foreign nationals and the exchange of information¹⁶ between partners in the chain. The experience gained from the experimental projects with the Entry and Residence Procedure (TEV) seems to show that the procedure is workable and that it provides both acceleration and simplification in the procedure for the client.

It is expected that the Modern Migration Policy Act will come into force on 1 June 2013.

12 A more extensive description can be found in the Annual Policy Report 2010, INDIAC–NL EMN NCP (2011).

13 *Parliamentary Papers II* 2010–2011, 33000 VII, no. 53.

14 For example, of employer or educational institution.

15 The first test project, the test project Au Pair was started on 1 July 2008.

16 The following test projects have been started: test project Au Pair, test project Highly Skilled Migrants, test project Study and test project cultural exchange.

Expat Centre

The Expat Centre Brabant merged with the International Service Desks in Maastricht and Tilburg in 2012 to become the Holland Expat Centre South. The new Expat Centre is a one-stop shop for expats who live and work in southern Netherlands. The Expat Centre organises the formalities for international labour migrants and provides them with information about a range of practical matters with which they may be involved in the Netherlands. The Expat Centre is a joint initiative of the participating municipalities (Eindhoven, Tilburg, Maastricht), the Immigration and Naturalisation Service (IND), the Brabant Development Agency (BOM), Brainport Development, Midpoint Brabant and the provinces of North Brabant and Limburg.

Expat Centres were also established at an earlier stage in the Netherlands in Amsterdam, Rotterdam, The Hague and Eindhoven.

INDiGO

INDiGO is the Immigration and Naturalisation Service (IND)'s new computer system, which is intended to replace the old information system (INDIS). The Immigration and Naturalisation Service (IND) is an organisation within which an enormous amount of files are handled. In the past this was carried out using hard copies of files, which made the work labour-intensive. By using INDiGO large parts of the production process will be digitised. This will mean that the Immigration and Naturalisation Service (IND) can work more efficiently, and both the provision of service as well as the enforcement will be improved. The former Minister for Immigration, Integration and Asylum provided an update to the House of Representatives throughout 2012 about the progress of INDiGO, and for the last time on 4 October 2012.¹⁷ The aim for 2012 that INDiGO would become the primary system of the Immigration and Naturalisation Service (IND) was achieved. However, the Immigration and Naturalisation Service (IND) still needs a certain amount of time in 2013 in order to complete the implementation of INDiGO and the conversion (changing over the data from INDIS to INDiGO). During this phase INDiGO will be loaded with data from INDIS.

Programme for Streamlining Admission Procedures

On 22 February 2011 the former Minister for Immigration, Integration and Asylum informed the House of Representatives about the policy intentions concerning quick, clear and careful admission procedures.¹⁸ As a result of these policy intentions the Programme for Streamlining Admission Procedures (PST) was set up. The intention of this programme is to realise the measures. During the first phase of the programme the measures that were announced were tested for feasibility in a test prior to execution (EAUT). The implementation of the measures will be tested during the second phase. On 22 May 2012 the former Minister for Immigration, Integration and Asylum set out the details of the streamlining of the Admission Procedures in his letter to the House of Representatives.¹⁹ Four projects were set up in 2012 under the scope of the second phase of the programme, including the Project

¹⁷ *Parliamentary Papers II* 2012-2013, 30 573, no. 100, no. 106 and no. 111.

¹⁸ *Parliamentary Papers II* 2010-2011, 19637, no. 1400.

¹⁹ *Parliamentary Papers II* 2011-2012, 19637, no. 1532.

Regular.²⁰ In collaboration with the partners in the chain the Repatriation and Departure Service, the Aliens Police, the Council for Refugees, the Legal Aid Council and the Central Agency for the Reception of Asylum Seekers, the Project Team Regular carried out the preparations in order to be able to implement the measures around halfway through 2013.

The measures relating to Regular include the following:

The introduction of a one-day test for regular humanitarian (follow-up) applications

Regular humanitarian (follow-up) applications of foreign nationals will be assessed in a one-day test. In the future the regular humanitarian (follow-up) application will be preceded by a written application, meaning that the file can be assessed before the appointment. This will mean that a decision concerning the application can be made more quickly, which will give the foreign national clarity more quickly about the perspective of residence in the Netherlands.

The administrative testing of all regular humanitarian grounds by the first regular humanitarian applications

In order to avoid the piling up of one procedure on top of another, other humanitarian policy frameworks will be tested administratively at the same time by the first regular humanitarian application. The decision will then be given in the form of a more broadly based decision.

Provision of the medical file by the foreign national him/herself

From now on, all applications in which medical circumstances play a role, the foreign national him/herself will be obliged to supply the relevant medical file as a condition of the application. The burden of proof relating to the medical situation will hereby be placed with the foreign national. This will also mean that the processing time of the application will be reduced.

The streamline of the follow-up applications from a centre with restricted movement (VBL) or family location (GL)

Families with minor children who submit a follow-up application from a family location or a centre with restricted movement must remain in view of the steering agency of the Repatriation and Departure²¹ Service. The emphasis must remain aimed at return. In order to facilitate this, regular follow-up applications from family locations and centres with restricted movement will be handled with priority.

3.1 Economic Migration

If employers cannot find workers within the Netherlands, then they will look for workers outside the Netherlands. In principle, a work permit is necessary for the admission of workers originating from outside the EU and the European Economic Area (EEA) (or

²⁰ Besides the regular project cited here, there are three other projects: the project asylum (see chapter 5), the project no cure no fee and the project legislative procedures. For further information about the Programme for Streamlining Admission Procedures see Parliamentary Papers II 2010-2011, 19637, no. 1400 and Parliamentary Papers II 2011-2012, 19637, no. 1532.

²¹ For further information see paragraph 4.2 about repatriation.

from the new European Member States of Bulgaria and Romania). Employers who want to allow workers for outside the EU/EEA (or from Bulgaria and Romania) must apply for a work permit through the Employee Insurance Agency (UWV). Basic principle for issuing work permits is that there is an insufficient supply of work available in the Netherlands and the European Union.²² This means that the Employee Insurance Agency (UWV) will look very carefully at applications from employers for a work permit whether there are people in the Netherlands or Europe who could do the work and whether the employer has put enough effort into looking into this. If an employer has not done so or if too low a salary is offered, then the work permit will be refused. Therefore a residence permit will also not be issued.

The Dutch labour market is protected by the Labour Act for Aliens (Wav). The Employee Insurance Agency (UWV) implements this Act and the Inspectorate SZW is responsible for its enforcement.

Over the last few years work has been carried out to make the Netherlands more attractive to highly skilled migrants. The Highly Skilled Migrants Regulation was introduced concerning highly skilled migrants who come to the Netherlands for longer than three months. In such cases companies are not required to apply for a work permit.

Highly qualified labour migrants from outside the EU are welcome because they offer a contribution to the Dutch knowledge economy. The Highly Skilled Migrants Regulation therefore has a low threshold and is simplified through its sole salary criterion. The salary of the highly skilled migrant must be in line with market conditions (comparable to that which Dutch workers would earn in a comparable profession under normal labour situations). Highly skilled migrants do not need a work permit.

Amendment of the Labour Act for Aliens

In the coalition agreement of the first Rutte government agreements were included concerning an investigation into a possible tightening up of the Labour Act for Aliens and into possible abuse of the Highly Skilled Migrants Regulation.

The first Rutte government announced the results of this on 11 April 2011 to the House of Representatives and a number of points were proposed for tightening up and therefore an improved working of the Act.²³ Structural amendment of the Labour Act for Aliens is not necessary. The results of the investigation showed that a structural amendment of the Labour Act for Aliens was unnecessary.²⁴

The House of Representatives started to deal with the proposal for legislative amendment of the Labour Act for Aliens on 9 November 2012.²⁵ The proposal includes the amendment of a number of parts of the Labour Act for Aliens:

²² *Parliamentary Papers II* 2010-2011, 32144, no. 5.

²³ *Parliamentary Papers II* 2010-2011, 32144, no. 5.

²⁴ *Parliamentary Papers II* 2012-2013, 33475, no. 3.

²⁵ *Parliamentary Papers II* 2012-2013, 33475, no. 3.

Tightening up the testing on grounds of those enjoying priority

The first item in line for tightening up of the Labour Act for Aliens goes hand-in-hand with the ambition of the second Rutte government that everyone should be able to participate in society according to their own strengths. Many people who can work are still in receipt of benefits. The government finds it unacceptable to allow supply to be admitted from outside the EU if the possibilities are not firstly deployed to the maximum within the Netherlands and the European Union. Only once job vacancies cannot be filled through the supply enjoying priority (national supply and workers from the other EU countries) will opportunities be open to employees from outside the EU.

Work permit for up to a maximum of 1 year

The duration of a work permit will be limited to 1 year. In relation to work permits without testing on the labour market (e.g. performing artists, sports players) the duration of a work permit is up to a maximum of 3 years.

Moreover, the extension of a work permit is no longer possible. If the duration has expired, then a new work permit must be applied for.

Prevention of competition in labour terms and conditions

Labour legislation should serve to protect employees from poor labour conditions, underpayment, illegality and repression in the labour market. Migrants remain sensitive to abuse in the area of labour terms and conditions. This is not only detrimental for the migrants themselves, but it also creates unfair competition in relation to Dutch employees. The government took serious steps in 2012 in tightening up the sanctions regime in the Tightening up of Enforcement and Sanctions Policy of Social Affairs and Employment Legislation²⁶ Act. This Act came into force on 1 January 2013.

Stimulation of the knowledge economy

Included in the coalition agreement the second Rutte government expressed the ambition of being one of the top five knowledge economies of the world. This involves strengthening the quality of education. The Netherlands must be able to attract excellent teachers and students.²⁷ Knowledge is crucial for the economy in order for a country to be internationally competitive.

Illegal student trainee

There was much discussion in 2012 in the Netherlands over the question that foreign nationals without a residence permit could follow an education programme (as long as they started this before their eighteenth birthday), but were not permitted to work as a trainee. A work permit is obligatory for work as a trainee under the Labour Act for Aliens and this cannot be issued to a foreign national without a (correct) residence permit. Because of the lack of possibility to be able to work as a trainee, illegal youths are unable to gain an educational diploma.

²⁶ Bulletin of Acts and Decrees 2012, 642.

²⁷ For further information about study and research see paragraph 3.3.

On 8 December 2012 the Minister of Social Affairs and Employment announced that the government considered this situation to be undesirable. Working as a trainee will become possible under the following conditions:

- The traineeship is obligatory to completing an educational programme;
- The illegal foreign national started this educational programme before his/her seventeenth birthday;
- The educational programme is included under BOL (a learning track in vocational education) in the Senior Secondary Vocational Education system;
- The traineeship is unpaid.

An exception is made to this rule for the work permit obligation in the Implementation of the Labour Act for Aliens Decree. This exception is expected to come into force on 1 July 2013. Until that time the Inspectorate SZW will not actively carry out enforcement.²⁸

Pilot project short-stay highly skilled migrant

The Ministry of Social Affairs and Employment started a pilot project on 1 January 2012 to make it possible for highly skilled migrants who want to stay for less than three months in the Netherlands to follow a simplified procedure. The Employee Insurance Agency (UWV) is carrying out this pilot project. The pilot project will last for two years and ends on 31 December 2013. During this period investigations are carried out to find out whether this is helpful to highly skilled migrants and their employers and also whether the trial should become a fixed regulation.

For a stay of less than three months, employers and highly skilled migrants are required to apply for a work permit, which is in contrast with the highly skilled migrant regulation.

Under the pilot project there is no test regarding the supply enjoying priority at the time of the application for a work permit, and that the accompanying period of at least five weeks for advertising the job vacancy also does not apply. This means that the Employee Insurance Agency (UWV) can issue a work permit within two weeks (target period) after submission of a complete application.

Only employers who have been included by the Immigration and Naturalisation Service (IND) in the highly skilled migrant regulation can be eligible for this regulation.²⁹

3.2 Family Reunification

The first Rutte government indicated in 2011 that it wanted to set stricter obligations to newcomers before they come to the Netherlands, so that those people who do come to the Netherlands are better prepared to integrate into Dutch society.³⁰ As from 1 October 2012 measures have been implemented with regard to family reunification and family formation.³¹

²⁸ *Parliamentary Papers* 2012-2013, 32144, no. 21.

²⁹ Government Gazette 2011 no. 21341.

³⁰ For further information see the Annual Policy Report 2011, INDIAC-NL EMN NCP (2012).

³¹ Bulletin of Acts and Decrees 2012 no. 148.

As set out in paragraph 2.1, the Dutch House of Representatives has changed its political composition. On 27 September 2012 the House of Representatives submitted a motion to suspend the implementation of the new family regulations till the end of the formation of the new government.³² However, it was neither legally nor technically possible to suspend the implementation of the measures and therefore the following regulations came into force as from 1 October 2012:

The policy of extended family reunion, the elderly persons policy and the family visit policy (up to a maximum of 6 months) have all lapsed. Foreign nationals who already had a residence permit on 1 October 2012 for a purpose of residence that had lapsed, will keep this residence permit and can also extend the period of validity after 1 October 2012. In addition, as from 1 October 2012 sponsors who have a temporary regular residence permit can only bring over a family member to the Netherlands if they have already stayed legitimately in the Netherlands for at least 1 year. This condition does not apply to sponsors who have a residence permit with a temporary purpose of residence under the Integration Decree.

The period for becoming eligible for an independent residence permit on grounds of continued residence has been extended from 3 to 5 years. Finally, the period after which it is assumed in any case that the main place of residence has been moved to abroad has been reduced from 9 to 6 months.

The most important change that was introduced on 1 October 2012 is that family reunification and family formation are now only possible for partners who are married or who have a registered partnership, as well as their minor children. One exception to this applies to partners for whom on grounds of legislation and regulations in the country of origin it is impossible to marry or enter into a registered partnership. These people may be eligible for a 'temporary marriage permit'.³³

In connection with the coalition agreement reached on 29 October 2012 of the second Rutte government, in which it is set out that a long-term and exclusive relationship is sufficient for family reunification and family formation, the State Secretary for Security and Justice informed the House of Representatives by letter dated 21 December 2012 that the partner policy, which applied before 1 October 2012, will be reintroduced.³⁴ This will require an amendment to the Aliens Decree. The aim is that this will come into force in April 2013. By way of a transitional measure, (advisory) applications for residence with a partner, which are received on or after 1 October 2012 by the Immigration and Naturalisation Service (IND), will be tested under the partner policy as that stood on 30 Sep-

32 *Parliamentary Papers II* 2012-2013, 32175, no. 38.

33 This permit is valid for six months and is only meant for people to get married in the Netherlands. If the marriage takes place within six months (or the partnership is registered within six months), then the permit can be changed to a residence permit to stay with a spouse or registered partner. The temporary marriage permit can only be applied for from 1 October 2012. It must be clear in the application that it is not possible to marry in the country of origin of the partner. This must involve a legal impossibility. For example, if on grounds of the legislation of the country of origin it is not possible for partners of the same gender to marry.

34 *Parliamentary Papers II* 2012-2013, 32175, no. 47.

tember 2012. If all the conditions are met then, with the application of Article 3.13, second paragraph, of the Aliens Decree, a positive decision will be given.

Reduction of fees for family migration

The Administrative Jurisdiction Division of the Council of State decided on 9 October 2012 that the high fees that must be paid by applications for family reunification detract from the useful effect of the Family Reunification Guideline 2003/86 and are therefore contrary to the Principle of Proportionality.

With reference to this decision, the State Secretary for Security and Justice informed the Senate and the House of Representatives in a letter dated 28 November 2012 that the fees for application for family reunification will be reset.

The fees have been changed as follows:

	Regular Provisional Residence Permit	Regular Residence Permit after Regular Provisional Residence Permit	Regular Residence Permit without Regular Provisional Residence Permit	Extension
Long-term resident third-country national	-	-	old: 130 new: 150	old: 130 new: 150
Family reunification (adults)	old: 1,250 new: 225	old: 300 new: 0	old: 1,250 new: 225	old: 375 new: 225
Family tariff for accompanying Family members	old: 250 new: 225	old: 300 new: 0	old: 250 new: 225	old: 150 ^{35*} new: 150*
Study	old: 300 new: 300	old: 300 new: 0	old: 600 new: 300	old: 150 new: 150
Scientific research	old: 350 new: 300	old: 0 new: 0	old: 600 new: 300	old: 375 new: 300

The new amounts come into force on 1 February 2013.

3.3 Students and Researchers

Study

In accordance with the Directive 2004/114/EC, the Netherlands wants to be a fruitful place for economy, science and culture. The government considers the admission of talented highly skilled and student migrants as a means to realising this.

When an international student wants to register with a Dutch institution, then the admissibility is assessed according to the necessary preparatory educational programme, the combination of subjects, the (recognised) diplomas that have been awarded and the language proficiency, all of which is aimed in terms of the specific educational programme for which the registration is requested. Proficiency in the English language is obligatory when it concerns an English language educational programme and this is tested by the educational institution by means of a language test. In case the international student does not meet with all the requirements for admission to a specific educational programme, but the educational institute expects that this can be achieved through a preparatory educational programme, then the international student can be given admittance to a preparatory bridge programme for up to a maximum of one year. Until the Modern Migration Policy comes into force, a separate residence permit is issued for this purpose, for which no extension is possible.³⁶

Besides this the conditions as cited in the Aliens Act must be satisfied in order to gain entry to the Netherlands.

Scientific researcher

Scientific researchers have a number of different possibilities for becoming eligible for a residence permit in the Netherlands:

Directive 2005/71/EC

In order to come to the Netherlands as scientific researcher (in accordance with Directive 2005/71/EC), the research institute must be recognised and a guest agreement must be entered into with the foreign national. Just as with the procedure for study, the admission procedure is a sponsor procedure and can only be submitted in principle through a research institute.

Scientific researchers who fall under the Directive 2005/71/EC do not need a work permit for carrying out research, but it is not permitted for them to carry out other work while staying in the Netherlands. The residence permit is issued under the limitation: 'residence as researcher under Directive 2005/71/EC.'

Highly skilled migrant regulation

In order to stay in the Netherlands on grounds of the Directive 2005/71/EC, then the majority of the working duties must involve carrying out research (> 51%). If researchers do not comply with this because, for example, they carry out more educational working duties, then usually they can make use of the Highly Skilled Migrant Regulation. Furthermore, it is not possible to carry out research on grounds of the Directive 2005/71/EC in a higher professional education institution. It is also not possible under the Highly skilled migrant regulation. For highly skilled migrants who carry out a paid research in pursuit of a doctorate, then no payment criteria apply, contrary to other highly skilled migrants. Highly skilled migrants are permitted to work in the Nether-

³⁶ For further information see the report about the immigration of international students to the Netherlands, INDIAC-NL EMN NCP (2012).

lands on the basis of the Decree governing the implementation of the Aliens Labour Act without a work permit.

Residence as paid scientific researcher

Besides the Directive 2005/71/EC and the Highly skilled migrant regulation, there are also scientific researchers appointed in the labour migration policy who do need a work permit.³⁷

These include, for example:

- Trainee research assistants and trainee researchers at a university;
- Foreign nationals who come to carry out specific research tasks in the 'post-doctoraal' phase for a maximum of two years in ongoing research projects; and
- Highly qualified researchers who come to carry out research work under a temporary contract on the recommendation of the Royal Academy of Sciences.³⁸

These scientific researchers are issued with a temporary residence permit under the limitation of 'paid employment'.

The 'search year for graduates' and the 'highly skilled regulation'

Two regulations exist under the modern migration policy when it came into force, which offer the possibility to certain groups of foreign nationals to stay in the Netherlands for a period of up to one year in order to find a job as highly skilled migrant. These regulations are called the 'search year for graduates' and the 'highly skilled regulation'. Under the modern migration policy these regulations have been combined to a residence under the scope of 'looking for and carrying out work, whether or not paid'.

Search year for graduates

The residence permit for a search year is meant for foreign students who have graduated in the Netherlands from a higher educational institution and who want to orientate themselves in the Dutch labour market in order to find a job as highly skilled migrant³⁹. Under this residence permit it is permitted to carry out work during the search year without the employer needing to provide a work permit.

Regulation for highly skilled people

Foreign students can apply for a residence permit for highly skilled people. This option is primarily open for students who have completed a Master's degree in the Netherlands or who have received a doctorate. In the second place are foreign nationals who have completed a Master's degree abroad. They must have been awarded their title at one of the universities in the top 200 league table of the most recent list of the Times Higher Education World University Rankings, the QS World University Rankings, or the Shanghai Jiao Tong Ranking.

