



# Mapping the Conditions of Stay and the Rationale for Entitlements and Restrictions for Family Migrants in the Netherlands

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### IMPORTANT NOTE

The restrictions and entitlements covered in this report are influenced by government policy and are subject to regular change. The mapping report aims to straddle a fine balance in condensing the detail of these arrangements and yet still providing a usable summary. As such, relevant sources noted throughout the text should be consulted for an accurate detailed picture of current policy. The report is correct at the point of completion of the final version in December 2012.

The rules generally refer to the Netherlands unless otherwise stated.

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## SECTION ONE: Identifying Family Migrants

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### 1. Identifying TCN Family Migrants

Whereas EU and international conventions classify all family migration as family reunification, the Dutch policy and legal context makes a differentiation between family formation and family reunification. Family formation refers mostly to marriage migration and consists of durable relationships formed during the residence of the sponsoring migrant in the Netherlands. The Netherlands is one of the few countries which allow cohabiting or same-sex couples to migrate if they form “relationships akin to a family” (Kofman 2004: 245). Family reunification, on the other hand, implies family bonds which existed before the first migrant moved to the Netherlands. In both cases, the family is defined as the nuclear family and includes spouses, children or parents of the sponsor.

Official Dutch statistics<sup>1</sup> classify migrants into two main categories and differentiate between ‘Western foreigners’ (*Westerse allochtonen*) and ‘non-Western foreigners’ (*niet-westerse allochtonen*).<sup>2</sup> This statistical differentiation has some legal consequences in the domain of pre-entry requirements. Citizens of EU and EEA countries, as well as citizens of Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, the Vatican, and the USA are considered to be ‘Western foreigners’ (*Westerse allochtonen*) whereas the citizens of rest of the countries of the world are considered to be ‘non-Western foreigners’ (*niet-westerse allochtonen*). Only citizens of ‘non-Western’ countries are subject to a separate visa regime (MVV) and to pre-entry integration conditions (De Hart, Strik and Pankratz 2013: 9). There are three exceptions within the category of ‘non-Western foreigners’:

- Citizens of the Dutch Caribbean Islands, which are part of the Kingdom of the Netherlands
- Turkish citizens on the bases of the EU Court of Justice case law<sup>3</sup> and the

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<sup>1</sup> <http://www.cbs.nl/nl-NL/menu/methoden/begrippen/default.htm?ConceptID=1057> (accessed on 9 May 2012)

<sup>2</sup> <http://media.leidenuniv.nl/legacy/overzicht-van-niet-westerse-geboortelanden.pdf> (accessed on 18 March 2013)

<sup>3</sup> Sahin CJEU C-242/06, 17 September 2009.

#### Association Agreement between EU and Turkey<sup>4</sup>.

- Highly-skilled migrants who are subject to a fast-track procedure (see below).

Dutch citizens, EU, EEA, and TCN nationals living in the Netherlands can become sponsors (*referent*) for family migrants. The sponsor applying for family reunification must live in the Netherlands. Dutch expats need to settle down in the Netherlands before their TCN family members can join them. While EU and EEA citizens can be joined by their nuclear family members even if only in the possession of a temporary residence permit, TCNs may only act as sponsors if they are in the possession of a temporary residence permit with the duration of one year or more, provided they have a permit for a non-temporary goal or a permanent residence permit. Family reunification is generally not possible if the sponsor holds a residence permit related to seasonal work or exchange, as this type of temporary residence permit provides no automatic prospect of a permanent right of residence in the Netherlands. They are also outside the scope of the directive on family reunification.<sup>5</sup>

TCN students<sup>6</sup> can have their partners and children join them for a period longer than three months, whereas parents, grandparents, aunts and uncles, etc. are not eligible - they may only visit the student for three months at most. Foreigners requiring a visa must be in possession of a Schengen visa in order to gain entry to the Netherlands.

TCN family members of EU citizens fall under the Free Movement of Persons Directive (2004/38/EC).<sup>7</sup> This Directive does not distinguish between EU and TCN family members as long as the sponsor is an EU citizen who uses his freedom of movement rights. TCN family members may join their EU sponsor as long as the sponsor has the right to reside in the Netherlands (European Migration Network 2008).

Highly-skilled migrants can act as sponsors for family members immediately<sup>8</sup>, who can also enter the country with them through a fast-track procedure (European

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<sup>4</sup> Regulation I/80 and EC/Turkey Agreement.

<sup>5</sup> TK 2008–2009, 32 052, nr. 3, p. 50; Directive on Family Reunification (2003/86/EC), Article 3, paragraph 1.

<sup>6</sup> <http://www.nuffic.nl/toelating-verblijf/toelating/machtiging-tot-voorlopig-verblijf-mvv/gezinsleden>

<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:229:0035:0048:en:PDF>

<sup>8</sup> TK 2008–2009, 32 052, nr. 3, pp. 6-7.

Migration Network 2007). TCN family members of highly-skilled migrants enjoy a fast-track procedure for obtaining their entry visa only if their applications are filed simultaneously with that of the sponsor. They are not subject to pre-entry and post-entry integration conditions. The current Dutch coalition agreement states that like all other migrants, EU nationals and knowledge migrants are welcome if they are able to provide their own income by working, to integrate quickly and to contribute to society.<sup>9</sup>

All refugees in the Netherlands have the right to family reunification<sup>10</sup>. Refugees who do not apply within three months for reunification and asylum seekers who receive other forms of status need to fulfil the regular financial requirements incumbent upon other family migrants. Family members of refugees do not have to pass the pre-entry integration exams but have to meet the other MVV requirements. At the time of writing, the requirement that the family member must have the same nationality as the refugee and the lengths of subsequent reunification period is under discussion and in need of revision.<sup>11</sup>

In the Netherlands, TCN sponsors can only reunify with members of their 'nuclear family'. The nuclear family refers to the spouse or registered partner and their minor children or other minor children in their custody. Family formation is also allowed. For countries outside the European Union, legalized source documents are used as a proof of marital and familial ties. The migrant is responsible for the provision of the evidence. If no written material is present and the family bond cannot otherwise be proven, it is possible to use DNA testing to prove the biological relationship. DNA testing, however, gives only inconclusive results about the biological relationship - especially when only one of the parents is found to be a biological parent - and the test then confers no definite proof of the actual existence of a biological family (Gelderloos, Sipkes, Verberk 2002: 43). In the Netherlands, DNA testing is used for establishing family bonds of refugees and, in some cases, it can be supplemented/replaced with identifying interviews.

The Western concept of a family as the nuclear family is fundamentally different from some non-Western family concepts such as 'extended family' and polygamy.

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<sup>9</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p. 30.