37 Before the implementation of the Directive 2005/71/EC most scientific researchers has a residence permit under the limitation of paid employment. This residence permit for scientific researcher ceased to exist after the implementation of the modern migration policy. Unpaid scientific researchers do not require a work permit in order to be eligible for a residence permit under the limitation of paid employment.

38 In case of these categories there may be an overlap with Directive 2005/71/EC.

39 The salary threshold for this category of highly skilled migrants amounts to 27,336 gross per annum, irrespective of age.

The application is assessed under a points system, whereby the level of the educational programme and the age of the foreign national are important. During the period of validity of the residence permit as highly skilled person, the foreign national can look for a job in the Netherlands as highly skilled migrant regulation, or submit an application as self-employed person. The residence permit is issued for 1 year and cannot be extended. The holder of the residence permit as highly skilled person is permitted to carry out work if his/her employer can provide a work permit.

Foreign nationals can apply for a residence permit as highly skilled person up to three years after the date on which they graduated.

Modern Migration Policy test project Entry and Residence Procedure for Study Act

In the introduction to this chapter much attention was given to the Modern Migration Policy Act. The test project Entry and Residence Procedure was started in March 2009 in 10 educational institutions and since 2012 a large majority of the educational institutions are taking part in this test project. The educational establishments and the international students are no longer required to apply for a Regular Provisional Residence Permit for the Entry and Residence Procedure and submit the residence permit at two separate moments. Once the Regular Provisional Residence Permit has been issued, the Immigration and Naturalisation Service (IND) will issue the residence permit administratively after the Modern Migration Policy has come into force. The commencement date of this residence permit in the Entry and Residence Procedure is the expected date of entry to the Netherlands or one day after issue of the Regular Provisional Residence Permit by the diplomatic mission. After the Modern Migration Policy has been introduced, the Entry and Residence Procedure will apply to all purposes of residence.

3.4 Other Legal Migration

Besides the policy of economic migration, the policy for family reunification, the policy for study and research the regular Dutch migration policy also comprises a few other parts, such as entry for religious and medical reasons. Attention is given in this paragraph to developments in 2012 in relation to purposes of residence that are not included under the above-mentioned purposes of residence.

Pilot project Religious Residence

Ahead of the introduction of the Modern Migration Policy, in April 2010 a pilot project for religious residence was started. This pilot project concerns the admission of religious people through the mediation of religious organisations. The aim of this pilot project is to gain experience in the execution of the new legislation and regulations and the changed procedures. In addition to this the Immigration and Naturalisation Service (IND) is interested in getting to know religious sponsors because a shift has taken place in the responsibilities under the Modern Migration Policy from the Immigration and Naturali-

sation Service (IND) to the sponsor. As well as gaining experience, attention is also paid to raising the level of the service provision.

Within the pilot project, the Entry and Residence Procedure and the Regular Residence Permit sponsor procedure are both practised.

Au Pair Policy

As from 1 October 2012 the Au Pair Policy has been changed and clarified.⁴⁰

Included in the policy it is stated that an au pair:

- may not pay a sum of money for registration costs, for example, and/or mediation fees and/or following a course (provided by his/her own government) in preparation for residence in the Netherlands to a (Dutch or foreign) mediation agency or exchange organisation, which in total is higher than 10% of the maximum amount that a host family is permitted to pay monthly as pocket money to the au pair;
- may not pay a sum of money as deposit to a (Dutch or foreign) mediation agency or exchange organisation;
- may not sign a contract with a host family or (Dutch or foreign) mediation agency or exchange organisation whereby the au pair is obliged to pay money or a fine as sanction due to non-compliance with one or more obligations of this contract;
- may not carry out any tasks for people who need special care, which requires a specific skill. These tasks are not included under light household tasks.

These conditions apply to all requests for advice, all applications for (advisory) regular provisional residence permits and all applications for a residence permit as au pair that are submitted to or received by the Immigration and Naturalisation Service (IND) after 1 October 2012, except ongoing procedures. In this case, ongoing procedures are understood to include: all applications for (advisory) Regular Provisional Residence Permits and applications for a residence permit that were submitted to or received by the Immigration and Naturalisation Service (IND) before 1 October 2012. Also cases in which the Regular Provisional Residence Permit was issued before 1 October 2012, but the following application for a residence permit is submitted on or after 1 October 2012, will be considered to be ongoing procedures

Propose approach to forced marriages

The first Rutte government decided to intensify the approach towards forced marriages. A legislative proposal in connection with this was submitted to the House of Representatives in July 2012 with a view to expanding the possibilities for the criminal prosecution of forced marriages, polygamy and genital mutilation of women. In this plan 'Prevention of forced marriages 2012-2014' the specific measures are described that are necessary for increasing the preventive approach to forced marriages.⁴¹

⁴⁰ Government Gazette 2012, no. 16761.

⁴¹ *Parliamentary Papers II* 2011-2012, 32 175, no. 35.

3.5 Integration

The Netherlands aims not to carry out a policy on the basis of origin, but to offer individual arrangements where necessary within the regular policy. Integration is seen as a dynamic process that follows the lines of a number of strategic important variables: good schooling, a neighbourhood where it is pleasant to live, good physical and mental health and sustainable work. The input hereby is that the regular policy in these areas actually reaches all groups within Dutch society. Every citizen should be able to build up an independent existence through regular provisions and policy, possibly with the support from family or their immediate surroundings.⁴²

The Dutch policy is aimed at preparing foreign nationals who come to the Netherlands for a long-term stay for participation in Dutch society. Part of this policy involves the civic integration requirements that relate to command of the Dutch language and knowledge of Dutch society.

The bill 'Changes to the Civic Integration Act and a few other Acts in connection with increasing the personal responsibility relating to civic integration by those people obliged to do so' was passed by the Senate on 11 September 2012. As from 2013 immigrants who hold a residence permit must arrange and pay for their own obligatory civic integration programmes. If they have a low income then there is the opportunity for them to take out a loan from one of the Dutch social banks for their course and examination. They are only required to pay back this loan if their earnings are high enough. One important change is that the practical examination and the various different profiles for civic integration have been replaced by one central examination. Those people who culpably do not pass the obligatory civic examination within three years run the risk of losing their temporary residence permit. If that is not possible (for example in the case of recognised refugees), then a fine can be issued for not passing the examination within the given period. The government makes sure that there are enough qualified courses available. Migrants from the European Union and Turkey can also take out a loan from one of the social banks if they voluntarily want to follow a civic integration programme.

In order to make it easier for migrants to deploy the skills they have gained in their country of origin, recognition of diplomas and competencies gained abroad will be speeded up. The Information Centre for Credential Evaluation (IcDW) is the central desk where applications for the evaluation of diplomas can be submitted. The applications are handled by the Evaluation of Foreign Credentials (IDW) expertise centres. The Evaluation of Foreign Credentials (IDW) is a collaboration between the Cooperation Vocational Education, Training and the Labour Market (SBB) and the Dutch organisation for international collaboration in higher education (Nuffic).⁴³ Depending on the type of diploma, the evaluation is either issued by the Nuffic (higher and general secondary education) or by the Cooperation Vocational Education, Training and the Labour Mar-

42 Information from the Integration and Society Department.

43 For further information see: www.idw.nl.

ket (SBB) (Senior Secondary Vocational Education). Applications for diploma evaluations are usually submitted with a view to enrolment with a Dutch educational programme or entry to the labour market. As a result of the increasing globalisation the number of people coming to the Netherlands with a foreign diploma is constantly increasing. The Nuffic is currently evaluating around eleven thousand diplomas annually.⁴⁴ The Cooperation Vocational Education, Training and the Labour Market (SBB) currently evaluate around 1400 diplomas annually.⁴⁵

Another of the government's basic principles is that generic policy in the areas of care, work, education and security must be effective for everyone. Steps will be taken in relation to points at which citizens are impeded in their participation. Forced marriage, for example, stands in the way of integration in the Netherlands and is punishable.⁴⁶ The integration policy is aimed at the prevention of forced marriage and the Plan of Action for the prevention of forced marriage was submitted in 2012 to the House of Representatives.⁴⁷ Policy in the Netherlands pursues the principle of preventing discrimination.

Responsibility for the development and implementation of the integration policy in the Netherlands lies with the municipalities and local implementing bodies. Integration is therefore primarily a local matter. In order to tune the integration between the various organisations, a collaborative platform has been set up, the 'Shared Integration Agenda' (GIA). This is a platform where central government, municipalities and the Association of Netherlands Municipalities (VNG) can work together to tune the integration policy with each other. As from 2012 the Ministry of the Interior and Kingdom Relations has continued the existence of the 'Shared Integration Agenda' (GIA) under the title: the 'Shared Integral Approach' (GIA).⁴⁸

The local and national integration policy is strengthened through the new 'Shared Integral Approach' (GIA) by means of the exchange of information and mutual coordination. In 2012 the manual 'Living together binds differences: integration in (accelerated) transition' was published.⁴⁹ The content of this manual goes deeper into the integration policy and various good examples are provided for the municipalities by way of inspiration. Projects set up by local partners are also given financial support from the European Integration Fund.

The European Integration Fund is used in the Netherlands to improve the integration of third-country nationals from outside the European Union by providing subsidies for projects that are carried out by local parties, such as municipalities or local foundations and neighbourhood associations.

44 Information from Nuffic.

45 Information from SBB.

46 For further information also see paragraph 3.4.

47 *Parliamentary Papers II* 2011-2012, 32 175, no. 35.

48 The second Rutte government was installed on 5 November 2012. This resulted in a departmental reorganisation. The Integration and Society Department no longer falls under the responsibility of the Ministry of Internal Affairs and Kingdom Relations, but now under the Ministry of Social Affairs and Employment.

49 For further information see <http://www.rijksoverheid.nl/documenten-en-publicaties/richtlijnen/2012/07/23/samen-leven-bindt-verschillen-integratie-in-versnelde-transitie.html>.

Financing from the European Integration Fund is used to promote both the social structural integration as well as the social cultural integration. The following subjects were the strategic priorities for 2012:

- Active participation in the integration process of third-country nationals and the receiving countries.
- Increasing the effectiveness of the integration measures, whereby vulnerable groups such as women were prioritised.
- Stimulation of the collaboration at various different levels between governments in the area of integration.
- Reflection on measures before departure to the Netherlands, which contribute to integration in Dutch society.

In order to remain in contact with specific groups, the government is aiming at developing a dialogue with those groups. The dialogue with migrant organisations and interest groups is very important for the development of policy. Round table talks and expert meetings, for example, are organised with various different migrant organisations about specific themes. These talks provide a means for gaining a picture of signals, charting problems and making an inventory of directions for solutions.

The Netherlands takes part actively at a European level in the discussions between the national contact points for integration. On 3 and 4 September 2012 the Netherlands and Germany organised the conference 'Free movement and participation of EU citizens - making it work for all'.⁵⁰ This conference was aimed on the one hand at winning more backing for a discussion about the integration of EU citizens within Europe and on the other hand gaining understanding from experiences from other EU Member States and gaining more knowledge in relation to the impact of free circulation.

The Netherlands is also active when it comes to monitoring the effects of the integration policy. The Social and Cultural Planning Office published a study in 2012 with the title '*Measuring and monitoring immigrant integration in Europe*' whereby 17 European Member States were compared with each other concerning the effectiveness of their integration policies.

Finally, the Dutch government stimulates representative migrant organisations to take part in the European Integration Forum.

3.6 Citizenship and Naturalisation

The course of becoming a Dutch citizen starts with the municipality. Those who want to naturalise are required to submit their application for naturalisation to the municipality together with the necessary documents. On the basis of these documents and a series of signed declarations the municipality issues an advice to the Immigration and Naturalisa-

⁵⁰ *Parliamentary Papers II 2011-2012, 29407, no. 151.*

tion Service (IND) and sends the application for naturalisation through to the Immigration and Naturalisation Service (IND).

Under the scope of the Regulation for the finalisation of the legacy of the old Aliens Act, as from 15 June 2007 a regular residence permit is officially issued to asylum seekers who satisfy certain conditions. From June 2012 these foreign nationals will have stayed legally in the Netherlands for five years and they can submit an application for naturalisation. A large proportion of them handed over no documents by the issue of the permit in 2007 in order to prove their identity. Under the rights of foreign nationals they are exempted from the requirement for handing over a passport and legalised birth certificate. However, the normal rules concerning naturalisation do apply to them.

The former Minister of the Interior and Kingdom Relations sent a letter to the House of Representatives on 7 December 2011 in which he answered questions that had been put to him by the House of Representatives about the possibility of exempting this category of foreign nationals from the requirement of providing a legalised birth certificate and a valid foreign travel document by their naturalisation. The Minister made it clear in his reaction that he saw no reason to make an exception for these people. According to the Minister, they have had five years in which to obtain a legalised birth certificate and a passport in order to prove their identity and nationality. The Minister wants to prevent people from naturalising on grounds of incorrect personal details and/or nationality. People with a permit under the Regulation for the finalisation of the legacy of the old Aliens Act received a personal letter from the Immigration and Naturalisation Service (IND) in which the conditions for naturalisation are explained. The Immigration and Naturalisation Service (IND) also instructed the municipalities about the method of working in relation to applications for naturalisation from people with a Regulation for the finalisation of the legacy of the old Aliens Act permit and extra staff have been taken on in order to cope with the expected increased flow of applications for naturalisation in 2012.

The first Rutte government made preparations in 2011 to tighten up the requirements for gaining Dutch nationality. Under the scope of this a number of points for tightening up were formulated, including the introduction of a qualification and income requirement for those wishes to naturalise, an expansion of the requirement for renunciation and the obligation for civic integration for optants and repeal of the possibility for naturalisation for spouses of Dutch⁵¹ citizens abroad. Moreover it will become almost impossible to keep Dutch citizenship on the voluntary acquisition of another citizenship and unmarried foreigners will only be able to obtain a Dutch passport after five years.

The current Rutte government announced on 27 November 2012 that the Legislative Proposal to change the Netherlands Nationality Act in order to tighten up the conditions for the issue and acquisition of Dutch citizenship will be cancelled.⁵² It is uncertain at the moment whether the second Rutte government will come with a new legislative

51 One tightening up involved was that married and unmarried partners living together can only acquire Dutch citizenship after five years stay in the Netherlands (there is no period set at the moment for married partners and for unmarried partners a period of three years applies).

52 *Parliamentary Papers II 2011-2012*, 33410, no. 68.

proposal in 2013. Included in the coalition agreement is that the intention is to increase the naturalisation period from five years to seven years.

3.7 Management Migration and Mobility

3.7.1 *Visa policy*

The EU Visa Information System (EU-VIS) came into production on 11 October 2011. EU-VIS first came into use at the Embassies and Consulates of European countries in North Africa (Algeria, Egypt, Liberia, Mauritania, Morocco and Tunisia). On 10 May 2012 the Middle East countries (Israel, Jordan, Lebanon, Syria, the occupied Palestinian territories and Iraq) followed suit. On 5 June 2012 the registration in the VIS was also started for the issue of visas on the Dutch external borders. The Gulf region followed on 2 October 2012.⁵³

As from 5 June 2012 visas that are issued at the airports and seaports on the Dutch borders are also registered digitally in the EU-VIS. Seamen signing on and signing off on the border, for example, can get a visa, as well as people who came without a visa but who need to enter the Netherlands quickly for humanitarian reasons.

Legislative proposal to change the Aliens Act 2000 in connection with national visa and other subjects

A proposal submitted on 5 August 2008 to change the Aliens Act 2000 in connection with national visa and other subjects was adopted on 1 November 2011 by the House of ⁵⁴Representatives. The Senate accepted this proposal on 22 May 2012.⁵⁵ This legislative proposal adds rules to the Aliens Act 2000 relating to the issue of a national visa for residence of longer than 90 days (Regular Provisional Residence Permit).

What is different from the current legislation and regulations is that a foreign national is no longer required to submit his/her application for a Regular Provisional Residence Permit in person if he/she has a sponsor in the Netherlands. The Regular Provisional Residence Permit application can also be submitted by the sponsor. The 'sponsor procedure', which is currently going through an advisory procedure, will be given a legal basis and will become an application procedure.⁵⁶ The date of this legislative proposal coming into force is still to be announced.

The submission of an application by a sponsor does not release a foreign national from the obligation to appear in person before the Dutch representative in the country of origin: the foreign national must still provide the requested information in person to the Dutch representative. The issue of the Regular Provisional Residence Permit can only be carried out personally to whom the Regular Provisional Residence Permit is intended. Whether it is the sponsor of the foreign national or the foreign national him/herself

⁵³ *Parliamentary Papers II* 2011-2012, Parliamentary Paper 32317, no. 131.

⁵⁴ *Parliamentary Papers II* 2007-2008, 31 549, no. 2.

⁵⁵ *Parliamentary Papers II* 2011-2012, 31 549, F.

⁵⁶ For further information about the Entry and Residence procedure mentioned earlier in this Annual Policy Report, see also the introduction to chapter 3.

who starts the procedure is irrelevant for the statutory nature of the decision: in both situations that decision is the decision concerning the Regular Provisional Residence Permit application.

3.7.2 Schengen Governance

In 2011 the European Council proposed a change to the evaluation mechanism and a change to the Schengen Borders Code concerning the reintroduction of the interior border control.

Proposal for the temporary reintroduction of interior border control

The aim of the proposal for the temporary reintroduction of interior border control is to determine the mutual rules about the temporary reintroduction of border controls at the interior borders in exceptional circumstances. The proposal arises from a request from the European Council dated 23 and 24 June 2011 to introduce a mechanism to react to exceptional circumstances that form a threat to the Schengen collaboration in general, without endangering the principle of free circulation.

In relation to this proposal it is important for the Netherlands that Member States can remain able to assess whether temporary reintroduction of interior controls is necessary. In the end, the criteria for deciding this - namely whether the public order and/or national security is in question - remains within the exclusive authority of each Member State itself. The Netherlands considers it to be important that by the reintroduction of interior border controls there must really be a threat to the public order or the national security of one or more Member States.

A sizeable stream of irregular staying migrants can therefore not be a reason in itself for the reintroduction of interior controls, even for the situation in which a Member State fails to carry out sufficient supervision of their part of the exterior border. In this situation as well there must be a case of danger to public order or national security.

The Netherlands put the case that no periods can be set in the situation in which a Member State fails to provide sufficient supervision of the exterior border on a long-term basis and this situation forms a threat to the public order or national security. There was insufficient support for this point.

Proposal Schengen evaluation mechanism

The aim of the proposal concerning the Schengen evaluation mechanism is to create a new and more efficient legal framework for the evaluation and the application of the Schengen acquis by the Member States in the Schengen Area. All Schengen countries will be evaluated every five years on the basis of a list of questions and working visits by members of staff from the Commission as well as experts to be appointed by and from the Member States

In relation to this proposal the Netherlands made a strong case during the negotiations in putting itself forward to add constitutional elements to the evaluations, so that the functioning of the agencies involved in implementing the Schengen acquis in the Schengen evaluation can also be included. The Netherlands also wanted an allocation of roles whereby the European Commission would be allotted an enhanced role, but that the Council would continue to make the most politically sensitive decisions. The Netherlands also supported the proposal to change the legal basis in Article 70 of the Treaty on the Functioning of the European Union. The agreed Council text complies with this.

3.7.3 *Border Monitoring*

People who want to enter or leave the Schengen Area via the Netherlands pass a border crossing point and undergo a personal control. This border control is carried out by the Royal Netherlands Marechaussee or, in the Rotterdam port area, by the Seaport Police of the Rotterdam-Rijnmond Regional Force.

Intensification of the border controls

The Dutch government is working on the intensification of the border controls through the use of new technology, such as the use of passenger details of certain groups of passengers and the use of biometrics in the border security process. This will be realised by means of two programmes comprising a large IT component: Reform of Border Management and Biometrics in the Foreign Nationals Chain.

Reform of Border Management

The ambition relating to the Reform of Border Management programme is to create an effective and efficient border control process whereby use is made as much as possible of the deployment of computerised control and risk-based action on the basis of information received beforehand concerning passengers and their baggage. A good balance between maximum security and optimal mobility is hereby important. The programme is a collaboration between the Royal Netherlands Marechaussee, Customs, the Seaport Police, the National Coordinator for Security and Counterterrorism (NCTV), the Immigration and Naturalisation Service (IND), the Schiphol Group and the KLM airline company, under the umbrella of the Ministry of Security and Justice.

The programme is divided up into two phases, whereby the first phase ran up to 2012. The programme comprises the following four projects: Project PARDEX (*'Passenger Related Data Exchange'*), Project API (*'Advance Passenger Information'*), Project No-Q (*'Automatic Border Crossing'*) and Project RT (*'Registered Travelers'*).