<sup>10</sup> *Vreemdelingenwet 2000*, Article 29 and European Convention of Human Rights

<sup>11</sup> <http://www.vluchtelingenwerk.nl/actueel/gezinshereniging-op-aantal-punten-verbeterd.php>

Furthermore, in some countries in Africa and elsewhere, it is not unusual for the village head or other authority to place children under the authority of extended family members who can offer the best care in a particular situation. As such, some sponsors may not be able to prove a family bond in the traditional sense employed in Dutch policies, based on nuclear families (composed of parents and children) and blood ties. This is especially relevant in the cases of family reunification with children, where the parental bond must be assessed. The parental bond may be established through official documents or DNA tests. If refugees cannot obtain the necessary documents, they can resort to DNA tests to prove their biological family ties. In the case of polygamous unions, the only children who can be considered for family reunification are the children of the wife whom the sponsor wishes to bring to the Netherlands. The children of other wives cannot be considered for family reunification (Gelderloos, Sipkes and Verberk 2002: 40).

Since 1<sup>st</sup> October 2012, extended family reunification is only allowed if there are “more than normal emotional ties” between the sponsor and the family members applying for family reunification (De Hart et al. 2013: 9). The Secretary of State for Security and Justice may also use discretion to admit individual cases of family members if there is a situation of “exceptional harshness” (idem).

Since 1<sup>st</sup> April 2001, it has been legal for two men or two women to get married in the Netherlands. Same-sex couples who want to legalize their relationship can choose among three options: civil marriage, registered partnership, or a cohabitation agreement. Accordingly, same sex partners are also entitled for family reunification as a cohabiting or married couple in the Netherlands if they form ‘relationships akin to a family’ (Kofman 2004: 245). Since 1<sup>st</sup> October 2012 unmarried partners lost the right to family reunification and same-sex partners are also asked to show evidence of a registered partnership. However, the Rutte II Cabinet intended to renew the right of unmarried partners to family reunification. The Modern Migration Policy Law (*Wet Modern Migratiebeleid*) of 1<sup>st</sup> June 2013 allows family reunification for unmarried partners who have a permanent and exclusive relationship. Under the new Law, unmarried partners again qualify for a MVV and residence permit for the purpose of family reunification.



Individuals, heterosexual families, and same-sex families can adopt TCN children if they fulfil the following conditions:

- They take full financial responsibility for the child.
- The age difference between parents and children is not more than 40 years.
- The adoptive parent(s) meet certain medical and legal pre-conditions.<sup>12</sup>

If the adoptive parents have Dutch citizenship, the adopted child also receives Dutch nationality. However, if only one adoptive parent is Dutch, the child has to be under the care of the Dutch parent and to live in the Netherlands for at least three years before s/he can receive Dutch citizenship.<sup>13</sup>

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<sup>12</sup> <http://www.rijksoverheid.nl/onderwerpen/adoptie/vraag-en-antwoord/wanneer-kom-ik-in-aanmerking-voor-adoptie-van-een-kind-uit-het-buitenland.html>

<sup>13</sup> <https://zoek.officielebekendmakingen.nl/stcrt-2010-10196.html>

## 2. Conditions of Entry and Residence for TCN Family Migrants

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### 2.1 Pre-entry admission conditions

Sponsors willing to bring a non-Western TCN family member need to go through a so-called MVV (*Machtiging tot Voorlopig Verblijf* - 'Authorisation for Temporary Stay') application. The conditions are as follows:

- *Proof of family relationship*: The family relationship must be proven by original notarized documents with certified translation if the documents are not in Dutch, English, French or German. The application must be an original extract from the municipal administration showing the residence address, the family composition and (if applicable) the registration of marriage. If the application is rejected, an objection can be submitted within four weeks. In the case of a successful application, the family will receive an invitation to come and collect it in person at the regional IND desk. The statutory decision period is a maximum of six months.
- *Age*: For family formation and family reunification, both the sponsor and the partner have to be at least 21 years old<sup>14</sup>. The new Coalition agreement aims to increase the minimum age requirement to 24 years.<sup>15</sup>
- *Income*<sup>16</sup>: The sponsor has to prove receipt of a reliable, sustainable and independent income at least as high as the legal minimum income, which at the date of this report amounts to € 1562.33 per month including vacation bonus. This condition also applies to short-stay visas for other family members. For family members, income needs to be stable in that the sponsor has to have earned this monthly income for at least three years or must have a labour contract for at least one more year. To remain eligible, family members must meet the general requirements for admission and have sufficient financial resources whilst applying for a (renewal of the temporary) residence permit. The

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<sup>14</sup> [http://www.indklantdienstwijzer.nl/KnowledgeRoot.aspx?knowledge\\_id=SubintentiesHuwelijkEnGezin](http://www.indklantdienstwijzer.nl/KnowledgeRoot.aspx?knowledge_id=SubintentiesHuwelijkEnGezin) (accessed on 7 February 2012).

<sup>15</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p. 29.

<sup>16</sup> <http://www.ind.nl/Leges/tabel-normbedragen-voldoende-geld.aspx> (accessed on 2 May 2012).

following persons are exempt from the income requirement:

- persons who have been demonstrably permanent and fully unable to work<sup>17</sup>
- persons who are 65 years or older.<sup>18</sup>

The new Coalition agreement refers to the intention to increase the requirement of sufficient income to 120% above the legal minimum income and to add additional measures to combat bogus and forced marriages and marriages between cousins.<sup>19</sup> It should be noted that a 120% income requirement had previously been introduced in the Netherlands in 2004 but was declared unlawful in 2010 in the European Court of Justice *Chakroun* case (C-578/08J) as a result of which the income requirement for all family sponsors was levelled to equivalence with the minimum income (WODC 2009).

- *Pre-Integration*<sup>20</sup>: According to the Civic Integration Abroad Act (2006-present) (*Wet inburgering in het buitenland*)<sup>21</sup>, only candidates who succeed in a basic Dutch language (A1 level) and society test are allowed to obtain an entry visa (MVV) to the Netherlands. The test includes a comprehension, speaking, listening, and reading component that requires all applicants to be literate in Dutch. One can be exempted from this requirement for health reasons for which a medical attestation is required. Family members of highly-skilled migrants are also exempt from this condition (European Migration Network 2007). For family migrants who have fulfilled this condition, reunification must take place within a year otherwise the test needs to be retaken.<sup>22</sup> The new Coalition agreement proposes to raise the level of the integration exam abroad even further.<sup>23</sup>
- The MVV functions as an entry visa or a provisional residence permit but this does not give the right to residence in the Netherlands. After the IND authorises an embassy or consulate to issue an MVV, one can apply for it

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<sup>17</sup> Vb2000, Article 3.22, Paragraph 3.

<sup>18</sup> Vb2000, Article 3.22, Paragraph 3.

<sup>19</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p. 29.

<sup>20</sup> <http://www.naarnederland.nl/category/home> (accessed on 9 May 2012).

<sup>21</sup> <http://maxius.nl/wet-inburgering-in-het-buitenland>.

<sup>22</sup> <http://www.buitenlandsepartner.nl/archive/index.php/t-52093.html>.

<sup>23</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p.30 .

within the next six months. The consequence of failing to apply within this period of six months is having to restart the application procedure. Upon approval, the MVV is valid for another six months, during which travel to and entry into the Netherlands and the application of a residence permit needs to take place.<sup>24</sup> According to the Modern Migration Policy Law (*Wet Modern Migratiebeleid*) of 1<sup>st</sup> June 2013, family members who possess an MVV will automatically receive a temporary residence permit.<sup>25</sup>

## 2.2 Conditions of stay for family migrants

During the first three years of residence, the rights of residence of a family migrant depend on the sponsor.<sup>26</sup> This means that the restrictions to which family migrants are subject to will reflect the situation of the sponsor and may affect the renewal of the temporary residence permit.<sup>27</sup> Renewal of the temporary residence permit can be refused in the following cases:

- if the migrant or the sponsor does not have sufficient and lasting means of subsistence<sup>28</sup>.
- if the migrant is not willing to cooperate with medical research to protect public health<sup>29</sup>: TCN migrants who need an MVV undergo a tuberculosis (TBC) examination shortly after arrival in the Netherlands and, if they test positive, they must receive tuberculosis treatment.<sup>30</sup>
- if the migrant fails to comply with the Foreign Nationals Employment Act<sup>31</sup> and does not comply with the restrictions stemming from the residence permit.<sup>32</sup>

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<sup>24</sup> <http://www.nuffic.nl/international-students/how-to-prepare/visas-and-permits/long-stay-visa>.

<sup>25</sup> <http://www.mvv-gezinshereniging.nl/nieuws/wet-modern-migratiebeleid-en-mvv-wet-treden-op-1-juni-2013-in-werking>

<sup>26</sup> TK 2008–2009, 32 052, nr. 3, p. 32

<sup>27</sup> Vreemdelingenwet 2000, Article 14.

<sup>28</sup> Vreemdelingenwet 2000, Article 16.1c.

<sup>29</sup> Vreemdelingenwet 2000, Article 16.1e

<sup>30</sup> [http://www.indklientdienstwijzer.nl/KnowledgeRoot.aspx?knowledge\\_id=SubintentiesHuwelijkEnGezin](http://www.indklientdienstwijzer.nl/KnowledgeRoot.aspx?knowledge_id=SubintentiesHuwelijkEnGezin) (accessed on 7 February 2012).

<sup>31</sup> Vreemdelingenwet 2000, Article 16.1f

<sup>32</sup> Vreemdelingenwet 2000, Article 16.1g

- if the migrant has not proven a basic knowledge of the Dutch language and society<sup>33</sup>: TCN migrants between the ages of 18-65 need to pass an integration test evaluating the spoken and written knowledge of Dutch language (A2 level according to the Common European Framework of Reference) and society within three years of arrival in the Netherlands.<sup>34</sup> These skills must be proven by passing integration and/or language exams. Since 1<sup>st</sup> January 2003, the amended Integration Act is valid and thus a residence permit may be withdrawn if the integration exam is not passed within three years following entry. For family members entering the country on basis of Article 8 of European Convention on Human Rights (ECHR), the Family Reunification Directive or as refugees, the residence permit may not be withdrawn. The new Dutch Cabinet has stressed in their Coalition agreement that knowledge of the Dutch language and society offers the best prospective for successful integration, and that insufficient integration on these grounds can become a basis of exclusion from public assistance for all migrants, EU and EEA citizens and TCNs equally.<sup>35</sup>

TCNs who apply for a permanent residence permit have to meet the following conditions:

- five years of legal residence;
- financial independence based on own income or lasting and sufficient means of subsistence provided by the sponsoring family member;<sup>36</sup>
- adequate health insurance coverage;<sup>37</sup>
- successfully passing the civic integration exam<sup>38</sup>.

Some exemptions are in place from the condition of passing the integration test for TCN migrants who:

- are younger than 16 or older than 65 years;

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<sup>33</sup> Vreemdelingenwet 2000, Article 16.1h

<sup>34</sup> Wet Inburgering, Article 7.

<sup>35</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p.30

<sup>36</sup> Vreemdelingenwet 2000, Article 20.d

<sup>37</sup> Vreemdelingenwet 2000, Article 20.g

<sup>38</sup> Vreemdelingenwet 2000, Article 20.k

- have lived for at least eight years during school years in the Netherlands;
- have followed a compulsory education course leading to a diploma or certificate;
- have passed the short exemption test;<sup>39</sup>
- can demonstrate that they have sufficient oral and written Dutch language skills and knowledge of Dutch society (through diplomas and certificates);
- are family members of EU nationals who are entitled to residence in the Netherlands by virtue of Directive 2004/38/EC or individuals who fall under the law of an EU member-state or any other state party to the Agreement on the EEA;<sup>40</sup>
- have met integration requirements for permanent residence in another member-state;<sup>41</sup>

If these conditions are met, the migrant obtains a permanent residence permit with full access to public resources after five years of uninterrupted, legal residence.<sup>42</sup>

The application for a permanent residence permit cannot be rejected if the applicant is:

- a minor who has been lawfully residing in the Netherlands in compliance with the restrictions tied to the residence status, has then moved out of the Netherlands, is now 18 years old, and her/his family ties have not been broken within a year.<sup>43</sup>
- is born in the Netherlands or has resided in the Netherlands for four years, has moved out of the Netherlands, and is now 18 years old. The application may only be rejected under reasons of threat to national security or on the basis of an irrevocable court sentence of more than 60 months for drug trafficking.<sup>44</sup>

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<sup>39</sup> Integration Decree (*Besluit Inburgering*), Article 2.7.

<sup>40</sup> <http://www.gemeenteloket.minszw.nl/binaries/content/assets/Inburgering/2012-10-12/Uitzonderingen-inburgeringsplicht.pdf>

<sup>41</sup> Directive 2003/109/EC of 25 November 2003 concerning the status to obtain long-term resident for third-country nationals.

<sup>42</sup> Vreemdelingenwet 2000, Article 20.j

<sup>43</sup> Vreemdelingenwet 2000, Article 21a.1b

<sup>44</sup> Vreemdelingenwet 2000, Article 21a.2

A family migrant can lose her/his status when her/his sponsor and/or s/he do(es) not meet the conditions required for obtaining a temporary or permanent residence permit. The conditions for the revocation of a permanent residence permit are stricter than for a temporary permit. While the income requirement is no longer an issue for a permanent permit, fraud or long-term stay abroad may be. If legal stay has been refused, the migrant needs to leave the country within four weeks.<sup>45</sup> In exceptional cases, this period might be extended.<sup>46</sup>

The dependent status of family migrants can end with the changes in the family relationship on the basis of which the stay permit was given, with a possibility of an independent individual stay permit after a minimum period of five years. After five years of residence as a family migrant, years in which the families ties have been kept intact and the person has had domicile in the Netherlands, that person can apply for a regular permanent residence permit. Passing of the integration exam is a condition for an independent right of residence.