The programme Reform of Border Management was started in 2012 with the call for tenders for an information system for the purpose of enabling the various different government services to record, on grounds of their statutory performance of duties, at one central point all passenger details that they are permitted to receive.⁵⁷ In addition to the provision of information, work was also carried out at the same time in the crea-

tion of a National Border Information and Analysis Centre, whereby the services involved could collaborate.

PARDEX project

The aim of the PARDEX project is to develop joint proposals, whereby the organisations involved in the programme are enabled to gather, analyse and circulate passenger-related information more quickly, more cleverly and better in mutual collaboration, for the purpose of increasing the security and mobility in and around the traffic of passengers. The information collected, which originates from the various different services, should lead to a clear picture of the people entering the Netherlands, on the basis on which profiles of people can be made.

The aim in 2012 was to make the first step in obtaining passenger information from 100% of all flights. This applied to passengers departing from, arriving at and transferring through the Netherlands. A legislative procedure was started for the benefit of this. The aim of the basic provision of PARDEX is to make it possible to be able to process all those passenger details quickly and reliably. When the second Rutte government was installed, it was decided no longer to invest in PARDEX for the time being. Under the framework of processing the budgetary measures from the coalition agreement of this government, the investment and operational costs involved in PARDEX were reappraised. On the basis of this reappraisal, the sizeable investment in PARDEX in this stage was not carried out. The PARDEX project is therefore removed from the overview of large governmental IT projects. From the (national) resources initially reserved in the budget and multiannual estimate, only a limited part can be used for the realisation and running of a facility, which is more limited in size and cost, for the benefit of border control.

API project

In order to assess whether a person should be refused entry to the Netherlands, the Royal Netherlands Marechaussee is able to use the API (*Advance Passenger Information*).

The control with API details was started in practice in 2012. Airline companies provide passenger details from so-called risk routes beforehand to airline companies for the benefit of border controls and against irregular migration. API are the passenger details that are provided by the carriers. The API application carries 27 watch lists, which are compared with the incoming passenger details. This enables the Royal Netherlands Marechaussee to act increasingly often aimed at risk and in light of information received.

Since 1 January 2012 the airline companies are obliged to provide API details of flights into the Netherlands from 28 other airports. At the end of October 2012 new risk routes were established on the basis of findings from the Royal Netherlands Marechaussee and the Information and Naturalisation Service (IND). It is expected that the list will be expanded in 2013 with 26 other airports.

RT project

It is important for the border management that the border security authorities have passenger information at the earliest possible stage. One way of achieving this is by creating known passenger groups. This includes business travellers who travel frequently between certain destinations. By means of registration on the basis of personal details and biometric characteristics and examination of a person's history they can participate in a programme on the basis of which they can cross a border under a computerised system.

There has been collaboration such as this for some years now between the Netherlands and the United States of America. This collaboration is called FLUX and it connects the passengers' programme Privium at Schiphol airport with Global Entry in the USA. FLUX has a stable list of members of around 2600 participants. In 2012 a principle agreement was reached with South Korea about collaboration between Privium and the Korean passenger programme Smart Entry Service (SES). FLUX is a passenger programme operated by the government and Schiphol together. Schiphol indicated in 2012 that it would like to stop with activities in the area of border crossing because this does not fall under the core activities of an airport. For this reason it is not clear whether the government will continue with the Registered Travelers programme.

Biometrics and the Foreign Nationals chain

On 5 March 2012 the former Minister for Immigration, Integration and Asylum sent the legislative proposal concerning biometrics in the foreign nationals chain to the House of Representatives. The aim of the legislative proposal is for fingerprints and digital passport photographs to be filed in a central file. The legislative proposal should improve the identity control of foreign nationals by the application for a residence permit. The use of biometric details will also be implemented by family migration and residence permits for study or work; this already takes place with foreign nationals who apply for asylum.

The use of face registrations and fingerprints in determination and verification of the identity of a foreign national is of crucial importance in the determination of a person's identity. By using fingerprints and photos in the control, identity fraud, document fraud and irregular stay can be tackled more successfully. All services that are involved with issuing and controlling residence permits will be working with fingerprints and digital photos: the Immigration and Naturalisation Service (IND), the Aliens Police, the Seaport Police, the Royal Netherlands Marechaussee, the Central Agency for the Reception of Asylum Seekers, the Custodial Institutions Agency, the Repatriation and Departure Service and diplomatic posts abroad. People applying for a residence permit will be required to supply their fingerprints and a passport photo once only. After this their identity can be checked with a scan of their fingerprints and comparison with their photo. With regard to the passport photo, this does not relate to the obvious visual image, but to the unchangeable characteristics, such as the distance between the eyes, ears and chin.

Those biometric characteristics will be recorded in a central file and in a chip in the residence document. Nothing will change for asylum seekers; they are already required to give their fingerprints and a photo at the time of their asylum application. In this way it can be checked whether they have submitted an application for asylum previously in another European country, or under another name in the Netherlands. People who take a civic integration examination abroad because they want to come to the Netherlands for family reunification are already required to identify themselves with fingerprints and a photo. These will also be filed in a central file in the future. This will mean that the Netherlands can prevent fraud when issuing the final residence document. The Personal Data Protection Act applies to the biometric details.⁵⁸

Since May 2012 the Immigration and Naturalisation Service (IND) issue residence documents whereby, besides the photo, fingerprints are also included in the chip.

Mobile surveillance / @migo boras

The Royal Netherlands Marechaussee carries out Mobile Supervision Security (MTV) in the border areas with Germany and Belgium. The Mobile Supervision Security (MTV) concerns police controls on the basis of the Aliens Act in tackling irregular migration that is aimed at irregular residence, whether or not through organised groups, at the earliest possible stage. The Mobile Supervision Security (MTV) supervision contributes to the national security and is aimed at prevention and the discouragement of future irregular migration and at tackling cross-border (migration) crime and terrorism. In order to tackle irregular residence at the earliest possible stage, people who cross the border by road can be subjected to foreign national supervision within an area of up to 20 kilometres of the border. The supervision can also be carried out in international trains and in the case of international air traffic whereby there is a case of an intra-Schengen flight to a territory of the Netherlands. In order to safeguard that no effect occurs as a result of the border control, on 1 June 2011 limitations to the frequency and intensity of the controls were included in the Aliens Decree 2000.

In 2012 the opinions became divided regarding the Dutch legal system in view of the compatibility of the Mobile Supervision Security (MTV) controls with the Community law. The European Court of Justice ruled on 19 July 2012 that the Mobile Supervision Security (MTV) controls, as long as they remain within the strict parameters of the Aliens Decree, do fit into the frameworks of the Community law and are therefore not contrary to the Schengen Border Code. The lawfulness of the Mobile Supervision Security (MTV) controls is therefore confirmed by this judgment from the European Court of Justice.

Starting on 1 August 2012 the Mobile Supervision Security (MTV) controls have been supported by the camera system @migoboras. This enables the Royal Netherlands Marechaussee to work more on the basis of information.

EU-VIS

The Royal Netherlands Marechaussee is carrying out a pilot phase using EU-VIS. All fixed border posts (including at the Seaport Police Rotterdam) are supplied with the technical possibility for issuing visas with the possibility for control within the system. Processes are being developed at the present time to make the EU-VIS information available for detection purposes.

Maritime Single Window

In addition to this, a start was made in 2012 under the management of the Ministry of Infrastructure and the Environment with the development of a Maritime Single Window (MSW). Maritime Single Window (MSW) is an electronic platform where seagoing vessels entering and leaving seaports can report via one electronic way. By means of Maritime Single Window (MSW) the administrative transactions carried out by the maritime border controls will be streamlined and the Directive 2010/65/EU (report formalities for seagoing vessels) implemented. The Maritime Single Window (MSW) contributes to reducing the number of reports that shipowners and masters are repeatedly required to provide to the various different port authorities and other government bodies.

The e-Counter not only means a reduction in the administrative burden for the citizens involved. The electronic exchange of data with the government also makes improved risk management possible on the basis of timely provided data sets. This means that Maritime Single Window (MSW) advances both the coastal navigation as well as a safer maritime exterior border. The Maritime Single Window (MSW) is due to be operational by mid-2015.

Eurosur

In addition to this, a start has been made with the implementation course for the European border control system Eurosur. Eurosur is being developed with a view to tackling irregular migration and cross-border crime and also protection of the lives of irregular staying migrants at the exterior borders of the European Union. Eurosur involves a network of national coordination centres between which information is shared via situation images and the deployment of high-grade technology. Eurosur makes it possible to act at an early stage and on the basis of information at the exterior borders of the EU. The Netherlands is due to be connected up with Eurosur on 1 October 2014.

3.7.4 *Frontex*

The Netherlands is represented by the Royal Netherlands Marechaussee in the Management Board Frontex and coordinates through the *National Point of Contact* all the Dutch input relating to Frontex. Together with the Immigration and Naturalisation Service (IND), the Repatriation and Departure Service, the Seaport Police and Coastguard Organisation, the Royal Netherlands Marechaussee provides support by way of personnel and equipment for the operations coordinated by Frontex and the Training Centre of the Royal Netherlands Marechaussee is a partnership academy for Frontex trainings, mainly in the area of documents.

In the fight against irregular migration, the Netherlands provides a substantial contribution to the Frontex operations, spread over many Member States, particularly at the southern and eastern borders of Europe. The Dutch experts support the Member States in preventing and tackling irregular migration and in improving border controls. This includes, for example, document training, support through the deployment of border guards at the exterior borders and border crossing points and capacity development. Assistance is also provided by Dutch interpreters in operations in Greece and Bulgaria in the debriefing and screening of irregular migrants.

The Netherlands participated in various Frontex operations in 2012. This included the Netherlands providing border guards and document experts in the Poseidon and Attica operations at the Turkish-Greek border. The Netherlands provided 1488 days of support within Frontex to Operation Attica by the Royal Netherlands Marechaussee and the Immigration and Naturalisation Service (IND). The aim of Operation Attica (in Greece) is to create an effective return policy in that country. The Seaport Police and the Royal Netherlands Marechaussee provided 3810 days of support to Operation Poseidon. Dutch personnel supported the Greek border authorities by means of surveillance at the border, interviewing irregular staying migrants who had been apprehended and through the work of interpreters.

4 IRREGULAR MIGRATION AND RETURN

4.1 Irregular Migration

In July 2011 the first Rutte government presented its approach to irregular residence in the form of a number of concrete measures. One of these measures is making irregular residence punishable as an offence. The penalisation of irregular residence is not an aim in itself, but simply one of the instruments with which irregular arrival and irregular residence in the Netherlands can be prevented and tackled. It forms a part of coherent set of measures, the point of which is to make unlawful residence in the Netherlands less attractive.

In the coalition agreement the current second Rutte government has also agreed that irregular residence will become punishable and the return policy will be intensified.⁵⁹ The penalisation of irregular residence is seen as an instrument with which irregular arrival and irregular residence in the Netherlands can be prevented and tackled.⁶⁰

Too many foreign nationals remain long-term in the Netherlands who, during the time of their residence, go through one procedure after another without a clear perspective of being issued with a residence permit. Foreign nationals who are not permitted to stay in the Netherlands (any longer) should actually leave the country. Irregular migration and irregular residence are strongly discouraged. Those people who are not permitted to stay in the Netherlands are obliged to leave independently or will be removed. Assisted voluntary return is encouraged as much as possible and, where necessary, return is enforced.

In February 2012 the former Minister for Immigration, Integration and Asylum, the Ministry of Security and Justice and the Chairperson of the Chief Constables' Council reached a series of agreements concerning the intensification of combating irregularity and the return policy.⁶¹ It was agreed that the police will increase the supervision of foreign nationals in order to counter irregular residence. The greatest attention is aimed at irregular residents who are guilty of committing crimes or minor offences or who create a nuisance. In addition to this, the police are concerned with asylum seekers who have exhausted all legal means to stay and other foreign nationals who have no residence permit (any longer) and who remain irregularly in the Netherlands. The police remain careful in their handling of vulnerable groups such as minors, the elderly and irregular residents who are ill as well as victims of human trafficking.

Social debate

Just as in 2011, the social debate in 2012 was fuelled by the plans to make irregular residence punishable.

59 *Parliamentary Papers II* 2012-2013, 33 410, no. 15.

60 Further explanation about the plans of the second Rutte government to penalise illegality is given later on in this chapter.

61 Result agreement Intensification of Supervision of Foreign Nationals 2012-2014.

Church in Action, a group within the Protestant Church in the Netherlands, is one of the initiators of the 'Coalition against Penalisation' which presented a statement against the government's proposal to make irregularity punishable. Apart from almost all the churches in the Netherlands, the Dutch Trade Union Federation (FNV) and the National Federation of Christian Trade Unions (VCN), various Dutch municipalities, lawyers associations and refugees organisations also form part of this coalition. In their joint statement, these organisations called the possible penalisation of irregular residence "out of all proportion" and "bad for society".⁶² The measure will lead to irregular residents no longer seeking help, which will lead to them becoming yet more anonymous and the municipalities will no longer have any view of the irregular residents within their areas, argue these organisations.⁶³

The (critical) discussion about the Dutch asylum policy was fuelled in 2012 by increasing protest from the asylum seekers (including some who had exhausted all legal means to stay) within the Netherlands.

Tent camps

At the end of 2011 a group of Somali asylum seekers who had exhausted all legal means to stay started a protest action by the gates of the asylum seekers' residence centre in Ter Apel. They argue that it is not safe in their country and therefore they cannot repatriate there. According to the former Minister for Immigration, Integration and Asylum, voluntary (assisted) return to Somalia is possible for them in principle. The purpose of the action was to force a solution. One argument put forward by the activists was: "We cannot repatriate. Yet we are still evicted without the having the means for survival. We came here with well-founded reasons and we demand that our basic human rights are respected."⁶⁴ In the end the Somali nationals, who had exhausted all legal means to stay, broke up their tent camp in Ter Apel in December 2011, after discussions with the municipality of Vlagtwedde and taking up the offer from the Immigration and Naturalisation Service (IND) to submit a new application for asylum after all.

In 2012 there were also a series of protests from asylum seekers against the Dutch asylum policy.

In May 2012 a group of around 50 Iraqi asylum seekers who had exhausted all legal means to stay set up a tent camp next to the asylum seekers' residence centre in Ter Apel. According to a spokesperson for the group, it is not safe in central Iraq where the majority of them originate. The Iraqis want to use this action to force the authorities to look at their asylum applications once again and that they are provided with⁶⁵ decent accom-

62 For further information see: <http://www.trouw.nl/tr/nl/5091/Religie/article/detail/1858190/2011/03/10/Leers-heeft-toch-dezelfde-Bijbel.dhtml>.

63 For further information also see www.stichtinglos.nl. The Stichting Landelijk Ongedocumenteerden Steunpunt (LOS) [National Support for Migrants without Residence Permits] has been the information centre since 2003 for people and organisations who offer help to migrants without a residence permit.

64 For further information see: <http://www.doorbraak.eu/?p=8149>.

65 During the wars in Iraq many Iraqis were issued with temporary residence permits in the Netherlands. When the situation in Iraq improved (from the end of 2008) the Immigration and Naturalisation Service (IND) reassessed around 3,000 temporary asylum permits. In approximately half of the cases there was no reason for individual protection and the residence permits

modation. The group stated that they would stay in the tent camp until their demands have been met. Within a short period the tent camp grew to include around 350 people staying in 60 tents.⁶⁶ Most of these people originate from Iraq. There are also some people who had exhausted all legal means to stay who originate from Somalia, Afghanistan, Iran as well as a few from Azerbaijan and Sudan.

On 21 May 2012 the Minister for Immigration, Integration and Asylum offered the residents of the tent camp in Ter Apel accommodation until the arrival of the Iraqi Minister of Migration on 15 June 2012.⁶⁷ The accommodation offered was not without obligation, however, but subject to return. On 22 May 2012 the mayor of Vlagtwedde, within which municipality Ter Apel is situated, found that the safety of the people in the camp could no longer be guaranteed. For this reason the mayor started preparations for ending the occupation. The mayor advised the spokesperson thereby to accept the offer from the Minister for Immigration, Integration and Asylum for temporary accommodation. The group of around 230 Iraqis accepted the offer from the Minister. In addition around 30 foreign nationals with other nationalities also took up this offer.

The residents of the tent camp who did not accept the Minister's offer continued their occupation in the tent camp. During the afternoon of 23 May 2012 the mayor issued an emergency order on grounds of the Municipalities Act. On the basis of this order the remaining group of people were ordered to leave the camp. This led to around 110 foreign nationals being apprehended. This mainly involved Somali and Iraqi foreign nationals. These foreign nationals were subsequently housed in accommodation under a restricted movement order including a duty to report on a daily basis.⁶⁸

During the summer of 2012 a number of smaller protests took place involving mainly Iraqi and Somali asylum seekers. They say that they cannot return to Iraq and they wanted to gain attention for their situation through these actions.

In July a group of Somalis, in protest against their residence in accommodation with restricted movement, held an action by the Immigration and Naturalisation Service in 's-Hertogenbosch. The group of Somalis was given support later on by a number of Iraqi asylum seekers, who joined in the protest.

In August 2012 30 to 40 people protested by the Immigration and Naturalisation Service office in Zwolle. This mainly involved Iraqi Kurds who had exhausted all legal means to stay.

were withdrawn. Courts can still make judgments about these on appeal. Since November last year, the Iraqi government no longer collaborates with the enforced removal of asylum seekers who have exhausted all legal means of staying. Iraq gives no permission for this and no longer provides replacement travel papers for their citizens who are subject to enforced removal. For this reason the Netherlands also cannot place Iraqi foreign nationals without travel documents who have exhausted all legal means of staying for the time being under foreign national detention. Voluntary repatriation to Iraq is possible and the Iraqi authorities also collaborate in this.

66 For further information see: http://www.telegraaf.nl/binnenland/20051319/_Tentenkamp_Irakezen_in_Ter_Apel_.html.

67 The Iraqi Minister of Migration made agreements in the Netherlands on 15 June 2012 about the collaboration relating to the repatriation of Iraqi nationals who have exhausted all legal means of staying to Iraq.

68 *Parliamentary Papers II* 2011-2012, 19637, no. 1536.

In August 2012 a group of Iraqis who had exhausted all legal means to stay set up a tent camp behind the town hall in Vlagtwedde. This group of around twenty Iraqis had submitted an official application to the municipality under the Public Assemblies Act. Most of the residents of this tent camp had previously demonstrated in 's-Hertogenbosch, Zwolle and Ter Apel.

Two large protests were held during the second half of 2012. A large group of asylum seekers who had exhausted all legal means to stay stayed for several months in tent camps in Amsterdam and they demonstrated in The Hague against the national asylum policy. Both the municipality of Amsterdam and the municipality of The Hague, from the point of view of their responsibility for maintaining public order and under the framework of the Public Assemblies Act, were willing to permit the tent camp as an action in support of the demonstration. However, the municipalities also commented that these protest actions could not go on forever.

The former Minister for Immigration, Integration and Asylum made clear that he was convinced that the protest actions in Amsterdam and The Hague, just as with other similar actions, could not form a reason for offering the foreign nationals from the tent camp accommodation simply without question, nor to issue them with residence permits after all.⁶⁹ He emphasised in his letter that the Netherlands has a careful asylum procedure, which contains the necessary guarantees of quality, as well as the legal right of appeal. Foreign nationals who need protection are given this. Foreign nationals who are not eligible for protection in the Netherlands must comply with their obligation to leave the Netherlands. The basic principle thereby is that foreign nationals are themselves responsible for their departure.

In order to avoid the need to evict the residents in the tent camp, both the State Secretary for Security and Justice and the municipality of Amsterdam contacted the residents of the tent camp:

- On 15 November 2012 the State Secretary set out in a written document for the residents of the tent camps in The Hague and Amsterdam what the possibilities were in order for them to acquire temporary accommodation. Foreign nationals from the tent camp can have temporary accommodation in the centre with restricted movement in Ter Apel as long as they are prepared to continue with organising their return, in collaboration with the Repatriation and Departure Service, to their country of origin. Foreign nationals who still had an admissions procedure ongoing with the Immigration and Naturalisation Service (IND) or the Court, and for whom there was no alternative available of their own for accommodation, were permitted to make use of accommodation in an asylum seekers centre for up to a maximum of 30 days.⁷⁰
- On 20 November 2012 the municipality of Amsterdam, in collaboration with a few other municipalities, offered the foreign nationals from the tent camp in Amsterdam 30 days accommodation in a shelter for the homeless either within or outside Amster-

⁶⁹ *Parliamentary Papers II 2012-2013*, 29344, no. 91.

⁷⁰ *Parliamentary Papers II 2012-2012*, 29344, no. 92.

dam, insofar as the foreign nationals themselves could not provide their own accommodation.⁷¹

The majority of those people involved chose neither of these alternatives and waited for their eviction.