If a family migrant's stay is of permanent nature, s/he can apply for naturalization after five years of legal, uninterrupted residence as a Dutch citizen if s/he has passed the integration exam.<sup>47</sup> Knowledge of the Dutch language at A2 level has to be proven with certificates or diplomas in order to apply for Dutch citizenship.

The new Coalition agreement plans to increase the residence requirement for naturalization from five to seven years.<sup>48</sup> The Coalition will increase the level of the integration test after admission, and add the consequence that, in the case of insufficient effort to master the Dutch language after admission, the residence permit might be withdrawn or not renewed, except for former asylum seekers who have acquired residence status. Further, the responsibility of the integration exam rests fully on the migrant: except for refugees, both preparation and costs will become individual responsibilities. A social loan is available to cover costs for migrants with lesser means. Most importantly, the right to residence could be fully lost if the immigrant were to apply for subsistence assistance during the first seven years of residence.

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<sup>45</sup> Vreemdelingenwet 2000, Article 62.1

<sup>46</sup> Vreemdelingenwet 2000, Article 62.3

<sup>47</sup> [http://overheidsloket.overheid.nl/index.php?p=product&product\\_id=1000552](http://overheidsloket.overheid.nl/index.php?p=product&product_id=1000552)

<sup>48</sup> Bruggen Slaan. Regeerakkoord VVD-PvdA, 29 October 2012, p. 31

## 2.3 Exceptions to the abovementioned conditions for family migrants

In cases of divorce, the migrant partner qualifies for an independent residence permit if five years of marriage or partnership have been completed.<sup>49</sup> For example, one could apply for a permanent or 'continued residence' permit. Since 1<sup>st</sup> January 2010, the migrant has to also prove that s/he has passed the integration exam. This condition does not apply if the applicant can prove that the relationship ended due to domestic violence.

To be entitled to the right of stay after divorce, the applicant must have lived together with the sponsor for the previous three years. The end of the relationship is not determined by the official time of the divorce, but depends on the time the partner begins to live (and is registered) at a different address.<sup>50</sup>

If the relationship or marriage is terminated after less than five years and one has had a residence permit basis of that relationship or marriage, one can obtain a permit for permanent residence in case of a compelling humanitarian reason, including:

- the situation of single women in the country of origin
- the social position of women in the country of origin
- the impossibility of return to the country of origin
- the upbringing/caring responsibilities for children born in the Netherlands
- demonstrable (sexual) violence within the family.

In the case of a threat of honour-related violence in the Netherlands and/or in the country of origin, one may be eligible for a temporary residence permit issued for one year. After a year, the situation will be reassessed, and the residence permit may

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<sup>49</sup> <http://www.nuffic.nl/nederlandse-organisaties/nieuws-evenementen/nieuws-archief/2012/maart/voorwaarden-gezinsmigratie-worden-aangescherpt>.

<sup>50</sup> [http://www.juridischloket.nl/vraagenantwoord/verblijf-immigratie/verblijfsvergunning-en-echtscheiding-of-einde-relatie/Pages/default.aspx?\\_st\\_osc=related](http://www.juridischloket.nl/vraagenantwoord/verblijf-immigratie/verblijfsvergunning-en-echtscheiding-of-einde-relatie/Pages/default.aspx?_st_osc=related).



be renewed. After five years of legal residence one can qualify for a permanent residence permit. If the threat is only present in the Netherlands, one must leave the country, but if the threat is only in the country of origin one may apply for asylum in the Netherlands.<sup>51</sup>

In the case of a deceased partner, one may be granted an independent residence permit before the ending of the five-year waiting period by meeting the following conditions:

- the partner was a Dutch citizen or s/he had permanent residence in the Netherlands
- the applicant has not since moved out of the Netherlands.

In the case of minors, if they have had a residence permit dependent on the parents for one year or longer, they are eligible for an independent residence permit. Children who are 18 years or older qualify for an independent residence permit when they have had a residence permit dependent on the parents for five years or longer. In the latter case, having passed the integration exam is a pre-condition unless the relationship with the parent(s) was terminated as a result of domestic violence.

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<sup>51</sup> [http://www.juridischloket.nl/vraagenantwoord/verblijf-immigratie/verblijfsvergunning-en-echtscheiding-of-einde-relatie/Pages/default.aspx?\\_st\\_osc=related](http://www.juridischloket.nl/vraagenantwoord/verblijf-immigratie/verblijfsvergunning-en-echtscheiding-of-einde-relatie/Pages/default.aspx?_st_osc=related).

## SECTION TWO: Entitlements and Post-Entry Admission Criteria

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The Aliens Law (*Vreemdelingenwet*) passed in 2000 does not mention the category of family migrants but distinguishes between legal and illegal migrants. Legal migrants are classified into two groups: legal migrants with a temporary residence permit, and legal migrants with a permanent residence permit. This distinction is explicit in all legislation concerning the rights and restrictions of foreign citizens in the Netherlands.

Legal migrants' access to public services and resources depends on the nature of their residence permit.<sup>52</sup> For temporary legal migrants, recourse to public resources may have consequences for the renewal of their temporary residence permit. In the case of recourse to public resources not permitted by a temporary residence status, renewal of the residence permit may be refused. Furthermore, a temporary residence permit may only be renewed for five subsequent years.<sup>53</sup>

Irregular ('illegal') migrants have no access to public resources, except for mandatory education, emergency medical help, primary health care, and legal counselling. The use of these provisions does not give right to legal residence.<sup>54</sup>

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<sup>52</sup> *Vreemdelingenwet*, 2000, Article 12.

<sup>53</sup> *Vreemdelingenwet*, 2000, Article 13.

<sup>54</sup> *Vreemdelingenwet*, 2000, Article 10.

### 3. Education

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In the Netherlands, education is compulsory for all children between five and sixteen years of age. Children with non-Dutch nationality, asylum seekers of school age, and children who reside illegally in the Netherlands are also obliged to attend school.<sup>55</sup> Compulsory education is free of charge, though the schools might ask for fees to participate in extra activities. It is foremost the parents' responsibility to enrol the child for school and to assure the child's attendance. In the case of families with problems, an obligatory education official (*leerplichtambtenaar*) may be assigned to make sure the children attend school properly.

#### 3.1 Pre-school programs for migrant children

Children in the Netherlands can begin primary school at the age of four years. Prior to this age, a number of provisions are available, including childcare facilities for working parents and preschool playgroups. For employed parents, paid childcare facilities are partly subsidized by employers and partly by tax refunds depending on income.<sup>56</sup> The primary purpose of childcare is to enable parents to perform paid work or to follow a training or education course. Preschool playgroups are less about childcare *per se*, but are educational provisions where children learn to interact with other children during one or two half days per week in a play-oriented environment where their development is encouraged.