After the eviction of the tent camps, the group of asylum seekers who had exhausted all legal means of staying moved into an empty church in Amsterdam, which soon came to be referred to as the 'Refuge Church'. The owner of the Refuge Church agreed to the asylum seekers who had exhausted all legal means of staying residing in his church.⁷²

Penalisation of irregular residence

On 21 December 2012 the Cabinet agreed to a proposal from the State Secretary for Security and Justice to submit a proposal to the House of Representatives to change the Aliens Act by including the penalisation of irregular foreign national residents in the Netherlands.⁷³ Foreign nationals who stay irregularly in the Netherlands are committing an offence and the sanction against this is a fine. If the fine is not paid, then imprisonment for non-payment of a fine is possible.

Foreign nationals who are fined twice (or more often) because they are staying irregularly in the Netherlands risk a strict ban on⁷⁴ entry. The duration of the strict ban on entry in connection with irregularity is up to a maximum of five years. Non-compliance with this ban on entry is a crime and can be punished by a prison sentence of up to a maximum of six months or a fine. The introduction of the penalisation means that irregular residence in the Netherlands will become less attractive. It is meant to be a preventive measure. Moreover, it sends out a clear signal to foreign nationals who stay irregularly in the Netherlands: from now on they will be punishable.

The penalisation applies only to foreign nationals over the age of 18 years. If the foreign national still has a departure period in connection with independent departure (up to 28 days), then the penalisation does not apply.

People who help irregular residents for humanitarian reasons are not punishable. Employers and fraudulent landlords, whose aim is purely for profit and who employ irregular residents or offer them accommodation, will remain punishable. They will be dealt with in strict terms.

First and foremost is that foreign nationals, who are staying irregularly, must leave and preferably voluntary, but if not then they will be forced to leave (removal). The penalisation of irregular residence cannot lead to the delay or hindrance of this departure.

71 *Parliamentary Papers II* 2012-2013, 29344, no. 114.

72 For further information also see the website of the 'Refugee Church' www.devluchtkerk.nl.

73 For further information see <http://www.rijksoverheid.nl/nieuws/2012/12/21/illegal-verblijf-van-vreemdelingen-straftbaar.html>.

74 For further information also see paragraph 4.2.

Although the Court of Justice had previously judged the penalisation of irregularity was contrary to the European return directive, the Court of Justice of the European Union ruled on 6 December 2012 (Sagor judgment, C-430/11) that EU Member States have the authority to introduce the penalisation of irregular residence under the sanction of a fine. The European return guideline is not against the punishment of irregular residence also with a punishment of imprisonment. A Member State must guarantee, however, that implementation of that punishment must end as soon as the removal of the irregular foreign national in question is possible.⁷⁵

4.2 Return

The return policy is aimed at tackling and preventing the irregular residence of foreign nationals who are staying in the Netherlands unlawfully. The basic principle is that foreign nationals who are not staying (any longer) lawfully in the Netherlands, must repatriate independently to their country of origin or depart to another country where their entry is guaranteed. The foreign national is responsible for this him/herself. If he/she does not comply with this, then forced departure can ensue. Foreign nationals without residence permits who want to repatriate to their country of origin can be supported in rebuilding their existence there. The foreign national can repatriate independently with financial support or with support in kind (for example retraining or help with setting up a business) or with a combination of both of these.⁷⁶

In order to guarantee that asylum seekers who have exhausted all legal means of staying and other foreign nationals actually leave the Netherlands, the first Rutte government introduced a number of new measures. The measures are set out in the letter 'Return in the foreign national policy' and are aimed at stimulating independent departure, increasing the collaboration with countries of origin, reducing the laxity in the departure process and the improvement and simplification of the process in receiving (replacement) travel⁷⁷ documents. These measures have already been implemented.

On 6 July 2012 the former Minister for Immigration, Integration and Asylum was able to give feedback regarding the state of affairs concerning the implementation of the above-mentioned measures.⁷⁸

Assisted voluntary return

Independent departure is the preferred alternative in the Netherlands and is stimulated as much as possible. The new policy regulations were published on 15 December 2011 relating to assisted voluntary return and the (sustainable) reintegration of asylum seekers who have exhausted all legal means of staying. On 1 January 2012 the Subsidy Framework for Voluntary Return came into force. Under these policy regulations orga-

75 For further information see: <http://www.minbuza.nl/ecer/nieuws/2012/12/strafbaarstelling-van-illegaal-verblijf-niet-in-strijd-met-de-terugkeerrichtlijn.html>.

76 For further information also see the organisation for the asylum and migration policy in the Netherlands INDIAC –NL EMN NCP (2012).

77 These measures are worked out in further detail in the 'repatriation letter' of 1 July 2011. For further information also see *Parliamentary Papers II* 2010-2011, 19 637, no. 1436.

78 *Parliamentary Papers II* 2012-2013, 19637, no. 1566.

nisations from the social midfield, as well as local governmental departments, can submit projects to support asylum seekers who have exhausted all legal means of staying who want to repatriate to⁷⁹ their country of origin. The main change concerns the combination of provisions for support in kind with the existing regulation for financial support.

Return of families with minor children and unaccompanied minors

In the return policy extra attention is given to the return of families with minor children and unaccompanied minors. For families with minor children who are obliged to leave the country, but whose departure has not yet been arranged, specific locations have been set up at the start of 2011, the family locations, where accommodation is offered until departure can take place and where the departure of the families is facilitated intensively.⁸⁰ In addition to this, a project has been developed together with the International Organisation for Migration (IOM), the Repatriation and Departure Service and the Ministry of Foreign Affairs to give extra stimulation to families with minor children who have exhausted all legal means of staying for the voluntary return of this target group. This programme from the IOM, the *Assisted Voluntary Return for Families with underage children* (AVR FC 1), offers support in the area of reintegration of the repatriated people. This support may include, for example, (temporary) accommodation, schooling or starting up a business. The emphasis thereby lies with the development of the minor children within the family. The AVR FC 1 project was rounded off in the first half of 2012. The proposed aim of supporting 150 families in total with minor children in their return was achieved.⁸¹ Within the 'Subsidy Framework for Voluntary Return' the Dutch government financed a similar project that is aimed at families with minor children. This project AVR FC 2 started on 1 May 2012.

Alternatives for the custody of foreign nationals

The basic principle of the return policy is that measures for the benefit of the return process involve as little as possible infringement of the freedom of the foreign national. At the same time it is of great importance that foreign nationals who are staying unlawfully cannot avoid the obligation to depart. In order to test in practice whether alternatives to the restriction of movement do not incur any unacceptable risks to the supervision and contributions to the actual return, four different pilot projects were started in 2012.⁸² Under these pilot projects existing alternatives, set out under the legislation, for the restriction of movement of foreign nationals were applied to chosen target groups.⁸³

79 This has been made possible by the changes to the subsidy policy concerning the voluntary sustainable repatriation and reintegration of ex-asylum seekers. For further information also see: <http://www.dienstterugkeerenvertrek.nl/actueel/2011/12/subsidiebeleid-vrijwillige-duurzame-terugkeer-en-herintegratie-van-ex-asielzoekers.aspx?cp=66&cs=56636>.

80 *Parliamentary Papers II* 2010-2011, 29 344, no. 79.

81 *Parliamentary Papers II* 2012-2013, 19637, no. 1566.

82 *Parliamentary Papers II* 2011-2012, 19637, no. 1483.

83 Illegal foreign nationals who have never submitted an entry application do not belong to this target group. The risk of this group avoiding supervision is considered to be too high so that other alternatives can be applied. Also foreign nationals who have been rejected at the border cannot make use of alternatives for the custody of foreign nationals.

These alternatives are:

1. *Introducing an obligation to report to the Aliens Police (VP) in combination with facilitation of return by the Repatriation and Departure Service for foreign nationals who are obliged to depart and who need accommodation with recognisably trustworthy private individuals or organisations.*

This pilot project concerns a combination of a number of alternatives for the custody of foreign nationals and specifically concerns foreign nationals who obliged to depart who have accommodation with a non-governmental organisation (NGO) or a recognisably trustworthy private individual and who do not obstruct their return to their country of origin or another country to which they have been afforded entry. The Repatriation and Departure Service is in charge of this and is closely involved with obtaining the most effective and efficient supervision measure. This pilot project will involve a few dozen foreign nationals.

2. *The imposition of a measure restricting movement in a centre for restricted movement for ex-unaccompanied minor foreign nationals who at the moment of ending the Project Perspective were in treatment there.*

This pilot project involves ex-unaccompanied minor foreign nationals who have exhausted all legal means of staying and who are under the obligation to depart, who fall under the Experiment Perspective, which has since ended.⁸⁴ Ex-unaccompanied minor foreign nationals who have exhausted all legal means of staying who have taken part in this experiment and who can be removed, are in principle eligible for the measure for restriction of movement with accommodation in a restriction of movement centre as alternative to the custody of foreign nationals. This pilot project involves a maximum of a few hundred ex-unaccompanied minor foreign nationals who have exhausted all legal means of staying.

3. *The investigation of a deposit to be paid in advance by or on behalf of the foreign national who is obliged to depart, which will be repaid once it has been shown that he/she has left the territory of the European Union.*

This pilot project concerns the provision of a deposit beforehand that is paid by or on behalf of the foreign national obliged to depart. The money is repaid when the foreign national can show that he/she has left the territory of the European Union. Providing a deposit can be applied, for example, to foreign nationals who are detained and who collaborate in their return and are waiting for a travel document. This pilot project is being implemented in a few dozen cases.

4. *Helping to finance return projects by non-governmental organisations and associations, which are supported locally by municipalities and/or church bodies.*

The Dutch government finances, under this pilot project, return projects of non-governmental organisations and associations, which are supported locally by municipalities

⁸⁴ 'Perspective' was meant for asylum seekers who had exhausted all legal means of staying and who have become adults in the meantime, but who came to the Netherlands before their 18th birthday and applied for asylum. In the experiment an attempt was made through the municipal support points to stimulate the ex-unaccompanied foreign minors to repatriate to their country of origin. The Perspective experiment was ended in September 2011.

and church organisations. This pilot project is aimed at promoting the sustainable return and reintegration of foreign nationals who are not residing legally in the Netherlands.

Return Directive

The Netherlands implemented the European Return Directive of 31 December 2011. With the introduction of the return directive the return decision and the entry ban were introduced.

Foreign nationals of whom it has been determined that they have no right to residence in the Netherlands or foreign nationals who are found, will receive a return decision. The return decision is a document in which it is stated that they must leave the Netherlands and the Schengen Area and that they will be given a term of departure of between 0 and 28 days in order to comply.

If the foreign national is not given a term of departure or who does not keep to the term of departure, then he/she will be placed under an entry ban. This results in the foreign national being banned in principle from entering the whole Schengen Area for up to a maximum of five years. The risk of being given an entry ban can be reason enough for foreign nationals to leave independently. When being issued with a return decision, it can be pointed out to a foreign national that if he/she does not comply with the obligation to depart then an entry ban can be issued, after which his/her continued residence is punishable. This gives an extra incentive to leave independently.⁸⁵

Collaboration with other European countries

The Netherlands also participated in 2012 in a number of European projects with the aim of improving collaboration in the area of return.

EURINT

The Netherlands (Repatriation and Departure Service) received subsidies from the European Union in 2011 and 2012 together with its sister organisations in Germany, Belgium and Romania for the joint implementation of the *European Initiative on Integrated Return Management* (EURINT). The aim of this initiative was to act mutually towards third countries in order to improve the collaboration with the third country in the area of return. As well as carrying out negotiation missions, various task forces were also organised whereby the improvement of the identification process of the foreign national held a central role. EURINT functions as a platform for the exchange of knowledge and experience and also sharing best practices between the European sister services for the purpose of improving (forced) return.

Nineteen Member States, as well as Norway, Switzerland and Frontex participated in the final conference under the framework of EURINT in Bucharest. The operational results are presented here. The participants in the conference determined that there is a need for a broader European network aimed at an intensive strategic approach towards third

countries in the area of return. In October 2012 the Netherlands and Belgium presented a joint proposal at the GDISC Repatriation conference in Budapest and separately at Frontex to start a follow-up project on the basis of the EURINT experiences, whereby more countries participate in the network.

ERI

In June 2011, under the initiative of the Netherlands (Repatriation and Departure Service), the *European Reintegration Instrument* (ERI) was started. This project is financed by the Community Repatriation Fund. Together with the Repatriation and Departure Service, the sister organisations in Belgium, Germany and France also take part in this project.

The aim of this project is to promote sustainable reintegration after an independent or enforced departure. The five European partners sign a contract with just one local partner in seven target countries. People who have repatriated supported by the partner organisation by means of *the offer* of counselling and sponsors in their course of reintegration in the country of origin.

During the GDISC repatriation conference several references were made to the ERI and EURINT initiatives as examples for other European operational collaborations in the area of return and forced return projects.

ERPUM

The Netherlands (Repatriation and Departure Service) took part actively in 2012 in the ERPUM project. This initiative from Sweden is carried out together with the United Kingdom and Norway and is aimed at the realisation of adequate accommodation for the benefit of the return of unaccompanied minors to Afghanistan and Iraq.

Joint Return Operations

In addition the Netherlands works closely with other Member States within the EU on the joint repatriation operations, the so-called *Joint return Operations* (JRO). The organisation of the JRO is in the hands of a Member State and is carried out in collaboration with the department *Return Operations Sector* (ROS) of Frontex.

5 INTERNATIONAL PROTECTION INCLUDING ASYLUM

The so-called Improved Asylum Procedure was started as from 1 July 2010 in the Netherlands. The old AC procedure (whereby the aim was to make a decision concerning an asylum application within 48 process hours) is hereby extended to an eight-day general asylum procedure and the asylum seeker is given a rest and preparation period before his/her procedure starts. The purpose is that all asylum applications that require no further research (whereby it may involve decisions, rejections and Dublin cases) is dealt with during the general asylum procedure. When a decision cannot be made within 8 days for substantive reasons, then the case is referred to the extended asylum procedure.⁸⁶

Programme for Streamlining Admission Procedures

In the previous edition of this report a great deal of attention was given to the policy vision, which the former Minister for Immigration, Integration and Asylum announced on 22 February 2011, for reaching more streamlined and efficient admission procedures. In his letter to the House of Representatives of 22 May 2012, together with its attached appendix, the Minister gave further details about this.⁸⁷

Various projects and working groups were set up for the second phase of the programme (preparation for implementation). The whole package of measures for asylum is worked out in further detail within the Asylum project. This involves the following measures:

- Rearrangement of the grounds for asylum.
- Testing of all regular humanitarian policy frameworks together at the first asylum application.
- Introduction of a one-day test at follow-up asylum applications.
- Follow-up procedure at the centre with restricted movement or family location.
- The more efficient set-up of investigations by SDIS of the Immigration and Naturalisation Service.
- Introduction of fees on the issue of a replacement asylum residence document.
- Acceleration of the Dublin procedure.
- Adjustment of the planning by the Council for Legal Aid concerning the time of preparation by a legal counsel during the rest and preparation period.
- To send the proposal instead of issuing it in person.

With the Programme for Streamlining Admission Procedures steps are taken to build on the Improved Asylum Procedure, which came into force on 1 July 2010 and the purpose of which was to complete asylum applications in a shorter period of time. The Programme for Streamlining Admission Procedures is a package of measures the aim of which is to further streamline the admission procedure. The measures are aimed against the piling of one procedure on top of another and limiting the extension of residence through continuous procedures, without providing grounds of new facts and circum-

⁸⁶ For further information see the Annual Policy Report 2011, INDIAC EMN NCP 2012.

⁸⁷ *Parliamentary Papers II* 2010-2011, 19 637, no. 1400.

tances. This package also includes the rearrangement of grounds for asylum in accordance with European guidelines. In addition adjustments to the admission procedures (both for asylum and regular humanitarian) are included, as well as the introduction of the no-cure, no fee-principle in relation to legal aid. Measures are also proposed to speed up the processing time of procedures.

The details of the policy vision of Streamlining Admission Procedures was discussed on 3 July 2012 during the General Consultation with the House of Representatives. The second Rutte government accepted the plans more or less unchanged. At the moment the preparations for the implementation of the measures are in full swing. One of the conditions for implementation is that the changes to the legislation and regulations and the IT system are ready. In the above-mentioned letter of 22 May 2012 the Minister indicated that the package of measures will be able to be implemented during the first half of 2013. Some (parts of) measures have already been implemented.

Regulation for the long-term residence of children

In the Coalition Agreement of 29 October 2012 the second Rutte government indicated that it would strengthen the position of minor foreign nationals who are rooted in the Netherlands.

On 21 December 2012 the Cabinet agreed to the proposal from the State Secretary for Security and Justice to come to a definitive regulation and a transitional arrangement for asylum children who have stayed for at least five years in the Netherlands.⁸⁸

These children and their family members can, when they comply with certain conditions, be eligible for a residence permit. The second Rutte government will thereby end the situation of children who have already stayed in the Netherlands for a long time, yet without having the prospect of being issued with a residence permit.

A transitional arrangement will be implemented for asylum children without the prospect of a residence permit, who have already stayed for longer than five years in the Netherlands. In addition to this a definitive regulation will be implemented, which is intended to prevent future discussion about this group of children and the government's role in their situation. The definitive regulation will comprise a policy in which it can be tested objectively whether the government should issue a permit on the basis of the long-term residence. The actions of the parents and the child will also play a part thereby in the decision.

It applies in both regulations that a regular residence permit can be issued to (unaccompanied) minor foreign nationals who submit an application for a residence permit and have already stayed in the Netherlands for more than five years before their 17th birthday, whereby they have actually stayed in the Netherlands for those five years or more and have not avoided the attention of central government for more than three months. The same thing applies to the foreign national's family members, unless the family ties

have been broken. When foreign nationals apply for consideration under the regulation, it does not mean that they immediately have the right to accommodation during the assessment of the application. It goes without saying that no permit will be issued to foreign nationals who form a danger to the public order or national security. This applies when there is a case of Article 1F of the Convention on Refugees or when a foreign national has been convicted to an unconditional prison sentence of at least one month. The same conditions apply to the family members. Proven departure from the European Union also leads to non-issuance of a residence permit.

Apart from the general terms and conditions, the transitional arrangement also includes a few other specific conditions. The foreign national must be younger than 21 years old on 29 October 2012. In addition there is a one-off possibility in relation to certain temporary residence permits, such as a permit on grounds of medical grounds or following an educational programme, to convert such permits into a permit on grounds of this regulation. Foreign nationals are also offered a one-off possibility rectification of identity when there has once only been doubt about the purported identity.

In relation to the definitive regulation the application must be submitted before the foreign national reaches the age of 19 years. In addition to this the foreign national, as well as his/her family members, must have collaborated in his/her return and his/her identity must be proven.

Both regulations come into at the end of January 2013. Foreign nationals who think that they are eligible for a permit on the basis of the transitional arrangement can submit an application from the end of January during a period of three months. From that date foreign nationals can also submit an application under the definitive regulation.

Specific groups in the country-related policy

Article 29, first paragraph, of the Aliens Act 2000 sets out the grounds on which an asylum seeker may be eligible for a temporary asylum residence permit.⁸⁹ The grounds a. and b. of this Article are intended to offer international protection, to which the Qualification Guideline also relates. Apart from these two grounds for asylum to which the Qualification Guideline relates, there are four more grounds set out in Article 29, first paragraph, of the Aliens Act 2000 under which an asylum seeker may be eligible for a temporary asylum residence permit: the grounds c., d., e. and f. These are based in the national policy and therefore provide national protection. The Qualification Guideline is not related in any way to this national protection.

The ground a.: persecution of a group

Persecution of a group is involved when a group of foreign nationals are systematically subjected to persecution in the country of origin on account of one of the grounds set out in Article 1A of the Convention on Refugees. In case of persecution of a group, the requirement for individualisation will be limited for a foreign national who claims to fall

89 This policy is set out in paragraph C2 Aliens Act Implementation Guidelines 2000.

into this category. The foreign national is only required to show that it is plausible that he/she belongs to this group, of which all members fear persecution.

The ground a.: risk groups:

Under the country-related asylum policy a population group can be designated as risk group if it appears that persecution of foreign nationals belonging to this group are persecuted in the country of origin. This does not need to entail a systematic form of persecution. Even if the persecution only occurs incidentally, a population group can be designated as risk group by the Minister. It will be more quickly assumed of people belonging to a risk group that the incidences suffered by them are serious enough that they should be granted refugee status. When these people claim to be suffering problems with the authorities or fellow citizens, and when believable and individualised statements have been submitted, then even with only the slightest indications it can be assumed to be plausible that there is a grounded case of fear of persecution. The requirement for individualisation remains applicable to the foreign national who belongs to a risk group. It is true that these groups are indicated in the Dutch policy, but this concerns international protection under the Convention on Refugees.

In 2012 the following groups were designated as risk groups:

- Afghanistan: people who come from an area where they belong to an ethnic or a religious minority, as well as lesbians, homosexuals, bisexuals and transsexuals.⁹⁰
- Somalia: the ethnic minority groups Reer Hamar, synonymous with Benadiri.⁹¹
- Iraq: lesbians, homosexuals, bisexuals and transsexuals, including those people who only admit to this after arrival in the Netherlands.⁹²
- Sudan: SPLM/North supporters, the ethnic Nuba, non-Arab population groups from Darfur.⁹³

In June 2012 the Minister for Foreign Affairs issued an official report concerning the situation regarding lesbians, homosexuals, bisexuals and transsexuals (LHBTs) in Iraq. The extremely worrying details in the official report gave reason to change the policy with regard to LHBTs. Iraqi LHBTs are now designated as a group who are systematically exposed to the practice of acts of serious violation of human rights, therefore group persecution.⁹⁴

90 The country policy for Afghanistan was not changed in 2012. The policy in 2012 is based on the decree from the Minister for Immigration and Asylum on 2 December 2011, number WBV 2011/16, containing changes to the Aliens Act Implementation Guidelines 2000, Government Gazette 2011, no. 22504.

91 Decree from the Minister for Migration Affairs and Integration dated 1 December 2012, number 2012/24, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 23880.

92 Decree from the Minister for Migration Affairs, Integration and Asylum dated 29 March 2012, number WBV 2012/9, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 7615. By decree dated 15 August 2012, number WBV 2012/19, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 17337 is the policy on account of the extremely worrying reports about the situation in which Iraqi LHBTs find themselves, which was further expanded and Iraqi LHBTs are designated as a group that is subject to group persecution.

93 Decree from the Minister for Migration Affairs and Integration dated 23 October 2012, number 2012/23, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, no. 22840.

94 Decree from the Minister for Migration Affairs and Integration dated 15 August 2012, number WBV 2012/19, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 17337. This decree follows the previous review decree taken on 29 March 2012, number WBV 2012/9, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 7615. In the review decree of 29 March 2012 it was included that Iraqi LHBTs

The ground a.: change of the basic principles assessing the grounds for persecution of homosexuality and religion.

Supplementary to the acts of persecution set out in the legislation and regulations, the grounds for persecution of homosexuality and religion are described in greater detail in a decree dated 22 March 2012.⁹⁵

Persecution of homosexuals.

If an asylum seeker makes a claim that he has experienced problems as a result of his homosexual nature (or his/her lesbian, bisexual or transsexual nature), then under certain circumstances this can lead to the conclusion that he is a Convention refugee. It is also expected of a homosexual asylum seeker that he does not conceal his nature. On the other hand, the situation whereby the foreign national cannot demonstrate his homosexuality in the same way in his country of origin as in the Netherlands is not sufficient reason to be eligible for residence. The idea hereby is that it is not for the Netherlands to guarantee that the freedom existing here should also exist in the country of origin. The situation in the country of origin can also include the fact that the foreign national needs to demonstrate a certain level of reservation in expressing his homosexual nature in order to prevent serious violations of his fundamental rights. But this reservation cannot go so far as meaning that the foreign national cannot practice his sexual nature in a meaningful way.

Persecution for religious reasons

Supplementary to the legislation and regulations already described, grounds of persecution can occur in other ways in relation to persecution for religious reasons. This may include, for example, the ban the practice of religion and religious education and seriously discriminatory measures against people with a particular religious belief.

In the new policy it is not expected that people who are followers of a (minority) religion must hide this fact in the country of origin. On the other hand, the situation whereby the foreign national cannot demonstrate his/her belief in the same way in his/her country of origin as in the Netherlands is not sufficient reason to be eligible for residence as Convention refugee. The idea hereby is that it is not for the Netherlands to guarantee that the freedom existing here should also exist in the country of origin. The situation in the country of origin can also include the fact that the foreign national needs to demonstrate a certain level of reservation in practising his religion in order to prevent serious violations of his fundamental rights, such as the active practice of conversion activities. But this reservation cannot go so far as meaning that the foreign national cannot practice his/her religious belief in a meaningful way.

were also designated, besides being a risk group, as vulnerable minority group, meaning that they are eligible sooner for protection. The extremely worrying reports in June 2012 about the position of LHBTs led to an expansion of the policy whereby the individualisation requirement for LHBTs is further limited.

95 Decree of the Minister for Immigration, Integration and Asylum dated 21 June 2012, no. WBV 2012/11, containing revision to the Aliens Regulations 2000, Government Gazette 2012, no. 12179.

Following the ruling of the European Court of Justice on 5 September 2012 (joined claims Y and Z, C071/11 and C-99/11) relating to the infringement⁹⁶ of the (public) religious perception, in his letter to the House of Representatives of 2 November 2012 the former Minister for Immigration, Integration and Asylum brought the general policy concerning religious minorities more in line with the case law of the European Court of Justice.⁹⁷ The basic principle remains that not every infringement of the right to religious freedom forms an act of persecution. What is important is the seriousness of the violation. Whether a violation of the right to religious freedom must be considered to be an act of persecution does not depend on the circumstance or the religion in public or private, alone or together with others, but the weight of the measures and the sanctions that are taken, or could be taken, against the person involved. In assessing the asylum application, the subjective elements of the foreign national are taken into account. It is irrelevant in principle that the foreign national can avoid the danger by stopping certain religious actions. It cannot be reasonably expected of the foreign national that he/she stops religious actions, which expose him/her to actual danger of persecution.

The ground b.

The ground b. stipulates that an asylum permit can be issued to the foreign national who has made a plausible claim that he/she has well-founded reasons for fearing that he/she, following removal, would run a real risk in the country of origin or continuous residence of being subjected to torture, inhumane or humiliating treatment or punishment. This stipulation is taken from Article 3 of the European Convention on Human Rights (ECHR). Removal to a country where someone runs a real risk of being subjected to such treatment forms a violation of this Article. The real risk can also exist after the foreign national's departure from the country of origin.

The assessment whether there is a case of such a situation as described in the ground b. takes place according to the following elements:

- Exceptional situation: in the country of origin there a case of an exceptional situation as meant in Article 3 of the ECHR and Article 15c of Directive 2004/83/EC, in which people run a real risk simply through their presence in the country of origin of treatment in violation of Article 3 of the ECHR (in the words of the ECHR: most extreme cases of general violence). The requirement for individualisation is limited in these cases to originating from the country or area where there is an exceptional situation.
- Systematic exposure: the foreign national belongs to a group that is systematically exposed to a treatment that violates Article 3 of the ECHR if there is a case of an 'exceptional situation'. The requirement for individualisation is limited to making it plausible that belonging to a population group or social group would entail running the real risk of actions as meant in Article 3 of the ECHR.
- Vulnerable minority groups: the foreign national can be eligible for an asylum resi-

96 In the ruling of 5 September 2012 (joined claims Y and Z C071/11 and C-99/11) the European Court of Justice ruled that not every infringement of the right to religious freedom is an act of persecution. The Court commented thereby that an act of persecution can be the result of an infringement of the external experience of that freedom. In assessing whether infringement of the right to religious freedom forms an act of persecution the competent authorities must investigate whether the person in question, bearing in mind his/her personal situation, is subject to real danger in his/her country of origin for reasons of practising that freedom.

97 Letter with reference number 2012-0000585700.

dence permit on grounds of the policy concerning 'vulnerable minority groups' if there is no case of an 'exceptional situation' and 'systematic exposure'. Less strict requirements are set for asylum seekers who belong to a vulnerable minority group in order for them to be eligible for an asylum permit on the ground b. The requirement for individualisation is not limited in these cases to what the foreign national has personally experienced. On the basis of the statements made by the foreign national, the Immigration and Naturalisation Service (IND) weighs up what people in the close surroundings of the foreign national, who also belong to the vulnerable minority group, have experienced in violations of human rights.

- Individual characteristics: on grounds of his/her personal situation or individual account of the reasons for the application for asylum, the foreign national has put forward a plausible case that he/she runs a real risk of treatment in violation of Article 3 of the ECHR, if no previous situations exist. In that case the requirement for individualisation applies in full.

The ground b.: 'Exceptional situation'.

During (part of the year) 2012 there existed an 'exceptional situation', as meant in Article 15c of Directive 2004/83/EC, in the following regions:

- Somalia: the security situation in the city of Mogadishu is so bad that it can be considered to be an exceptional situation. This means in general that foreign nationals who can prove that they come from Mogadishu it applies that they come from an area in which the level of indiscriminate violence in the armed conflict is so high that a citizen returning, simply through his/her presence, runs a real risk there of serious injury.⁹⁸
- Democratic Republic of Congo it appears from information from the Ministry of Foreign Affairs that the security situation in the areas of North and South Kivu and Upper and Lower Uele is so serious that these satisfy the requirements of Article 15c of the Directive 2004/83/EC. But insofar as this situation presents itself, people from these areas are provided with alternative accommodation in Kinshasa.⁹⁹
- Sudan: a situation as meant in Article 15c of Directive 2004/83/EC is assumed to be the case for the areas of North and South Darfur. With the exception of the non-Arab population groups, there is alternative accommodation in other parts of Sudan.¹⁰⁰
- Sudan: a situation as meant in Article 15c of Directive 2004/83/EC is assumed to be the case for the areas of South Kordofan (including Abyei) and Blue Nile. With the exception of people who are connected with supporting rebel groups (especially SPLM/Supporters of the North and Nuba), there is alternative accommodation in other parts of Sudan.¹⁰¹

98 Decree from the Minister for Migration Affairs and Integration dated 1 December 2012, number 2012/24, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 23880.

99 Decree of the Minister for Immigration, Integration and Asylum dated 29 March 2012, no. WBV 2012/6, containing revision to the Aliens Regulations 2000, Government Gazette 2012, 7456.

100 Decree from the Minister for Migration Affairs and Integration dated 23 October 2012, number 2012/23, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012 no. 22840.

101 Decree from the Minister for Migration Affairs and Integration dated 23 October 2012, number 2012/23, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012 no. 22840.

The ground b.: 'Systematic exposure'.

- Somalia: the ethnic Reer Hamar / Benadiri (Somalia) are designated as a group that is systematically exposed to a practice of inhumane treatment.¹⁰² In respect of a foreign national who comes from Somalia who claims to belong to this group, the requirement for individualisation will be limited to the foreign national demonstrating that it is plausible that he/she belongs to this group in order to be eligible for the decision that on his/her return he/she would be exposed to a treatment in violation of Article 3 of the ECHR.

The ground b.: 'Vulnerable minority groups'.

During 2012 the following groups were designated as vulnerable minority groups in the country of origin:

- Iraq: Christians (also those who converted to Christianity in the Netherlands), Mandaeans, Yezidis, Jews, Shabakis and Kakais (only religious minority groups and Palestinians. Also lesbians, homosexuals, bisexuals and transsexuals.¹⁰³
- Libya: lesbians, homosexuals, bisexuals and transsexuals.¹⁰⁴
- Afghanistan: people who come from an area where they belong to an ethnic or a religious minority, as well as single women, lesbians, homosexuals, bisexuals and transsexuals.¹⁰⁵
- Sudan: the ethnic Nuba and the non-Arab population groups from Darfur.¹⁰⁶

Population groups who were no longer designated in 2012 as 'vulnerable minority groups' are:

Democratic Republic of Congo ethnic Tutsis; information from the Ministry of Foreign Affairs shows that the situation for Tutsis in the DRC is slowly improving. The position of Tutsis no longer differs from the position of other groups in the country. Reassessment of permits already issued is not yet taking place.¹⁰⁷

The ground b.: westernised Somalians.

On 31 July 2012 the Administrative Jurisdiction Division of the Council of State ruled that the decision of the European Court of Human Rights (ECHR) of 28 June 2011 was not fully implemented in the policy and that when testing whether someone can maintain his/her position under Al-Shabaab on his/her return should also form part of the consideration, or whether that person has become so westernised that, on his/her return, he/she would be deemed by Al-Shabaab to be westernised and would run a real risk of

102 Decree from the Minister for Migration Affairs and Integration dated 1 December 2012, number 2012/24, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 23880.

103 Decree from the Minister for Migration Affairs, Integration and Asylum dated 29 March 2012, number WBV 2012/9, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 7615.

104 Decree from the Minister for Migration Affairs and Integration dated 13 July 2012, number WBV 2012/15, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 15127.

105 The country policy for Afghanistan was not changed in 2012. The policy in 2012 is based on the decision taken by the Minister for Immigration and Asylum on 2 December 2011, number WBV 2011/16, containing changes to the Aliens Act Implementation Guidelines 2000, Government Gazette 2011, no. 22504.

106 Decree from the Minister for Migration Affairs and Integration dated 23 October 2012, number 2012/23, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, no. 22840.

107 Decree of the Minister for Immigration, Integration and Asylum dated 29 March 2012, no. WBV 2012/6, containing revision to the Aliens Regulations 2000, Government Gazette 2012, 7456.

serious injury in connection with that fact. The decision of 1 November 2012 was that the policy relating to this point should be brought more in line with the ECHR's ruling. This means that the return of people who come from the other areas (outside Mogadishu) of Central and Southern Somalia can lead to violation of Article 2 of the ECHR. When assessing the real risk of serious injury in relation to foreign nationals who come from these areas then it should also be tested whether they have become so westernised that they would be deemed to be westernised by Al-Shabaab on their return. This concerns risks they would run, posed by Al-Shabaab, when repatriated to their country of origin as a result of specific characteristics that they would find impossible to disguise and which they would not be able to change after their return.

Characteristics that play a role in any case in the assessment include the age of the foreign national on their arrival in the Netherlands, the duration of the stay in the Netherlands, the number of formative years spent in both the Netherlands and Somalia, the level at which the foreign national speaks and understands the Dutch language and participates in Dutch society.¹⁰⁸

The ground b: forced removal to Eritrea.

It appears from the official country report from the Ministry of Foreign Affairs concerning Eritrea that foreign nationals who undergo forced return to Eritrea run the risk on their return of imprisonment, mistreatment and torture. On these grounds and also on grounds of a ruling made by the Administrative Jurisdiction Division of the Council of State of 26 October 2011, forced return to Eritrea will not take place. Eritreans who apply for asylum and who left Eritrea illegally will in principle be issued with a residence permit under the ground b.

(Assisted) voluntary return still remains possible for people who left Eritrea legally and with permission from the Eritrean authorities. It is true that these people do not undergo enforced removal, but they are not given preferential eligibility for the issue of a residence permit under the ground b.¹⁰⁹

The ground b.: Return of Syrians who are not supporters of the regime.

In the official country report of the Ministry of Foreign Affairs and in other public sources about Syria there are reports of large-scale and serious violations of human rights carried out by the Syrian authorities. The reports have led to the conclusion that Syrian citizens, with the exclusion of active supporters of the regime, run the risk on their return from abroad of being exposed to treatment in violation with Article 3 of the ECHR. Asylum seekers from Syria who are not active supporters of the regime therefore are eligible for a residence permit under the ground b.¹¹⁰

108 Decree from the Minister for Migration Affairs and Integration dated 1 December 2012, number 2012/24, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012 no. 23880.

109 Decree from the Minister for Immigration, Integration and Asylum dated 26 March 2012, number WBV 2012/5, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, no. 6669.

110 Decree from the Minister for Immigration, Integration and Asylum dated 21 August 2012, number WBV 2012/20, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 17486.

The ground c.: compelling reasons of a humanitarian nature.

The asylum residence permit on the national ground c. of Article 29, first paragraph, of the Aliens Act 2000 can be issued to the foreign national who, on grounds of compelling reasons of a humanitarian nature in connection with the reasons of his/her departure from the country of origin, cannot reasonably be expected to repatriate to the country of origin.

In 2012 this policy applied to:

- Afghanistan: single women and westernised minor girls attending school (and their family members).¹¹¹
- Iran: lesbians, homosexuals, bisexuals and transsexuals.¹¹²

The ground d.: categorical protection.

The asylum residence permit under the national ground d. of Article 29, first paragraph, of the Aliens Act 2000 can be issued to the foreign national who, on return to the country of origin, would suffer exceptional harshness in connection with the general situation there. This ground d. therefore does not afford protection under individual grounds, but group protection or, in other words, categorical protection.

The categorical protection policy was ended in 2012 in relation to

- Chechnya: it appeared from the official country report of the Ministry of Foreign Affairs concerning the Northern Caucasus that the situation for the citizens of Chechnya has improved in comparison with the last few years. Moreover, there is no policy in force of categorical protection because alternative residence is possible for Chechens elsewhere in Russia.¹¹³
- Sudan: the non-Arab population groups from the areas of North, West and South Darfur.¹¹⁴

Moratorium on decision

A decision is given within a maximum of one year after receipt of the application for issuance of a temporary asylum residence visa. Strictly speaking, a moratorium on decision offers the possibility to extend the period in which a decision is made by one year at most. This moratorium on decision can be implemented if it is expected that there will be a short period of uncertainty about the situation in the country of origin. Due to this uncertain situation it cannot reasonably be expected that a decision is made concerning the application. The moratorium on decision can also be implemented in cases whereby the number of applications from a particular country or a particular region is so large

111 The country policy for Afghanistan was not changed in 2012. The policy in 2012 is based on the decree from the Minister for Immigration and Asylum from December 2011, number WBV 2011/16, containing changes to the Aliens Act Implementation Guidelines 2000, Government Gazette 2011, no. 22504.

112 The country policy for Iran was not changed in 2012. The policy is based on the decree from the Minister for Immigration and Asylum of 9 December 2011, number WBV 2011/14, containing changes to the Aliens Act Implementation Guidelines 2000, Government Gazette 2011, no. 20850.

113 Decree from the Minister for Immigration, Integration and Asylum dated 6 April 2012, number WBV 2010/8, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 7614.

114 Decree from the Minister for Immigration, Integration and Asylum dated 23 October 2012, number WBV 2012/23, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, no. 22840.

that it cannot reasonably be expected to reach decisions on all of the applications within the given time.¹¹⁵

In 2012 the moratorium on decision was not extended for:

- Syria: on 6 July 2012 the second consecutive decision and departure moratorium for Syria ended. The moratorium cannot be extended again.¹¹⁶
- Libya: the moratorium on decision was not extended because of the clear change of regime after the death of President Gaddafi.¹¹⁷
- Ivory Coast.¹¹⁸

5.1 Common European Asylum System (CEAS)

Since 1999 the European Union has continued to pursue the creation of a common asylum system. The reason for this was the unsatisfactory level of mutual coordination, which created problems for the EU Member States in connection with the stream of asylum seekers from other parts of the world. This resulted in practical problems, such as ‘asylum shopping’ and a disproportionate spread of asylum applications over the different Member States. In order to be able to address these problems, a common approach concerning the asylum policy was necessary. The core points of that common asylum policy are solidarity, coordination and harmonisation. The solidarity is translated into a programme that includes helping other countries, particularly those in southern Europe, with the processing of the stream of asylum seekers. The area of collaboration and harmonisation in the policy has led to three guidelines and a regulation. The guidelines provide a minimum standard for the accommodation of asylum seekers in the Member States (the Accommodation Guideline), minimum standards for the recognition of citizens of third countries and stateless people as refugees or as people in need of protection (the Qualification Guideline) and minimum standards for the procedures in the Member States for issuing or withdrawal of international protection (the Procedure Guideline). The regulation provides for the setting of criteria and instruments in order to be able to determine which Member State is responsible for handling an application for asylum (Dublin regulation).

The Treaty of Lisbon set the assignment in 2007 for realisation of the “second phase” of the GEAS. The European Commission has made proposals in light of this. The Netherlands also collaborated constructively in 2012 with other Member States in the Council, the European Commission and the European Parliament in order to complete the GEAS.

The following developments were made in 2012:

¹¹⁵ This policy is set out in paragraph C19 Aliens Act Implementation Guidelines 2000.

¹¹⁶ Decree from the Minister for Immigration, Integration and Asylum dated 21 August 2012, number WBV 2012/20, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 17486.

¹¹⁷ Decree from the Minister for Immigration, Integration and Asylum dated 13 July 2012, number WBV 2012/15, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 2012, 15127.

¹¹⁸ Decree of the Minister for Immigration, Integration and Asylum dated 28 February 2012, no. WBV 2012/2, containing revision to the Aliens Regulations 2000, Government Gazette 2012, 5106.