Participation in pre-school and early-school education programmes are encouraged to stimulate the development of young children from deprived backgrounds, including many children of migrant parents. These programmes are provided through collaboration between pre-school playgroups or – less often – childcare centres and primary schools in areas with large numbers of children from deprived backgrounds. They begin in the preschool playgroup when children are aged two and a half years old and continue in the first two years of primary school (OECD 2009: 29-30).

Children of migrants or children of mixed marriages are considered to have a 'language barrier'. When they enter primary education they should be effectively

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<sup>55</sup> <http://www.rijksoverheid.nl/onderwerpen/leerplicht>.

<sup>56</sup> Wet Kinderopvang, 2012 (<http://www.kinderopvangtotaal.nl/334/Wet-en-Regels.html>).

supported in their development. Article 166 of the Social Support Act (WMO)<sup>57</sup> requires municipalities to provide adequate preschool education, both in nurseries and kindergartens, for this target group. The responsibilities of municipalities have been extended through the law on education (OKE)<sup>58</sup> in August 2010. Municipalities are in charge of making arrangements with the schools regarding the effects of early education, especially for children with language deficiencies. The legislation advises parents to take up this opportunity for collaboration with schools and the municipalities. It is up to municipalities to determine which priority groups they target for their pre-school and early childhood education policy and how they reach parents so as to promote children's participation in early childhood education programs.

### 3.2 Primary education

Taking a language test at the start of their school career is not standard practice for migrant pupils in Dutch education. Many primary schools do, however, operate a 'pupil monitoring system', in which the progress of pupils is measured and recorded in a number of areas, including language (OECD 2009: 14).

### 3.3 Secondary education

Secondary education encompasses schools providing pre-vocational secondary education (VMBO) and practical training (PRO), general secondary education (HAVO), and pre-university education (VWO). All four types of secondary education are for children aged 12 and older, and begin with a period of basic secondary education. Children are usually evaluated in their last year of primary school based on a combination of a standard test score and the school's recommendation. There are also international and bilingual schools that provide secondary education. The examination results of native students and migrant students are published in the annual reports of the Dutch Education Inspectorate and by Statistics Netherlands (CBS) (OECD 2008: 65-66).

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<sup>57</sup> <http://www.rijksoverheid.nl/onderwerpen/wet-maatschappelijke-ondersteuning-wmo>.

<sup>58</sup> <http://www.wetoke.nl/>.

### 3.4 Vocational education

MBO (*Middelbaar Beroeps Onderwijs*) is the name for secondary vocational education in the Netherlands. Vocational education is the main supplier to the labour market, often regarded as the 'foundation of the economy'. The sector consists of 70 colleges, comprising of VET colleges (ROCs in Dutch), agricultural VET colleges (AOCs) and specialized vocational colleges. Vocational education is available for young people from 16 years old to develop skills and increase their chances of employment. Further, vocational education is also available for adults and thus for family migrants with a residence permit. The cost of education needs to be covered by the individual.

### 3.5 Tertiary/further education

There are other adult courses targeting personal and career development provided by regional training centres (ROCs). For each course or training the municipality determines the target group and priority groups of participants. Target groups often include illiterate adults, immigrants, elderly, young mothers, and the unemployed. Whether or not the municipality subsidizes the financial costs depends on the income of the participant.

### 3.6 Higher education

The Dutch Higher Education and Scientific Research Act (WHW)<sup>59</sup> contains national legislation on Dutch higher education. In principle, there are three ways to obtain admission to a Dutch Bachelor program:

- with a Dutch VWO diploma;

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<sup>59</sup>[http://www.stab.nl/wetten/0718\\_Wet\\_op\\_het\\_hoger\\_onderwijs\\_en\\_wetenschappelijk\\_onderzoek\\_WHW.htm](http://www.stab.nl/wetten/0718_Wet_op_het_hoger_onderwijs_en_wetenschappelijk_onderzoek_WHW.htm)

- with a foreign degree deemed equivalent to a Bachelors or Master's degree; or<sup>60</sup>
- by passing an entrance examination.<sup>61</sup>

Future students are able to obtain admission to a Dutch Master's programme in two ways:

- after earning a Bachelor's degree in the same subject matter as the Masters; or<sup>62</sup>
- the university granting a certificate of authorization.<sup>63</sup>

The fees of higher education for TCNs are on average 45% higher than those for Dutch citizens or EU nationals.<sup>64</sup> The tariffs vary per university and course of study.

TCN students are eligible for financial assistance if they have a permanent residence permit. In some cases, TCN students with temporary residents permits can apply for financial assistance if they are adopted children or stay with Dutch or EU/EEA parents / partner in the Netherlands. The amount of the financial assistance depends on the housing situation of the applicant (less if the applicant lives with his or her family) and it has different components that can be applied for independently.

### 3.7 Reskilling (e.g. computer, driving license)

The Netherlands does not recognize driving licences obtained outside of the EU and EEA. Next to the licences obtained in EU and EEA countries, some or all categories of licences from Taiwan, Israel, Japan, Singapore, Andorra, South Korea, Québec in Canada, Aruba, Jersey, Man and Monaco<sup>65</sup>, can be exchanged for a Dutch licence. For possessors of driving licences from the remaining countries of the world, Dutch driving exams need to be passed, and a legal residence permit is needed to sit the exams.

<sup>60</sup> Wet op het hoger onderwijs en wetenschappelijk onderzoek, 1992, Article 7, paragraph 28.

<sup>61</sup> Wet op het hoger onderwijs en wetenschappelijk onderzoek, 1992, Article 7, paragraph 29.

<sup>62</sup> Wet of hoger onderwijs Art 7/30a.

<sup>63</sup> Wet op hoger onderwijs Art7/30a-b.

<sup>64</sup> <http://www.nuffic.nl/international-students/dutch-education/tuition-fees/?searchterm=tuition%20fees>

<sup>65</sup> See <http://www.rdw.nl/nl/particulier/hetrijbewijs/buitenlandsrijbewijsomwisselen/Pages/Kanikmijnrijbewijsomwisselen.aspx> (accessed on 18 March 2013).

### 3.8 Restrictions on training and career choices of migrants

Entering the labour market at the previous level attained in the country of origin is difficult for medium and highly-skilled migrants who do not speak Dutch. General accreditation of prior learning is still limited (OECD 2008: 6); not only are diplomas often not recognized as equivalent, but a high level of Dutch language is also expected in this part of the labour market, exception being multi-national organizations. Often, migrants need to start their career in the Netherlands with low-skilled jobs and climb up the ladder through persistence.

## 4. Employment

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### 4.1 Recognition of educational and vocational diplomas obtained in TC's

Diplomas that need to be recognized must be legalized. Legalization implies the verification of the name and function of the person and of the organization that signed the diploma on behalf of the awarding institution. Legalization thus informs foreign authorities of the legitimate status of the diploma concerned. Legalization is done through two different procedures, depending on the country of origin. For so-called Apostille countries, one stamp will suffice, in all other cases two stamps are needed, one of the Dutch Ministry of Foreign Affairs and the second one of the Embassy (or Consulate) of the country of origin. Both procedures meet the international standards of the so-called 'legalization chain'.<sup>66</sup>

For low-skilled jobs, there are no special diplomas required. However, there are professions which require that previous skills obtained in the country of origin are recognized in the Netherlands as equivalent to a Dutch trainee in that profession. The process of diploma recognition (*diplomawaardering*) involves an evaluation of the highest acquired diploma. It is a certificate or a statement which describes the Dutch training program comparable to the foreign diploma. The process gives potential employers an idea as to the level of the immigrant's previous training but does not

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<sup>66</sup> [http://www.ib-groep.nl/international\\_visitors/Diploma\\_assessment/Going\\_abroad/s20\\_legalizing.asp](http://www.ib-groep.nl/international_visitors/Diploma_assessment/Going_abroad/s20_legalizing.asp)

guarantee any other rights or implicit recognition of the quality of title earned in the country of origin.

## **4.2 Length of the period during which family migrants are not allowed to work**

If the sponsor is allowed to work in the Netherlands, then the family member is also allowed to work.<sup>67</sup> However, a working permit is required. Only after having worked in Netherlands for three years continuously with a work permit will the family migrant not need a working permit anymore.<sup>68</sup>

The family member who has carried out at least one year of legal employment in the Netherlands and has a prospect of continued employment with the same employer is legally entitled to continued access to the labour market and hence to legal residence in the Netherlands. If the family relationship is interrupted before the expiry of that year, national law governs the stay of the family members. Minor children, subjects of family reunification, qualify after a year for a residence permit for continued residence (under non-temporary humanitarian grounds), allowing them free access to the labour market.<sup>69</sup>

Family members of highly-skilled migrants have immediate and unrestricted access to the labour market as soon as the ‘residence endorsement general’ stamp has been attached to their travel document, which means that they can work even before the residence permit has been issued.

Family migrants (with the exception of family members of highly-skilled migrants) are restricted from the labour market during the period before their residence permits have been issued and in cases where a time gap is formed between two different residence permits.

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<sup>67</sup> [http://www.expatlawnl/dutch\\_work\\_permits.htm](http://www.expatlawnl/dutch_work_permits.htm)

<sup>68</sup> [https://www.werk.nl/werk\\_nl/werkgever/meerweten/werkvergunning/wanneerhebtueentewerkstellin gsvergunningnodig#ID193](https://www.werk.nl/werk_nl/werkgever/meerweten/werkvergunning/wanneerhebtueentewerkstellin gsvergunningnodig#ID193)

<sup>69</sup> Tweede Kamer, vergaderjaar 2008–2009, 32 052, nr. 3:56.



### 4.3 Regime of work permits

Employers are required to obtain work permits before they hire individuals from outside the EU for working in the Netherlands. The Foreign Nationals Employment Act, or WAV (*Wet Arbeid Vreemdelingen*<sup>70</sup>), requires employers first to recruit amongst Dutch and other EU citizens. This step is intended to protect the Dutch and European labour markets. The work permit system allows the Ministry of Social Affairs and Employment to regulate the intake of labour in the Netherlands. The work permit application procedure requires the employer in most cases to show that no qualified Dutch or EU nationals are available to fill the vacancy after advertising for at least five weeks prior to filing the application. If the work permit is granted, then normally the IND will automatically issue a residence permit assuming other requirements are met. If the residence permit is not approved (because, for example, the IND discovers that the applicant has a criminal record or an invalid passport), the work permit is automatically withdrawn when the residence permit is denied. The maximum length of a work permit is three years. People who have had work permits for three consecutive years and have not moved out of the Netherlands since then become exempt from the work permit requirement. Their residence permits are endorsed with the note 'Employment freely permitted' and 'No work permit required'.<sup>71</sup>

For senior executives, specialists, sports coaches, athletes, and artists, the employer also has to apply for a work permit. For them, it is not necessary to notify the national office for reintegration into the labour market, UWV (*Uitvoeringsinstituut Werknemersverzekeringen*), five weeks before the work contract begins.

The following groups are exempted from the work permit requirement:

- highly-skilled workers (skilled or knowledge workers);
- employees with a residence permit in which work is freely permitted; and
- legally residing self-employed entrepreneurs.

For workers from outside the EU without a work permit needed in order to work,

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<sup>70</sup> [http://www.st-ab.nl/wetten/0395\\_Wet\\_arbeid\\_vreemdelingen\\_Wav.htm](http://www.st-ab.nl/wetten/0395_Wet_arbeid_vreemdelingen_Wav.htm)

<sup>71</sup> [http://www.expatlawnl/dutch\\_work\\_permits.htm](http://www.expatlawnl/dutch_work_permits.htm)

there is a notification obligation. This means that the employer must notify in writing the UWV about these employees.<sup>72</sup>

For employment stays shorter than three months, an employee must apply for a visa. For stays of three or more months s/he needs to apply for a residence permit.<sup>73</sup> Foreign workers have the same rights and obligations as all Dutch employees: earning at least the legal minimum wage, holidays, leave, and legally regulated working hours and conditions. If employers and employees have concluded a collective agreement, it is also valid for the foreign workers.<sup>74</sup>

## 4.4 Requirements for entrepreneurs

An entrepreneur who wishes to start a business in the Netherlands has to register his or her company in the Dutch Chamber of Commerce (*Kamer van Koophandel*). Self-employed entrepreneurs are excluded from the Dutch work permit requirement. Nevertheless, they cannot start working in the Netherlands unless they have a residence permit for the self-employed (*verblijf voor het verrichten van arbeid als zelfstandige*). This permit is granted on the basis of a points system based on the following evaluation:

- *Personal experience*: education, employment experience, previous annual income, possession of high level experience of entrepreneur, and experience acquired in working with or in the Netherlands.
- *Business plan*: analysis of the market, organization, and financing.
- *Added value for the Dutch economy*: innovation, creation of employment, and investment.<sup>75</sup>

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<sup>72</sup> <http://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/tewerkstellingsvergunning-voor-buitenlandse-werknemers>

<sup>73</sup> <http://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/verblijfsvergunningen-en-registraties-voor-buitenlandse-werknemers>

<sup>74</sup> <http://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/rechten-en-plichten-van-een-buitenlandse-werknemer/werknemers-die-voor-een-nederlands-bedrijf-werken>