The Qualification Directive

The negotiations in the area of the Qualification Directive were completed in 2011. The Qualification Directive (Directive 2004/83/EC) from 2004 will be withdrawn at the latest on 21 December 2013 and replaced by the adjusted Directive (Directive 2011/95/EC) of 13 December 2011. No change to the Aliens Act is needed for the implementation of this Directive. However, the Aliens Decree, the Aliens Regulations and the Aliens Act Implementation Guidelines will need to be adjusted on certain points. Preparations were made for these adjustments in 2012. The Guideline provides further details to the criteria for the recognition of an asylum seeker as refugee or whether a person is eligible for subsidiary protection. The aim of the Guideline is in particular to clarify a number of legal terms, to bring the standards for giving protection in accordance with European case law and the further equating of the rights and provisions that are awarded to refugees and people with subsidiary protection.

The Dublin Convention

The Dublin Convention sets out the allocation of responsibility for the handling of applications for asylum to Member States. The core of this is that an asylum seeker can be handed over to the country that played the most important role on his/her entry or the residence of the asylum seeker within the territory of the EU, whereby exceptions apply that are aimed at maintaining family and relational ties.

On 19 September 2012 the Council (the Member States), the European Commission and the European Parliament reached an agreement in an informal trilogy concerning a possible amendment of the Dublin Convention.¹¹⁹ However, the negotiations were not formally completed at that time; in particular, an agreement still needed to be reached about the handling of specific groups (mainly unaccompanied minor foreign nationals). In 2012 the departments in charge of policy, legislation and implementation worked intensively together in order to reach as good as possible and as workable as possible result to the negotiations.

The Accommodation Guideline

The aim of the Accommodation Guideline is to realise greater uniformity between the Member States concerning the accommodation and the level of provisions for asylum seekers.

In the Committee of Permanent Representatives in Brussels agreement was reached, under the framework of the informal trilogy of the Council, the Commission and the European Parliament, over a compromise text. The Netherlands also provided a contribution to these negotiations during 2012. After testing by the lawyers/translators of the Council and the European Parliament, the final text will be set by the Council in 2013 and then the implementation phase will start.

¹¹⁹ This revision is one of the measures that will be taken under the framework of the second phase of the realisation of the Common European Asylum Policy.

The Procedure Guideline

The aim of this Guideline is the harmonisation of the asylum procedure so that the assessment of an application for asylum produces the same result in all European Member States.

The negotiations over this Guideline were carried out intensively and collaboration was sought from the other Member States and the European Parliament in order to influence the outcome. At the end of 2012 there was still no compromise text agreed between the Council and the European Parliament, but the trilogy had made a start.

5.2 European Asylum Support Office (EASO)

The EASO, which was set up in 2010 and has been operational since 19 June 2011, is established in Malta; its aim is to support the practical collaboration of the EU Member States in the area of asylum. The European Union wants to contribute to a common European asylum policy from the bottom up by means of the EASO.¹²⁰

- The general manager of the Immigration and Naturalisation Service (IND) represents the Netherlands in the Management Board Meetings of the EASO.
- In 2012 two Seconded National Experts were seconded to the EASO.
- Employees from the Immigration and Naturalisation Service and the Repatriation and Departure Service have regularly taken part in expert meetings of the EASO.

The Netherlands did not receive any direct support itself from the EASO in 2012.

5.3 Intra-EU Solidarity including Relocation

The Dutch Immigration and Naturalisation Service (IND) contributes to the solidarity with the EU by means of support of the EASO *Intervention Pool*.

The Netherlands did not take over any applications for international protection from other EU Member States in 2012.

5.4 Cooperation with Third Countries including Resettlement

The Netherlands participates in the UNHCR resettlement programme. Furthermore, the Netherlands works on the improvement of refugee protection in regions of origin. In both Kenya and Jordan the Netherlands supports large projects that contribute to capacity building for the benefit of the refugees in those countries. The Netherlands argued in the Justice and Internal Affairs Council (JBZ Council) for a quick realisation of the Protection Programmes under the framework of the Syrian refugee problem.

The Netherlands carries out a number of resettlement missions annually to different destinations throughout the whole world. The resettlement missions are chosen on an

¹²⁰ For further information also see www.europa-nu.nl.

annual basis in light of the above-mentioned basic principles. Participants in the missions are employees from the Immigration and Naturalisation Service (IND) and the Central Agency for the Reception of Asylum Seekers (COA). Sometimes employees from the Ministry of Foreign Affairs and doctors from the Medical Advisors Office of the Immigration and Naturalisation Service (IND) are also deployed. Depending on the need for necessary expertise per resettlement mission, a flexible approach is used towards the composition of the delegation of the mission. By means of the resettlement missions, groups of refugees can be interviewed on location (including in refugee camps) within a limited period of time and can be assessed whether they are eligible for resettlement.

In addition to the resettlement missions, the UNHCR can put forward individual files, for example in the case of so-called 'emergency cases'.

Just as in previous years, in 2012 a quota was upheld of an average of 500 invited refugees annually. For the coming policy period of 2012- 2015 this means a total of 2000 refugees can be received.

From this number around 400 people annually will be selected through the resettlement missions and around 100 people through individual recommendations by UNHCR.

In 2012 four resettlement missions were carried out in the following countries:

- Lebanon (refugees from Iran and Iraq),
- Kenya (various nationalities),
- Ecuador (Columbian refugees),
- Sudan (Eritrean refugees),
- Thailand (various nationalities).

Furthermore, a number of refugees were recommended individually by UNHCR in 2012.

Increasing the asylum capacity in third countries

Increasing the asylum capacity and self-reliance of refugees is one of the aspects of migration management, which the Netherlands works on, both under the first Rutte government as well as under the current government, by giving support to the accommodation of refugees in the region of origin. Means from the central fund for migration and development are invested in strengthening asylum systems. The focus hereby lies with that stream of refugees with which the Netherlands is also involved via the asylum procedure. This mainly concerns countries that provide the first reception for Somalians, Afghans, Syrians and Iraqi refugees.

As junior partner, the Netherlands participates in a pilot project that is aimed at increasing the asylum capacity in the countries of the Eastern Partnership (Armenia, Azerbaijan, Georgia, Moldova, Ukraine and White Russia). Under the framework of the asylum and migration panel of the Eastern Partnership, the Netherlands has also shared its knowledge about the set-up of an asylum procedure.

6 UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

If an asylum application is rejected then, under the current Dutch policy, an unaccompanied minor can be eligible as a matter of course for a temporary regular residence permit under a limitation in connection with residence as an unaccompanied minor. The unaccompanied minor residence permit can also be issued as a matter of course if an asylum residence permit is withdrawn. Only foreign nationals who are minor and unaccompanied can be eligible for an unaccompanied minor residence permit.

The permit can be issued if adequate accommodation is lacking, under local terms, in the country of origin or another country to which he/she can reasonably be expected to go to. Furthermore, it also applies to unaccompanied minor aged 16 and 17 years old that they cannot look after themselves independently in the country of origin or another country to which they can reasonably be expected to go to.¹²¹ The passport requirement and other regular requirements, such as the requirement for means, which normally speaking apply on the issue of a regular residence permit, do not apply for the issue of an unaccompanied minor residence permit. The fact of being a minor is assessed under Dutch law.¹²² This means that the person has not yet reached the age of 18 years and that he/she has not been married. A minor is not considered to have reached the age of majority in case of a marriage that is not eligible for recognition under Dutch (international) private law. However, such a marriage can be important in the assessment of the question whether the foreign national is unaccompanied, the level of independence and the possibility of accommodation. In case of doubt concerning the fact of being a minor, then an investigation into the age can be carried out.

A foreign national is deemed to be unaccompanied if he/she is not supervised by his/her parent(s), who have reached the age of majority, or possibly a guardian already appointed abroad.¹²³

Review of the unaccompanied minor policy

A review of the unaccompanied minor policy was set up in 2011.¹²⁴ The details of this were worked out in 2012. In 2013 the new an unaccompanied minor policy will be implemented.

The aim of the review is to be able to offer clarity more quickly about the perspective for an unaccompanied minor: residence in the Netherlands or return. The above-mentioned an unaccompanied minor residence permit, which is temporary, will hereby be scrapped. Efforts will also be made towards the increased and quicker return of unaccompanied minors who need no protection in the Netherlands, under the condition that there is adequate accommodation in the country of origin or the country of long-term residence. If it is determined that, through no fault of the unaccompanied minor him/her-

121 For further information see Article 3.56, paragraph 1, Aliens Decree 2000.

122 Book 1, Article 233 of the Dutch Civil Code.

123 For further information see C2/7.1.3. Aliens Act Implementation Guidelines 2000.

124 For further information see the Annual Policy Report 2011, INDIAC–NL EMN NCP (2012).

self, there is no possibility for return to adequate accommodation, and the unaccompanied minor was younger than 15 years old at the time of his/her application, then the unaccompanied minor can apply for a permit on grounds of the so-called 'blameless' specific policy for unaccompanied minors. This permit is issued for a period of five years.

The long-term residence of children

As stated in Chapter 5, the State Secretary for Security and Justice provided further explanation in his letter to the House of Representatives of 21 December 2012 about what the regulation will entail for strengthening the position of minor children who are rooted in the Netherlands.¹²⁵ The definitive regulation includes that children and their family members who have stayed in the Netherlands on a long-term basis and unaccompanied minor foreign nationals, may be eligible under certain conditions for a residence permit. The background of the regulation is that the children cannot be adversely affected by the long-term residence, which can be blamed on such factors as lengthy procedures or non-collaboration with departure and the piling up of one procedure on top of another by the parents. Foreign nationals who submitted an application for asylum and who are younger than 19 years old and have stayed in the Netherlands for at least five years before reaching the age of majority, and who have stayed in the Netherlands for at least five years during that time, and who have not avoided the supervision of central government for longer than three months, can in principle be eligible for the issue of a residence permit. The family members are also eligible in principle for a residence permit.¹²⁶

Until the definitive regulation is implemented then children can make use of a transitional regulation.¹²⁷

Detention of unaccompanied minor foreign nationals

A start was made in 2011 with the implementation of the new policy concerning the limitation of detention of unaccompanied minor foreign nationals.¹²⁸ The core of this new policy is that the detention of unaccompanied minor foreign nationals should be reserved for only extreme circumstances. Much more than in the case of adults it applies that only as a last resort should detention be used, and then for as short a time as possible. When considering the interests of the unaccompanied minor foreign national in withdrawing their freedom and the interests of the government through the deployment of detention in order to guarantee their presence, a real value is placed on the former interest. Therefore the detention of unaccompanied minor foreign nationals is only allowed if the government has compelling interests in guaranteeing the presence of the unaccompanied minor foreign national. In such cases, one or more of the following circumstances must apply.¹²⁹

- the unaccompanied minor foreign national is suspected or convicted of a crime;
- the departure of the unaccompanied minor foreign national from the Netherlands can be realised within fourteen days;

¹²⁵ *Parliamentary Papers II* 2012-2013, 19 637, no. 1597.

¹²⁶ For further information see chapter 5.

¹²⁷ For further information about the transitional regulation see chapter 5.

¹²⁸ *Parliamentary Papers II* 2010-2011, 27062, no. 68.

¹²⁹ *Parliamentary Papers II* 2012-2013, 27 062, no. 86.

- the unaccompanied minor foreign national had never previously left for an unknown destination from the accommodation or had not avoided a duty to report requirement or restriction of movement; or
- an unaccompanied minor foreign national has been refused entry on the exterior border, and the fact of being a minor has not been determined.

In the absence of the above-mentioned compelling circumstances then, in the interests of the unaccompanied minor foreign national, other means are used in guaranteeing the presence of the unaccompanied minor foreign national. Since the introduction of this policy, the effects of the policy in the number of detentions, as well as the duration of the detention, has been monitored.

There has been a noticeable reduction visible since the introduction of this new approach of the number of unaccompanied minor foreign nationals who have been placed in detention. The State Secretary for Security and Justice indicated in his letter of 20 December 2012 that policy change put through in 2011 led to the desired effect in 2012 of a significant limitation of the detention of unaccompanied minor foreign nationals.¹³⁰

Developments from an EU perspective

The Action Plan implemented in June 2010 by the European Commission and the Justice and Internal Affairs Council for unaccompanied minor foreign nationals is an important step in the formation of a common EU approach to this group. The European Asylum Support Office (EASO) plays an important role in the implementation of the Action Plan. In terms of the implementation the EASO has mainly concentrated on the exchange of information with other Member States, the exchange of best practices and setting up of guidelines in the area of the investigation into age. The input from the Netherlands has mainly been in the interest of emphasising the care with which investigations should be carried out and thereby presenting its own methods and best practices.

In its 'Mid-term' report from the European Commission about the Action Plan, the European Commission indicates that, through the common approach, far greater emphasis has been given to the interests of the child. But in the future there will be greater need for a general EU approach to unaccompanied minor foreign nationals. The development of a common approach is an ongoing process. This means that the exchange of knowledge will need to be extended in the future, methods must be improved in order to reach sustainable solutions in order to be able to guarantee adequate protection of children. Collaboration and the exchange of information are important and countries of origin and transit countries must be involved in this.

Besides unaccompanied minor foreign nationals, the Netherlands does not denote any other vulnerable groups for which a special policy applies.

7 ACTIONS AGAINST TRAFFICKING IN HUMAN BEINGS

It was set out in the coalition agreement of the second Rutte government that human trafficking would be combated with greater force. The coalition agreement also stated that victims would be afforded a stronger position and that the support for victims would be improved. Besides this, offenders will be treated more strictly and victims will be given the protection they deserve. For victims who cannot be expected, due to psychological and/or physical circumstances, that they provide assistance in the criminal investigation, the possibility exists that they can be issued with a residence permit on humanitarian grounds.

The Dutch government considers human trafficking as an extremely serious crime and therefore the approach to this is also a priority for the ¹³¹ government. Included in the coalition agreement of the second Rutte government is that the government is set on the more intensive detection and punishment of offenders. The B-9 regulation (Chapter B-9 of the Aliens Act Implementation Guidelines 2000) sets out that foreign nationals who are (possibly) victims of or witnesses to human trafficking can be given temporary legal status to stay in the Netherlands and in this way to remain available for ¹³² the police and the judiciary. At the same time, the victim will be protected, not only by temporary legal status in the Netherlands, but also through the regulation for victims to have access to a number of services (such as, for example, accommodation, medical assistance and legal support).

Accommodation for victims of human trafficking

In his letter of 1 February 2012 the Minister of Security and Justice explained in further detail the way in which the accommodation for victims of human trafficking will be organised.¹³³ An important part of the accommodation for victims of human trafficking concerns the pilot project 'categorical accommodation for victims of human trafficking'. This pilot project was set up in 2010 as a result of the increasing numbers of victims of human trafficking and set up with the purpose of offering primary accommodation to this specific group of victims and, by means of an evaluation of the pilot project, to answer the question as to how structural accommodation for victims of human trafficking should be set up.

Through the "Coordination Centre for Human Trafficking", which has a coordinating role in the placement of victims of human trafficking in accommodation, an updated file is kept as to which clients are accommodated and how the accommodation has worked out. In practice, it appears that this pilot project fulfils a great need: the accommodation is nearly always fully filled. An important objective of the pilot project was to encourage victims in reporting human trafficking. It appears that the great majority of the victims actually do this (around 90%). In addition to this, it appears that almost all victims within

¹³¹ *Parliamentary Papers II* 2011-2012, 28 638, no. 57.

¹³² Also see the Annual Policy Report of 2012 for further information, INDIAC – NL EMN NCP (2011).

¹³³ *Parliamentary Papers II* 2011-2012, 28 638, no. 72.

the pilot project come from abroad and to a greater extent make use of the period of reflection on grounds of the residence permit for victims of human trafficking (the B-9 regulation). If the victims file a report of human trafficking during the period of reflection, then they are issued with a temporary residence permit and, after around three months of accommodation, they can pass on to, for example, regular accommodation, projects for supervised accommodation or care institutions.

This pilot project has shown that the stream of victims with a B-9 permit have difficulty in passing on to independent or supervised accommodation. In order to improve the flow, the Ministry of Foreign Affairs and Kingdom Relations has placed this group under the 'task of providing accommodation for residence permit holders' since January 2012. This task comprises an obligation to provide results for municipalities. The Central Agency for the Reception of Asylum Seekers (COA) mediates between B9 permit holders and a selected number of municipalities. If a B9 permit holder can pass on to independent accommodation, then the person in question is introduced by the Coordination Centre for Human Trafficking to the Central Agency for the Reception of Asylum Seekers (COA). The Central Agency for the Reception of Asylum Seekers (COA) then reports this B-9 permit holder to a municipality and this municipality has two months in which to find suitable accommodation for the person in question.¹³⁴

Bearing in mind the above-mentioned positive experiences provided by the pilot project, it is important that this provision of accommodation is continued. For these reasons, this pilot project was extended from July 2012 as categorical provision of accommodation. Because of the high priority that the approach to human trafficking is afforded in the Netherlands, it is possible that the number of victims who need accommodation will increase in the coming years. The number of accommodation places was therefore increased in July 2012 from 50 to 70, with an option for further increase if necessary.¹³⁵ Outside the increase of the offer of accommodation places within the categorical accommodation, greater attention is also given to the question of care. Psycho-social diagnosis has now been added to the categorical accommodation. By means of this diagnosis, a better picture can be gained of which specific care and help is needed by the victims after their stay in the categorical accommodation.

The Coordination Centre for Human Trafficking structurally receives a budget at its disposal with which the accommodation of groups of victims from other forms of exploitation can be arranged. These groups mainly do not require much else in the way of care provisions and often simply want to start work with another employer or return to their country of origin. The temporary accommodation of these groups can be organised using the Coordination Centre for Human Trafficking budget.

Access to information for victims of human trafficking

Victims of human trafficking have, since 30 August 2012, better access to information about accommodation, help and supervision. The Coordination Centre for Human Traf-

¹³⁴ Parliamentary Papers II 2011-2012, 28 638, no. 92.

¹³⁵ Parliamentary Papers II 2011-2012, 28 638, no. 90.

ficking has developed a folder and a website in 5 languages - Dutch, English, Hungarian, Polish and Bulgarian.¹³⁶ The title of the folder and the website is 'What to do now'. The folder and the website have been made by Coordination Centre for Human Trafficking in collaboration with the police and the Ministry of Security and Justice. The Coordination Centre for Human Trafficking contributes this folder and associated website to the raising of consciousness for victims and their rights and obligations.

The folders are sent to all regional police departments throughout the Netherlands. The folder is intended for the victims of human trafficking who have had an interview with the police or who are considering doing this. The associated website provides more extensive information per subject. By means of the folder and the website there is uniform information available on a national basis for (possible) victims of human trafficking.

Improper use of the B9 regulation

The first Rutte government indicated on 15 November 2011 that it was planning to tackle the improper use of the B9 regulation in the strongest possible terms and to limit the access to a residence permit to those for whom this is intended: victims of human trafficking who collaborate with the authorities under the framework of the criminal approach to human trafficking.¹³⁷ The measures to be taken in order to make the B9 regulation less susceptible to improper use concern the speeding up and streamlining of the regulation. One of these measures is ending the right of residence on grounds of the B9 regulation as soon as the criminal proceedings have been dropped by the Public Prosecution Service. The decree of 20 July 2012 involves the fact that the right of residence of foreign nationals, who have submitted a complaint against the decision taken by the Public Prosecution Service not to prosecute, will no longer continue.¹³⁸ Once the case has been dropped and the application to extend the period of validity of the B9 permit has been rejected, or the residence permit has been withdrawn, remedies at law remain open. In addition to this, the possibility exists, for example, of having an application for continued residence tested. If the complaint case is declared to be grounded, then the B9 right of residence can be revived.¹³⁹ In this way justice is done to the protection of the (possible) victim.

Pilot project involving applications with no chance of success

The pilot project involving applications with no chance of success was started on 1 September 2012. This pilot project will run up to 1 January 2014 and is aimed at completing the procedure more quickly of dealing with reports of human trafficking with little or no detection indications by foreign nationals with a B9 permit, although of course with the necessary level of care.¹⁴⁰ Irregular foreign nationals who file a report with no chance of success or with insufficient detection indication will be offered a B9 permit, which will

¹³⁶ For further information see www.fromhereon.eu.

¹³⁷ For a complete summary of these measures see the Annual Policy Report 2011, INDIAC EMN NCP (2012) and *Parliamentary Papers II* 2011-2012, 28 638, no. 57.

¹³⁸ Bulletin of Acts and Decrees 2012, no. 359.

¹³⁹ Research from the National Rapporteur for Human Trafficking (2012) shows that the majority of cases of complaint are declared to be ungrounded.