<sup>75</sup> <http://www.businesslegalconsultancy.com/en/3204/self-employed-residence-permit-in-the-netherlands-holland-ind.html>

## 4.5 Restrictions on loans by private banks

The Netherlands has a system of personal loans (a fixed amount of money that needs to be paid back in equal terms over a fixed period of time) and continued credits (a higher credit limit on an account for which a monthly contribution is required). Whichever loan is needed, the bank or financial institute will require security of return payments, and therefore consider the applicant's income and assets and possessions (property, etc.). Dutch banks usually do not accept loan applications from temporary residence permit holders, but the type of residence permit determines if migrants can borrow money.<sup>76</sup>

## 4.6 Anti-discrimination clauses for public and private employers

Article 1 of the Dutch constitution forbids discrimination and stipulates that "Everyone in the Netherlands shall be treated equally in equal circumstances." There are ten grounds of discrimination mentioned in the law: race, gender, sexual orientation, political opinions, religion, life style, disability or chronic illness, civil status, nationality, and type of work contract (full-time, part-time, permanent, or temporary).<sup>77</sup>

Article 1 is expanded in the General Law on Equal Treatment (*Algemene wet gelijke behandeling* – AWGB) and in Articles of the Criminal Law (*Wetboek van Strafrecht*). The AWGB stipulates that everyone has an equal opportunity to obtain a job, good labour conditions, a good education, and good services or products.<sup>78</sup> A discriminatory decision should be corrected. The Dutch Criminal Law forbids discriminatory remarks or remarks that incite hatred or discrimination.

The problem with identifying discrimination in the labour market is that employers sometimes argue that for non-natives it is not their ethnic backgrounds but their "language capabilities, representativeness or the reaction of clients".<sup>79</sup> Experimental

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<sup>76</sup> [http://www.expatguideholland.com/themes/finance\\_insurance/finance/getting\\_a\\_loan/?region=egh](http://www.expatguideholland.com/themes/finance_insurance/finance/getting_a_loan/?region=egh)

<sup>77</sup> <https://www.discriminatie.nl/over-discriminatie/wat-zegt-de-wet-over-discriminatie> (accessed on 14 May 2012)

<sup>78</sup> <https://www.discriminatie.nl/over-discriminatie/wat-zegt-de-wet-over-discriminatie> (accessed on 14 May 2012)

<sup>79</sup> Veenman 2003 cited in [http://www.art1.nl/artikel/4405\\_Discriminatie\\_etnische\\_minderheden\\_op\\_de\\_arbeidsmarkt\\_-\\_Factsheet](http://www.art1.nl/artikel/4405_Discriminatie_etnische_minderheden_op_de_arbeidsmarkt_-_Factsheet) (accessed on 14 May 2012)

research has shown that trainee applications of native Dutch and Moroccan youngsters with identical CVs were evaluated differently: 40% of the former but only 28% of the latter were invited for an interview (Dolfing and Van Tubergen 2005). Another study concludes that 77% of private employment agencies agreed to work with a request by fictive employers not to select non-Dutch candidates.<sup>80</sup>

## 5. Welfare Benefits:

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### 5.1 Length of the period of 'no recourse to public resources'

Anyone on welfare benefits, thus also immigrants, has a duty to ensure independent means of existence as soon as possible.<sup>81</sup> Residents with a permanent residence permit have the same rights as Dutch citizens – only citizens with a temporary residence permit encounter restrictions, as explained below.

### 5.2 Differences between temporary permits, permanent permits, and citizenship

The Linking Act (*Koppelingswet*) 1998<sup>82</sup> is a law that clarifies the position of foreigners without residency or work permits and aims to discourage illegal residence in the Netherlands. The Linking Act owes its name to the fact that it entitles various public institutions to question whether a person is legally residing in the Netherlands.<sup>83</sup> The Act links the computer systems of the population register (census), social service systems, and the IND to each other. This integration disallows migrants without residence permits to access public goods like welfare benefits, housing, medical care, and education. The law is intended to discourage foreigners from coming to the Netherlands and to make sure that persons only receive those entitlements that their permits allow.

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<sup>80</sup> Volkskrant, 'Driekwart uitzendbureaus schuldig aan discriminatie', 2 November 2011, see on <http://www.volkskrant.nl/vk/nl/5273/Werk/article/detail/3009124/2011/11/02/Driekwart-uitzendbureaus-schuldig-aan-discriminatie.dhtml> (accessed on 14 May 2012).

<sup>81</sup> V08/05, December 2008, p. 13.

<sup>82</sup> <http://www.st-ab.nl/1-98203.htm>

<sup>83</sup> <http://www.rijksoverheid.nl/onderwerpen/asielbeleid-en-immigratie/vraag-en-antwoord/wat-is-de-koppelingswet.html>

The Linking Act states that undocumented migrants and labour migrants are not entitled to welfare benefits and services<sup>84</sup>. Furthermore, in the following cases, claiming welfare benefits may impact on the right of an individual to stay in the Netherlands:

- temporary residence permit related to family reunification and formation, where no exemption is granted and the permit has been for less than three years in possession (including staying with parent(s));
- residence permit for temporary study;
- residence permit for temporary employment;
- residence permit for refugees<sup>85</sup>; or
- permanent residence as an EU national<sup>86</sup>.

Access to welfare benefits and facilities does not automatically jeopardize one's chances of being granted a (re)new(ed) permit, but it does present a risk to the migrant. No recourse to welfare benefits and facilities has also been proposed as a condition for the residence status of the sponsor – this legal proposal has been pending for the last two years but has not, as yet, been put to a vote.<sup>87</sup>

Only in the following situations does receiving welfare benefits have no consequences for the right of residence of a foreigner:

- permanent residence permit
- temporary and permanent residence permit for asylum seekers
- EU nationals with a permanent residence permit<sup>88</sup>.

If one lives in a shelter with no residence permit, but has made an application for a residence permit connected with domestic violence, honour-related violence, or

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<sup>84</sup> Koppelingswet, 1998, Article 3.

<sup>85</sup> ECHR, Article 8.

<sup>86</sup> V08/05, December 2008, p. 25.

<sup>87</sup> <http://www.ind.nl/themas/momi/>

<sup>88</sup> V08/05, December 2008, p. 22.

trafficking, then one can apply for a benefit under the scheme for specific categories.<sup>89</sup>

### 5.3 Child benefit (Kindgebonden budget, formerly Kinderbijslag)<sup>90</sup>

Every parent living or working in the Netherlands has a right to claim child benefit as long as they are taking care of children up to 18 years old. There are extra conditions for children who are 16 and 17 years old, in which case the following conditions need to be fulfilled in order to receive child benefit:

- if the child is going to school to obtain a minimum educational qualification during the day;
- if the child is dismissed from the obligation to obtain a minimum educational qualification;
- if the child has obtained a minimum educational qualification and is still pursuing education full-time during the day;
- if the child has obtained a minimum educational qualification and is unemployed;
- if the child has obtained a minimum educational qualification and is not able to pursue education due to illness or disability; or
- if the child is not earning more than € 1,240 net per three months.