¹⁴⁰ *Parliamentary Papers II* 2012-2013, 28638, no. 95.

be withdrawn as soon as possible after investigations have been carried out. In order to enable the process as well as possible, details concerning the criminal proceedings and those under foreign national law will be exchanged immediately. After the pilot project has been evaluated then it will be decided whether this speeding up of the procedure will be implemented nationwide.

The Wall

Under the direction of the National Public Prosecution Service, the Netherlands Police Agency, the Inspectorate SZW, the Royal Netherlands Marechaussee, the Immigration and Naturalisation Service, the Tax and Customs Administration and the Expertise Centre for Human Trafficking and Human Smuggling have combined forces in investigating Chinese human trafficking and human smuggling in order to combat abuse better. The reason for this was awareness of a growing problem concerning Chinese victims of human trafficking, Chinese irregular staying foreign Nationals in the Netherlands and thereby related forms of crime and abuse. The aforementioned organisations exchanged and analysed information with each other in order to be able to carry out targeted detection and enforcement actions, and also to be able to increase the knowledge of this phenomenon. This also involved close collaboration with local government bodies and police forces.

The abuse in the Chinese beauty industry mainly involves abuse in massage salons. Under the framework of The Wall, in 2011 and 2012 various *different enforcement* actions were carried out in Amsterdam, The Hague and Rotterdam.¹⁴¹

Several Chinese massage salons were hereby inspected for possible offences under the Aliens Act, the Labour Act for Aliens, the General local regulation and compliance with tax regulations. Through The Wall project it has become clear over the last two years that there are genuine cases of abuse in the Chinese beauty industry. There is an extensive amount of sexual services practised in Chinese massage salons. In many cases these salons are a cover for prostitution. In addition there is the problem that many women working in Chinese massage salons find themselves in a vulnerable social and economic position. The working conditions make these women vulnerable to exploitation.

Maximum penalty for human trafficking raised

On 29 February 2012 the Minister of Security and Justice submitted a legislative proposal to the House of Representatives in which the maximum prison sentence for human trafficking was raised from eight to twelve years.¹⁴² The proposed increase expressed the seriousness of the crime better and also makes it easier to hold the suspect on remand. Human trafficking is a crime that often involves serious long-term violation of the self-esteem and integrity of the victims, who can be damaged by this for the rest of their lives. The measure fits in with the objective of the former coalition agreement to detect and combat human trafficking better.

141 Parliamentary Papers II 2011-2012, 28 638, no. 93.

142 Change to the Dutch Criminal Code 29 February 2012

Since the criminal practices of pimps involve human trafficking, this group will also be tackled more strictly. The social indignation against this form of modern slavery is rightly very intense. After all, pimps make victims of some of the most vulnerable members of Dutch society.¹⁴³

Directive for the prevention and combating of human trafficking

On 15 April 2011 the European Directive for the prevention and combating of human trafficking (Directive 2011/23/EU) came into force. This Directive should be converted into national law before 6 April 2013 and it sets minimum rules concerning the description of criminal offences and punishment in the area of human trafficking. The Directive also contains mutual stipulations which improve the prevention of this crime and the protection of the victims, with due regard for the gender perspective.

The Directive is an instrument for combating human trafficking in terms of prevention, as well as tackling criminals and protecting victims.

Implementation of the Directive will lead to the Netherlands tightening up certain points in the Dutch criminal legislation relating to human trafficking. The Directive also obliges the Member States to implement a number of preventive measures.

Member States are obliged to monitor the relevant developments through the appointment of a national rapporteur or similar mechanism. The Netherlands has complied with this obligation for more than ten years now through its National Rapporteur on Trafficking in Human Beings. The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children investigates under assignment of the Dutch government the nature and level of human trafficking and sexual violence towards children in the Netherlands. Since 2000 it has been reporting about the approach towards human trafficking and since 2012 also took over the approach towards sexual violence towards children. The National Rapporteur is independent in its judgment. Its task is to advise the government about the approach to these subjects. This advice, mainly in the form of recommendations, is included in written reports.

The chain-oriented approach and the multidisciplinary collaboration recommended as approach by the guideline is translated in the Netherlands into the setting up of the Task Force Human Trafficking/Human Smuggling. This was set up by the former Minister for Justice for a period of three years with the assignment of combating human trafficking. The establishment period of the Task Force Human Trafficking was extended in July 2011 until the end of 2014. The Task Force Human Trafficking/Human Smuggling comprises representatives from the Ministries involved in this area, the Public Prosecution Service, the detection services involved, the National Rapporteur on Trafficking in Human Beings, the IND, municipalities and the Coordination Centre for Human Trafficking. The points on which the Task Force concentrates fit in with the objectives of the guideline.

143 For further information see the report 'Human trafficking in and out of view' (National Rapporteur, 2012).

Royal Netherlands Marechaussee

The Royal Netherlands Marechaussee strengthens its special position regarding information at the physical borders. The normal police task in the area of combating human smuggling is still seen to be a very important task, but is increasingly combined with combating human trafficking. All police personnel are supplied with a new publication of a so-called indicator booklet. This is a handy publication aimed at the simplification of profiling. Besides this there is the project, originally set up locally and now rolled out nationally, whereby the attention is given to people brought to the Netherlands for the purposes of prostitution, or from the Netherlands to a foreign country.

Furthermore, the Netherlands takes an active part in the EU Policy Priorities set up by the EU Committee for Internal Security (COSI) for combating Trafficking in Human Beings (THB) and irregular migration to the so-called EMPACT-projects. The Netherlands is a co-driver (Dutch Police) for the project THB and participant (Royal Netherlands Marechaussee) in the project for irregular migration. In connection with this, but also during active detection work into human trafficking and human smuggling, the Netherlands works closely with other EU Member States via Europol.

8 MIGRATION AND DEVELOPMENT POLICY

Migration can provide a positive contribution to the development of developing countries. For example when migrants send money home family members (remittances). When they return temporarily. Or when ex-asylum seekers are given support on their return in setting up their own businesses. The Dutch migration and development policy stimulates this type of activity. In the policy document International Migration and Development 2008 six policy priorities are cited, which form the basic principles for the policy.

The six policy priorities are:

- (a) Greater attention for migration in the development dialogue and for development in the migration dialogue;
- (b) Institutional development in the area of migration management;
- (c) Stimulation of circulatory migration/brain gain;
- (d) Increasing the involvement of migration organisations;
- (e) Strengthening the relationship between money transfers and development;
- (f) Advancing sustainable return and reintegration.

On 11 July 2011 the State Secretary of Foreign Affairs, partly on behalf of the former Minister for Immigration, Integration and Asylum, improved the connection with the broader migration policy and the migration and development policy is now better embedded in the foreign policy.¹⁴⁴ The policy document International Migration and Development 2008 remains the starting point for this policy. The six previously cited policy priorities form the basic principles in the choice of activities. However, greater input was given to the themes of sustainable return and reintegration, including accommodation of repatriated unaccompanied minor foreign nationals, as well as in the area of protection of refugees in the region of origin. A connection has also been removed from the list of partner countries for the bilateral development collaboration. In its place there is a list of countries included, which are important for the cohesion theme of migration and development. This list is applied in the assessment of new project proposals.

In the spring of 2012 the programme migration and development was evaluated externally.¹⁴⁵ On 4 July 2012 the State Secretary of Foreign Affairs, partly on behalf of the former Minister for Immigration, Integration and Asylum, informed the House of Representatives about the outcome of this external evaluation. The aim of the evaluation was (a) being accountable for the implementation of the policy and (b) giving recommendations for the further development of the migration and development policy.

¹⁴⁴ Parliamentary Papers II 2010-2011, 30573, no. 74.

¹⁴⁵ This evaluation was carried out by Panteia/ Research for Policy and the Maastricht Graduate School of Governance.

In international terms, migration and development are changing fast. A few EU Member States, Switzerland and Norway, as well as the European Commission are developing initiatives in this area. Both in the academic as well as the international policy discussions themes such as circulatory migration, the involvement of migrant organisations, return and money transfers also hold a central position in 2012.¹⁴⁶

Greater attention for migration in the development dialogue and for development in the migration dialogue

Within the Dutch migration policy greater attention has been given to migration in the development policy. On the other hand, there is greater attention given to development within the migration policy. This applies mainly to the return policy. The Netherlands makes use of a strategic approach to countries, whereby a broader collaborative relationship can be set up with countries of origin (in particular countries that have high priority from a migration point of view) as well as for the application of the possibility of conditionality (if countries of origin do not collaborate, or collaborate too little on the return of their citizens, then this could have consequences for the bilateral collaboration with these countries, particularly for any collaborative development means that are channelled via the government).

Institutional development in the area of migration management

Under this policy priority the Netherlands puts extra effort into increasing the protection of refugees in regions of origin. This mainly involves improving local asylum systems through the training of government personnel and the employees of non-governmental organisations. In 2011 the Netherlands concentrated efforts particularly in countries in the region where many Somali refugees are accommodated, such as Kenya. In 2012 the Netherlands invested extra effort in increasing the asylum capacity in Jordan.

Stimulation of circulatory migration/brain gain

The Netherlands follows the international dialogue about circulatory migration, which is carried out, for example, in the Global Forum on Migration (GFMD) and also gives attention to pilot projects that are run by other Member States (Germany, Mauritius, Canada, Spain). However, the Dutch government has chosen not to develop any new Dutch initiatives in this area for the time being¹⁴⁷. As reported in the Annual Policy Report 2011, the Dutch pilot project involving circulatory migration was stopped in 2011.¹⁴⁸

The Netherlands supports a number of projects in which migrants are sent temporarily to the country of origin. By passing on their knowledge they contribute to the development in the country of origin (braingain). Such projects are demand-driven and based on the needs of the labour market in the country of origin. Migrants with a permanent residence status in the Netherlands (or other EU Member States) can apply voluntarily and are selected on the basis of a match with the particular demand in the country of origin.

¹⁴⁶ *Parliamentary Papers II* 2011-2012, 30573, no. 107.

¹⁴⁷ *Parliamentary Papers II* 2011-2012, 30573, no. 107.

¹⁴⁸ *Parliamentary Papers II* 2011-2012, 30573, no. 107.

Increasing the involvement of migration organisations

The Dutch government considers it to be desirable that migrant organisations organise themselves, for example, through a platform. Although migrant organisations be responsible for this perfectly well themselves, the government can also provide support hereby.

The African Diaspora Policy Centre (ADPC) is a centre of knowledge run for and by the African diaspora concerning migration and development. The centre is mainly aimed at the themes of peace *building*, better governance and brain gain. ADPC carries out research, advises policy makers, organises training programmes and meetings and prepares publications about these themes. The centre offers the African diaspora thereby a unique platform for the exchange of knowledge and experience with the objective of increasing their role and active involvement in migration and development. The ADPC successfully completed a programme in 2011 that was aimed at increasing the capacity of 12 African ministries related to the diaspora. Twenty-four staff members in total from the African ministries in question followed training programmes in Ghana, through which they were better able to involve the diaspora in the development in their countries of origin. Various African countries have shown interest in taking part in such training programmes. The Dutch Ministry of Foreign Affairs has agreed to project proposal from the ADPC for a follow-up to the project for increasing capacity and in 2012 financed thereby the activity Participation of Diaspora in the Joint Africa-EU Strategic Partnership carried out by the ADPC. This project is aimed at improving the participation of the African diaspora in the implementation of the Joint Africa-EU Partnership. One aim is to create a greater consciousness in African and European policy makers about the strategic role that the diaspora can play by the implementation of this partnership. A number of interested parties took part in the various consultation meetings, namely: diaspora organisations from EU Member States, professionals and representatives from various African countries, international representatives from EU Member States, the European Commission and the African Union. One important outcome of the project is the agreement made by diaspora organisations to set up a European diaspora network.

In 2011 the *International Centre for Migration Policy Development* (ICMPD) and IOM started the project *Strengthening African and Middle Eastern Diaspora Policy through South-South Exchange* (AMEDIP). The aim of the AMEDIP project is to improve the institutional capacity of national authorities responsible for the migration and development policy in 13 countries in Africa and the Middle East. This will facilitate the contributions made by their diaspora. This project will continue up to July 2013.

Strengthening the relationship between money transfers and development

The Netherlands believes that governments in principle should not act in a controlling manner by the deployment of money transfers. However, the Netherlands is involved in the creation of favourable preconditions in order to strengthen the relationship between money transfers (remittances) and development. In the first place this involves

improving the transparency in the Dutch market for money transfers, in particular by supporting the website www.geldnaarhuis.nl. This website is managed by IntEnt and the aim is to further increase the transparency in the Dutch market for money transfers and to reduce the costs involved in these transfers by stimulating competition in the market. The website is written in 8 languages and can be used to compare the costs of transferring money to 34 countries. An evaluation carried out in 2010 showed that users considered the website to be informative and that it contributes to greater transparency in the Dutch remittance market. However, the website is still not well enough known within the target group. An agreement was reached with IntEnt in 2012 that it would carry out a targeted promotional campaign in order to increase acquaintance of the website 'Geld naar Huis' amongst migrants, which should lead to a greater use of the website and the financial fluency of migrants. In addition to this, the website will be expanded by new providers. All these providers must be registered in any case with the De Nederlandsche Bank (DNB).

Advancing sustainable return and reintegration

In previous years, ex-asylum seekers who repatriated voluntarily were either offered financial support or support in kind. The efforts made towards sustainability of the return and reintegration are most noticeable in the support in kind. In order to prevent the repatriated people not taking up this offer, it is now possible for an ex-asylum seeker to use both forms of support.¹⁴⁹

¹⁴⁹ Government Gazette 2011 no. 22649. For further information also see the chapter about repatriation in this Annual Policy Report.

9 IMPLEMENTATION OF EU LEGISLATION

This chapter offers a review of the developments achieved in the Dutch legislation and regulations in 2012 under the framework of the implementation of European regulations.

9.1 Transposition of EU Legislation 2012

9.1.1 *Illegal Employment Directive*

Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (Pb EU, L168).

The aim of the proposed directive is to remove one of the most important pull factors of irregular migration: labour by third-country nationals who are staying irregularly in the EU. The proposed measures are aimed at punishing employers who allow irregular third-country nationals to carry out work.

Directive 2009/52/EC should be implemented before 20 July 2011. Implementation will take place by means of an amendment of the Labour Act for Aliens. A legislative proposal was submitted to the House of Representatives for this purpose on 8 July 2011. The proposal was passed by the House of Representatives on 20 December 2011. The Senate passed the proposal on 20 March 2012.

It is not yet known when the guideline will be implemented.

9.1.2 *Directive on prevention and combating of human trafficking*

Directive 2011/36/ EU on preventing and combating trafficking in human beings and the protection of victims. Withdrawal of Council Framework Decision 2002/629/JHA

The proposed directive sets minimum rules for the description of criminal offences in the area of human trafficking. The directive also contains mutual stipulations which improve the prevention of this crime and the protection of the victims, with due regard for the gender perspective. The directive is primarily an instrument under criminal law, but it also pertains to an integral approach to human trafficking. This means that attention is also given to prevention and the position of victims.

On 15 April 2011 the directive on prevention and combating of human trafficking (Directive 2011/36/EU) came into force. This directive is due to become national law before 6 April 2013.

Implementation of the directive will lead to the Netherlands tightening up certain points in the Dutch criminal legislation relating to human trafficking. The directive also obliges the Member States to implement a number of preventive measures.

It is not yet known when the directive will be implemented.

9.1.3 *Qualification Directive*

Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (Pb EU L377)

The recast Qualification Directive amends and, as a result of this, broadens the scope of the Directive that sets minimum standards for the qualification for refugees or for persons eligible for subsidiary protection. The Directive indicates what the protection offered comprises, whereby the specific integration problems, with which a person seeking that international protection is confronted, are also taken into account. The aim of the Directive is mainly the clarification of a number of legal definitions, bringing closer together the rights and provisions that are provided for refugees and those people given subsidiary protection, and to make the integration easier for foreign nationals in the EU to whom protection has been given.¹⁵⁰

The recast Qualification Directive (Directive 2011/95/EU) was approved by the Council on 24 November 2011. The Council and the European Parliament signed the proposal on 13 December 2011.

Negotiations in the area of the Qualification Directive have now been completed.

The Qualification Directive (Directive 2004/83/EC) from 2004 will be withdrawn at the latest by 21 December 2013 and replaced by the recast Directive (Directive 2011/95/EC) of 13 December 2011. No change to the Aliens Act is needed for the implementation of this Directive. However, the Aliens Decree, the Aliens Regulations and the Aliens Act Implementation Guidelines will need to be revised on certain points.

9.1.4 *Framework guideline for labour migration*

Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (Pb EU L343)

This Directive has a twofold aim. On the one hand, the aim is to set up one single procedure for the application for residence and work permits (one counter function). On the other hand, the Directive in question regulates that workers from a third country who are residing irregularly in the EU are afforded the same package of rights as workers from another EU Member State.

Directive 2011/98/EU was signed by the Council and the European Parliament on 13 December 2011. The Netherlands has started with the course of implementation.

The Directive is due to be implemented before 25 December 2013.

9.2 **Experiences, Debates in the (non) Implementation of EU Legislation**

The Dutch government takes a standpoint over every guideline. The first Rutte government announced a roadmap for the government's European input concerning the chapter "immigration" as described in the coalition agreement. The aim of the roadmap is to find support within the European Union and to create the With regard to the various different EU guidelines the government chooses a suitable strategy depending on the subject and the phase of the decision making. This paragraph deals with the guidelines according to the phase at which they stand: current revisions, new proposals, and concludes with the other wishes of the government. Since the current government has not explicitly taken a different standpoint, these standpoints still count as the official Dutch standpoint.

9.2.1 *Current Recasts*

Amendment to Family Reunification Directive

Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Pb EU, L 251).

On 15 November 2011 the European Commission published the Green Paper Family Reunification.¹⁵¹ The Netherlands sent a reaction to Brussels in March 2012 regarding the questions posed in the Green Paper. In reference to the reactions to the Green Paper and the public hearing held on 1 June 2012, the European Commission decided not to revise the Family Reunification Directive, but instead to work towards a better imple-

151 COM(2011)735, dated 15 November 2011.

mentation of the Directive and a better collaboration between the Member States by means of the exchange of information and learning from each other's experiences. This led to the setting up of an expert group, which met for the first time on 11 September 2012. This meeting addressed the subject of combating fraud and misuse of the right to family reunification.

Amendment to the Asylum Procedure Directive

Amended proposal for a Directive on common procedures for granting and withdrawing the international protection status (Recast).¹⁵²

In October 2009 the European Commission presented a proposal to amend this Asylum Procedure Directive. This proposal changes the directive that sets out the minimum standards for procedures used for awarding and withdrawing the refugee status. The change is meant to end the huge diversity of procedures within the EU, so that asylum seekers in all EU Member States are given the same proper investigation when they apply for international protection. The situation must be prevented whereby refugees are repatriated to a country where they fear persecution in the meaning of the Refugee Convention (non-refoulement). This is with a view to formulating a European asylum procedure so that there is better access to asylum procedures everywhere in the European Union, with the aim of an asylum application leading to the same outcome in every Member State.

On 1 June 2011 the European Commission published a revised proposal for the Asylum Procedure Directive.¹⁵³

This proposal changes the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. Since the Council did not succeed in reaching a standpoint, the European Commission published an amended proposal. According to the Commission the proposed system in the amended proposal is both efficient and protective. In addition it is also cost effective and works against cases of potential misuse. It guarantees that (asylum) applications are handled equally in all Member States and, according to the Commission, it is in agreement with the fundamental rights. At the same time it is flexible enough to leave space for exceptions in national judicial systems. In order to ensure effective implementation, the provisions in the proposal have been clarified and simplified.

On 7 October 2011 the Senate sent a reaction over the amended proposals for the Asylum Procedure Directive to the European Commission. The European Commission reacted to the Senate's letter on 2 April 2012. The European Commission indicated that actual harmonisation of both the rules as well as the practice are main objectives of a common European asylum system. This harmonisation is meant to lead to all Member States applying the EU asylum rules correctly and that no secondary streams are created.

The proposal is currently being handled by the Senate.

¹⁵² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0554:FIN:NL:PDF>

¹⁵³ Old title: Proposal for a Directive of the European Parliament and the Council concerning the minimum standards for the procedures in the Member States for the issuance or withdrawal of international protection (redetermination).

Amendment to the Long-Term Resident Directive

Directive 2011/51/EU of the European Parliament and the Council of 11 May 2011 for change of Directive 2003/109/EC for the purpose of expanding its working area to people who are afforded international protection

This guideline contains proposals to expand the Long-Term Resident Directive to include people who are afforded international protection. This expansion means that people who are afforded international protection can secure the status of long-term resident in the Member State which has given them protection (first Member State) after a period of five years of legal residence, can claim residence in another Member State (second Member State) under certain conditions and can secure the status of long-term resident in that second Member State after five years of legal residence.

On 19 May 2011 the Directive 2011/51/EC for change of Directive 2003/109/EC for the purpose of expanding its working area to people who are afforded international protection was published.

The Directive is due to be implemented before 20 May 2013.

9.2.2 *New Proposals*

Seasonal Workers Directive

Proposal for a Directive establishing common entry and residence conditions for third-country seasonal workers

This is a proposal for a Directive concerning seasonal employment. The purpose of the proposal is the setting up of a common procedure for entry to and residence in the EU and sets out the rights of seasonal workers from third countries.

The proposal is currently being handled by the Senate.

On 23 July 2012 there was a written discussion between the committee for Immigration and Asylum and the committee for Security and Justice of the Senate with the government. The negotiations over the Guideline for seasonal workers appear to be difficult.

Intra-Corporate Transferees Directive

Proposal for a common procedure for entry and residence of Intra-Corporate Transferees (ICT).

The aim of this Directive is to make the mobility of highly educated employees from outside the EU within companies easier. This will benefit multinationals in particular. The objective is that the permit will comprise the same conditions and rights throughout the whole of Europe so that it will become easier for multinationals to move their per-

sonnel from one branch to another within the EU. This concerns specialists, managers and trainees.

This Directive is currently being negotiated.

ANNEXES

Annex A: Methodology and Definitions

Methodology

This Annual Policy Report is mainly the result of desk research. The report has been compiled on behalf of the national contact point for the European Migration Network in the Netherlands by Drs. Henrika Wörmann. The chapter Asylum was written by Theo Thijm. Both authors work as scientific assistants for the Information and Analysis Centre (INDIAC). Thanks go to the expertise of the Implementation and Advice Department (AUA) of the Implementation Strategy and Advice Department of the Immigration and Naturalisation Service and the Migration Policy Department of the Ministry of Security and Justice. Also the Integration and Society Department and the Labour Relations Department of the Ministry of Social Affairs and Employment, the Repatriation and Departure Service of the Ministry of Security and Justice, the Royal Netherlands Marechaussee of the Ministry of Defence, the National Rapporteur for Human Trafficking and the Law Enforcement and Fight against Crime Department of the Ministry of Security and Justice have contributed to the realisation of this report.

Information about the realisation of legislation and regulations and about parliamentary debates was taken from official sources. The following types of documents were thereby consulted:

- Parliamentary Papers from the Senate and the House of Representatives;
- Proceeding of the Senate and the House of Representatives;
- Official publications of legislation and regulations in the Treaty Series, Bulletin of Acts and Decrees and the Government Gazette.

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

Statistical data has been taken from Eurostat and the information system of the Immigration and Naturalisation Service INDiGO. Also the Royal Netherlands Marechaussee, the Seaport Police and the Ministry of Foreign Affairs have made data available.

Websites have mainly been consulted in order to gain information about organisations and their standpoints. In addition to this, also publications of various organisations concerning asylum and migration have mainly been found on their websites. The websites of political parties were also consulted in order to make an inventory of their standpoints about asylum and migration.

Insight into the public debate was mainly gained via the internet. Investigation was carried out with the help of the websites of the large national daily newspapers and news

and current events programmes on national television (public and commercial stations) to find out which asylum and migration related subjects have been given the greatest attention in the media. An important source of information about the social debate is formed by the weekly news reports from the digital publication *Migratierecht.nl*, from the publishers Sdu Uitgevers.¹⁵⁴ As well as a general inventory of asylum and migration related subjects, media attention for specific subjects that came up in parliamentary debate were also investigated.

The aim of the Annual Policy Report is to represent all the important developments in the area of migration and asylum. In order to achieve this aim, a number of criteria were used for the meaning of 'important developments'. A differentiation was thereby made between changes in legislation and regulations on the one hand, and political and social debate on the other hand.

Criteria for the importance of changes in legislation and regulations

The report attempts to give as full as possible a review of the (proposed) changes in legislation and regulations in the various different policy areas that arise. All (proposed) changes that actually contain substantial revision of this legislation and regulations have been included in this report. However, minimal changes have not been included (for example, the annual increase in certain income requirements).

Criteria for the importance of political and social debate

No attempt has been made to give a full picture regarding the political and social debate and developments. The aim of the Annual Policy Report is to give an impression of the most important topics of discussion in the area of asylum and migration in the Netherlands. The following criteria were used in order to make a selection. In order to be included in the report, a political and social debate must at least comply with the following cumulative conditions:

- The subject must have come up in parliament.
- The subject has been 'in the news' for an extended period of time. There must have been reports of such in various different news media.

Implementation of European legislation and regulations

The aim of the Annual Policy Report is to give a complete picture of the implementation of European legislation and regulations in the area of asylum and migration. This is why all developments in this area have been included in this report.

Terms and definitions

This report makes use of the definition of the relevant terms in the European Migration¹⁵⁵ Network Glossary. The aim of the terms and definitions in this explanatory list of words developed by the European Migration Network is to improve the ability to compare information exchanged between the EU Member States.

¹⁵⁴ Available via the non-public website www.migratierechtonline.rijksweb.nl.

¹⁵⁵ EMN (2012). Available via <http://emn.intrasoft-intl.com/Glossary/index.do>.

Annex B: National Statistics

First residence permits, by reasons ¹					
	Total	Family reasons	Educational reasons	Remunerated activities reasons	Other reasons
First permits	51.162	21.160	10.747	10.921	8.334

Annual average unemployment rates of (Member) State citizens versus third-country nationals residing in the (Member) State for 2012 ²		
	Third country nationals	Total national population
Unemployment rate (%)	13,5	5,0

Issued visas			
	Total visas	Schengen visa	National visa
Visas issued by Royal Netherlands Marechaussee ³	7.504	7.504	-
Visa issued by Seaport Police ⁴	10.080	9.938	142
Visa issued by the Ministry of Foreign Affairs ⁵	450.851	416.084	34.767
Total visas issued	468.435	433.526	34.909

Third-country nationals returned ⁶			
	Returned as part of enforced repatriation measures	Returned voluntarily	Among third-country nationals returned voluntarily, the number of third-country nationals returned as part of an assisted return programme
Total	na	na	na

Third-country nationals who are relocated and resettled in Member States ⁷			
	Total	Relocated	Resettled
Third-country nationals	429	-	429

1 Source: Eurostat

2 Source: Central Bureau voor de Statistiek

3 Source: Royal Netherlands Marechaussee

4 Source: Seaport Police

5 Source: Ministry of Foreign Affairs

6 Source: Ministry of Security and Justice (KMI)

7 Source: Immigration and Naturalisation Service (INDIGO)

Unaccompanied minors⁸		
	Unaccompanied minors not applying for asylum	Unaccompanied minors applying for asylum
Total	na	na

Third-country nationals who have received a residence permit as victim of human trafficking⁹	
Third-country nationals	318

Traffickers arrested and convicted		
	Arrested/otherwise involved in a criminal proceeding	Convicted
Traffickers	na	na

Annex C: Overview of Implementations of EU Directives

State of affairs Implementation of EU legislation as of 31 December 2012

EU legislation	Corresponding national legislation and regulations (status)
<p>Directive 2001/51/EC (Schengen Implementation agreement)</p>	<p>Final implementation date 10 February 2003 Status: implemented from 15 September 2004 Aliens Act 2000</p> <ul style="list-style-type: none"> ● Act dated 13 May 2004 for the revision of the Aliens Act 2000 in accordance with Directive 2001/51/EC of the Council of the European Union of 28 June 2001 to include that which is stipulated in Article 26 of the Agreement to implement the Schengen Agreement of 14 June 1985.
<p>Directive 2001/55/EC (Temporary protection of displaced persons)</p>	<p>Final implementation date: 31 December 2002 Status: implemented from 15 February 2005 Aliens Act 2000, the Aliens Decree 2000 and Aliens Regulations 2000</p> <ul style="list-style-type: none"> ● Act of 16 December 2004 to revise the Aliens Act 2000 for the implementation of Directive no. 2001/55/EC of 20 July 2001 on minimum standards for giving 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 (PbEC L212), Bulletin of Acts and Decrees 2004, 691. ● Decision of 12 January 2005 to revise the Aliens Decree 2000 for the implementation of Directive no. 2001/55/EC, Bulletin of Acts and Decrees 2005, 25. ● Regulation from the Minister for Migration Affairs and Integration of 24 February 2005 containing a revision to the Aliens Regulations 2000 (thirty-second revision), Government Gazette 53, p. 17.
<p>Directive 2003/9/EC (Reception of asylum seekers)</p>	<p>Final implementation date: 6 February 2005 Status: implemented from 3 February 2005 Regulation for the provisions for asylum seekers and other categories of foreign nationals 2005</p>

	<ul style="list-style-type: none"> ● Regulation for the provisions for asylum seekers and other categories of foreign nationals 2005, Government Gazette 2005 24, p. 17.
Directive 2003/86/EC (Family reunification)	<p>Final implementation date: 3 October 2005 Status: implemented from 1 November 2004 Aliens Decree 2000</p> <ul style="list-style-type: none"> ● Decree dated 29 September 2004 to revise the Aliens Decree 2000 in connection with the implementation of Directive 2003/9/EC, Bulletin of Acts and Decrees 2004, 496.
Directive 2003/9/EC (Removal by air)	<p>Final implementation date: 6 December 2005 Status: implemented from 22 December 2005 Aliens Act Implementation Guidelines 2000</p> <ul style="list-style-type: none"> ● Decree from the Minister for Migration Affairs and Integration dated 8 December 2005, number 2005/59, containing revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 247, p. 35.
Directive 2003/9/EC (Third-country nationals who are long-term residents)	<p>Final implementation date: 23 January 2006 Status: implemented from 1 December 2006. Aliens Act 2000, Aliens Decree 2000, Aliens Regulations 2000, Aliens Act Implementation Guidelines 2000, Implementation Regulations of the Labour Act for Aliens and the Guidelines for the application of the Netherlands Nationality Act.</p> <ul style="list-style-type: none"> ● Act of 23 November 2006 to revise the Aliens Act 2000 for the implementation of Directive no. 2003/109/EC of the Council of the European Union of 25 November 2003 on the status of citizens from third countries as long-term residents (PbEU 2004, L16). Bulletin of Acts and Decrees 2006, 584. ● Decree dated 23 November 2006 to revise the Aliens Decree 2000 in connection with the implementation of Directive no. 2003/109/EC, Bulletin of Acts and Decrees 2006, 585. ● Regulation from the Minister of Justice of 7 January 2007 containing a revision of the Aliens Regulations 2000

	<p>(fifty-sixth revision) Government Gazette 11, p. 6.</p> <ul style="list-style-type: none"> ● Decree from the State Secretary for Justice of 16 April 2007, no. 2007/04, containing revision to the Aliens Regulations 2000, Government Gazette 78, p. 11. ● Regulation from the State Secretary for Social Affairs and Employment of 21 December 2006, Labour Market Directorate, to revise the Implementation Regulations for the Aliens Labour Act relating to the Delegation and Implementation Decree Aliens Labour Act, Government Gazette 1, p. 10. ● Nationalities Interim Communication (TBN 2007/5) of the Ministry of Justice, Government Gazette 67, p.7
<p>Directive 2004/38/EC (Free movement of European Union citizens and their family members)</p>	<p>Final implementation date: 30 April 2006 Status: implemented from 29 April 2006 Work and Social Assistance Act, Study Finance Act 2000, Educational Expenses (Allowances) Act, Aliens Act 2000, Aliens Decree 2000, Guidelines for the application of the Netherlands Nationality Act</p> <ul style="list-style-type: none"> ● of 7 July 2006 for the revision of the Work and Social Assistance Act, the Study Finances Act 2000, the Educational Expenses (Allowances) Act and the Aliens Act 2000 in connection with the realisation of Directive 2004/38/EC on the right of free circulation and residence in the territory of the Member States for citizens and their family members, as well as approval of the ● thereby connected qualification set out in the European convention on social and medical support, Bulletin of Acts and Decrees 2006, 373. ● Decree dated 24 April 2006 to revise the Aliens Decree 2000 in connection with the implementation of Directive 2004/38/EC, Bulletin of Acts and Decrees 2006, 215. ● Nationalities Interim Communication 2006/3, Government Gazette 109, p. 25.
<p>Directive 2004/81/EC (Human trafficking)</p>	<p>Final implementation date: 6 August 2006 Status: implemented from 1 February 2006 No revision of legislation and regulations</p>

<p>Directive 2004/82/EC (Passenger data)</p>	<p>Final implementation date: 5 September 2006 Status: implemented from 1 September 2007 Aliens Act 2000, Aliens Decree 2000, Aliens Regulations 2000 and Aliens Act Implementation Guidelines 2000</p> <ul style="list-style-type: none"> ● Act of 9 July 2007 on the revision of the Aliens Act 2000 to Directive no. 2004/82/EC of 29 April 2004 on the obligation of transporters to pass on passenger details (PbEU L 261). Bulletin of Acts and Decrees 2007, 252. ● Decree of 27 July 2007 on the revision of the Aliens Decree 2000 to Directive no. 2004/82/EC, Bulletin of Acts and Decrees 2007/ 283. ● Regulation from the Minister of Justice of 16 August 2007 containing a revision of the Aliens Regulations 2000 (sixty-fifth revision) Government Gazette 163, p. 9. ● Decree from the State Secretary for Justice of 25 September 2007, number 2007/27, on revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 194, p. 10.
<p>Directive 2004/83/EC (Qualification Directive)</p>	<p>Final implementation date: 10 October 2006. Status: implemented from 25 April 2008.</p> <ul style="list-style-type: none"> ● Act of 3 April 2008 on the revision of the Aliens Act 2000 for the implementation of 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 (PbEU L 304), Bulletin of Acts and Decrees 2008. 115. ● Decree of 9 April 2008 on revision of the Aliens Decree 2000 and the Implementation Decree of the Youth Care Act for the implementation of 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 (PbEU L 304), Bulletin of Acts and Decrees 2008, 116. Regulation from the State Secretary for Justice of 8 May 2008 containing revision of the Aliens Regulations 2000 (eightieth revision), Bulletin of Acts and Decrees 97, p. 16. ● Decree from the State Secretary for Justice of 10

	<p>November 2008, number 2008/27, on revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 728.</p>
<p>Directive 2004/114/EC (Student Directive)</p>	<p>Final implementation date: 12 January 2007 Status: implemented from 11 November 2006 Aliens Decree 2000, Aliens Regulations 2000 and Aliens Act Implementation Guidelines 2000.</p> <ul style="list-style-type: none"> ● Decree of 2 October 2006 for the revision of the Aliens Decree 2000 on the implementation of Directive 2004/114/EC, Bulletin of Acts and Decrees 2006, 458. ● Regulation from the Minister for Migration Affairs and Integration of 26 April 2006 containing a revision to the Aliens Regulations 2000 (forty-sixth revision), Government Gazette 84, p. 15. ● Decree from the Minister for Justice of 3 January 2007, number 2007/01, on revision of the Aliens Act Implementation Guidelines 2000, Government Gazette 38, p. 7.
<p>Directive 2005/71/EC (Research Directive)</p>	<p>Final implementation date: 12 October 2007. Status: implemented from 12 October 2007. Aliens Decree 2000, Decree for the implementation of the Labour Act for Aliens, Civil Integration Decree, Aliens Regulations 2000 and Aliens Act Implementation Guidelines 2000.</p> <ul style="list-style-type: none"> ● Decree of 26 September 2007 for the revision of the Aliens Decree 2000, Decree for the implementation of the Labour Act for Aliens and the Civil Integration Decree in connection with the implementation of Directive 2005/71/EC, Bulletin of Acts and Decrees 2007, 366. ● Regulation from the State Secretary for Justice of 16 October 2007 containing revision of the Aliens Regulations 2000 (seventy-first revision), Bulletin of Acts and Decrees 202, p. 24. ● Decree from the State Secretary for Justice of 21 January 2008, no. 2008/07, containing revision to the Aliens Regulations 2000, Government Gazette no. 21, p. 9.

<p>Directive 2005/85/EC (Refugee status)</p>	<p>Final implementation date: 1 December 2007. Status: implemented from 19 December 2007. Aliens Act 2000, Aliens Decree 2000, Aliens Regulations 2000 and Aliens Act Implementation Guidelines 2000.</p> <ul style="list-style-type: none"> ● Act of 15 November 2007 to revise the Aliens Act 2000 for the implementation of Directive no. 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (PbEU L 32), Bulletin of Acts and Decrees 2007, 450. ● Decree of 29 November 2007 on the revision of the Aliens Decree 2000 to Directive no. 2005/85/EC, Bulletin of Acts and Decrees 2007, 484. ● Regulation from the State Secretary for Justice of 7 December 2007 containing revision of the Aliens Regulations 2000 (seventy-third revision), Bulletin of Acts and Decrees 240, p. 9. ● Decree from the State Secretary for Justice of 7 December 2007, no. 2007/38, containing revision to the Aliens Regulations 2000, Government Gazette 240, p. 10.
<p>Directive 2008/115/EC (return directive)</p>	<p>Final implementation date: 24 December 2010. For Article 13, paragraph 4, 24 December 2001 Status: implemented from 31 December 2011.</p> <ul style="list-style-type: none"> ● The Netherlands was obliged to transpose the return directive guideline by 24 December 2010 at the latest into its own regulation. In June 2010 the legislative proposal was submitted to the House of Representatives that should regulate the implementation of the return directive. Partly because the Council of State had given a negative advice concerning the legislative proposal, the date of 24 December 2010 was not achieved. A partial implementation did take place in December 2010, which did not necessitate any revisions of the law. The course of the legislation has now been completed. The Act was taken up by the Senate on 13 December 2011. ● This decision is published in Government Gazette 663 of 15 December 2011.

<p>Directive 2009/50/EC (Blue Card)</p>	<p>Final implementation date: 19 June 2011 Status: implemented from 19 June 2011</p> <ul style="list-style-type: none"> ● The Directive no. 2009/50/EC came into force on 19 June 2011 by means of the Decree of 15 June 2011 for the determination of the time of enforcement of parts of the Modern Migration Decree and for the revision of the Aliens Decree 2000 and the Civil Integration Decree in connection with that enforcement. ● This decision is published in Government Gazette 291 of 17 June 2011.
<p>Directive 2009/52/EC (combating illegal employment)</p>	<p>Final implementation date: 20 July 2011 Status: It is not yet known when the guideline will be implemented.</p> <ul style="list-style-type: none"> ● Directive 2009/52/EC should be implemented before 20 July 2011. Implementation will take place by means of an amendment of the Labour Act for Aliens. ● A legislative proposal was submitted to the House of Representatives for this purpose on 8 July 2011. The proposal was passed by the House of Representatives on 20 December 2011. ● The Senate passed the proposal on 20 March 2012.
<p>Directive 2011/36/EU (Directive on preventing and combating human trafficking)</p>	<p>Final implementation date: 6 April 2013 Status: It is not yet known when the guideline will be implemented.</p> <ul style="list-style-type: none"> ● On 15 April 2011 the European Guideline for the prevention and combating of human trafficking (Directive 2011/23/EU) came into force. ● This guideline is due to become national law before 6 April 2013.
<p>Directive 2011/51/EC (Amendment of the long-term residents Directive)</p>	<p>Final implementation date: 20 May 2013 Status: It is not yet known when the guideline will be implemented.</p> <ul style="list-style-type: none"> ● On 19 May 2011 the Directive 2011/51/EC for change of Directive 2003/109/EC for the purpose of expanding its

	<p>working area to people who are afforded international protection was signed by Council of the European Parliament.</p>
<p>Directive 2011/95/EU (Amendment of the Qualification Directive)</p>	<p>Final implementation date: 21 December 2013 Status: It is not yet known when the directive will be implemented.</p> <ul style="list-style-type: none"> ● The revised Qualification Directive (Directive 2011/95/EU) was approved by the Council on 24 November 2011. ● The Council and the European Parliament signed the proposal on 13 December 2011. ● The Qualification Directive (Directive 2004/83/EC) from 2004 will be withdrawn at the latest on 21 December 2013 and replaced by the adjusted Guideline (Directive 2011/95/EC) of 13 December 2011.

Annex D: Bibliography

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The European Migration Network (EMN) has been set up by the Council of the European Union. The EMN collects up-to-date, objective, reliable and where possible comparable information on migration and asylum. The EMN publishes reports on a variety of subjects in the field of asylum and migration. The establishment of the EMN is consistent with the aim of the EU to establish an effective asylum and migration policy.

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