### 5.4 Childcare support (*Kinderopvangtoeslag*)<sup>91</sup>

Parents who work, study, or follow a course to boost their chances on the labour market are entitled to childcare support for children living in their house until the age when the children enter high school. The amount of support is income-

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<sup>89</sup> [http://www.st-ab.nl/wettennr05/0445008Regeling\\_verstrekkingen\\_bepaalde\\_categorieen\\_vreemdelingen\\_Rvb.htm](http://www.st-ab.nl/wettennr05/0445008Regeling_verstrekkingen_bepaalde_categorieen_vreemdelingen_Rvb.htm) (accessed on 19 March 2013).

<sup>90</sup> <http://www.rijksoverheid.nl/onderwerpen/kinderbijslag/vraag-en-antwoord/wat-is-kinderbijslag.html> (accessed on 27 April 2012).

<sup>91</sup> <http://www.rijksoverheid.nl/onderwerpen/kinderopvangtoeslag/vraag-en-antwoord/wanneer-heb-ik-recht-op-kinderopvangtoeslag.html> (accessed on 9 May 2012).

dependent and is paid by the state as a tax refund. The pre-requisites for this program are:

- Dutch nationality or legal residence permit; or
- resident in the Netherlands or an EU or EEA country.

## 5.5 Healthcare costs support (*Zorgtoeslag*)<sup>92</sup>

The healthcare costs support aims to assist people with a low income in paying the costs of a basic health insurance, which is obligatory for all residents of the Netherlands. The following conditions must be fulfilled:

- 18 years old or older;
- Dutch health insurance;
- a maximum income of € 35.059 per year (in 2011: € 36.022) for those living alone and € 51.691 per year (in 2011: € 54.264) for those within partnerships;
- Dutch nationality or a residence permit providing a right to support (a condition which is also valid for the partner).

The amount of healthcare costs support is income-dependent.

## 5.6 Unemployment benefits

### 5.6.1 Unemployment benefit, the WW (*Werkloosheidswetuitkering*)<sup>93</sup>

If an employee becomes totally or partially unemployed, s/he can apply for an unemployment benefit. The WW is a temporary benefit covering the loss of income between two jobs. It is a conditional benefit. For example, one has to have worked for at least 26 out of 36 weeks prior to becoming unemployed.

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<sup>92</sup> <http://www.rijksoverheid.nl/onderwerpen/zorgtoeslag/vraag-en-antwoord/wat-is-zorgtoeslag.html>; <http://www.rijksoverheid.nl/onderwerpen/zorgtoeslag> (accessed on 4 May 2012).

<sup>93</sup> <http://www.rijksoverheid.nl/onderwerpen/ww> (accessed on 4 May 2012).

### 5.6.2 Subsistence assistance (*Algemene bijstand*)<sup>94</sup>

Anyone older than 18 years old living in the Netherlands can apply for subsistence assistance if they do not have enough personal income or capital to cover their livelihood, and if they are not entitled for any other welfare benefit. Right to residence can be lost if a migrant makes use of subsistence assistance in the first five years of residence. The new Rutte-II Cabinet has announced that it will raise this term of no recourse to seven years.<sup>95</sup> Those wearing a veil covering their faces completely do not qualify for subsistence assistance.<sup>96</sup>

### 5.6.3 Subsistence assistance for self-employed (*Bijstand voor zelfstandigen*)

The self-employed are responsible for their income but municipalities can provide some assistance up to the level of subsistence assistance.

### 5.6.4 Special assistance (*Bijzondere bijstand*)<sup>97</sup>

This benefit is for emergency expenses for receivers of subsistence assistance. The special conditions vary per municipality.

### 5.6.5 Sickness benefit (*Ziektewet*)<sup>98</sup>

Every employee younger than 65 years old is automatically insured for sickness by his or her employer. If one becomes sick and does not have an employer (anymore), s/he can receive 'sickness payment (*ziekengeld*)' on the condition of insurance. The following situations lead to entitlement for sickness benefit:

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<sup>94</sup> <http://www.rijksoverheid.nl/onderwerpen/bijstand/vraag-en-antwoord/wanneer-heb-ik-recht-op-bijstand.html> (accessed on 27 April 2012).

<sup>95</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p. 31.

<sup>96</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p. 31.

<sup>97</sup> <http://www.rijksoverheid.nl/onderwerpen/bijstand/bijzondere-bijstand> (accessed on 27 April 2012).

<sup>98</sup> <http://www.rijksoverheid.nl/onderwerpen/ziektewetuitkering/vraag-en-antwoord/wanneer-kom-ik-in-aanmerking-voor-de-ziektewet.html>; <http://www.rijksoverheid.nl/onderwerpen/ziektewetuitkering> (accessed on 4 May 2012).



- working as a temp (without a permanent contract with a temp agency);
- working on call (depending on the type of the call contract);
- end of a temporary contract during illness;
- having an exceptional working arrangement (e.g. as house help, trainee, freelance, working on provisions, musician, or artist);
- receiving an unemployment benefit and being ill for longer than 13 weeks;
- becoming ill as a result of pregnancy or giving birth;
- donating an organ as a result of which one is temporarily unable to work; or
- becoming sick within five years after being employed whilst being partially disabled.

The sickness benefit is paid for duration of no more than two years and amounts to 70% of daily salary.

## 5.7 Disability benefits

### 5.7.1 Assistance for the young disabled, Wet Wajong (Wet werk en arbeidsondersteuning jonggehandicapten)<sup>99</sup>

This benefit is for those who have become disabled in their youth or during their studies. The benefit begins at the earliest at 18 years of age and ends at the latest at 65 years of age. The following persons are entitled to Wajong:

- those who are at least 25% unfit to work on their 17<sup>th</sup> birthday; and
- those who are younger than 30 years old and have become at least 25% disabled as a result of which it has become impossible to work (full-time) after their studies, on the condition that they have studied for at least six months before the disability occurred.

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<sup>99</sup> <http://www.rijksoverheid.nl/onderwerpen/wajong/vraag-en-antwoord/wanneer-kom-ik-in-aanmerking-voor-een-wajong-uitkering.html> (accessed on 4 May 2012).

### **5.7.2 Assistance for the partially incapacitated, WIA (*Wet werk en inkomen naar arbeidsvermogen*)<sup>100</sup>**

Employees who have been declared to be more than 35% unfit to work (*arbeidsongeschikt*) after two years of sickness may be entitled to this benefit. There are two types of welfare arrangements that fall under WIA: (i) return to work for the partially incapacitated scheme, WGA (*regeling werkhervatting gedeeltelijk arbeidsgeschikten*) arranges the benefits of those who can still partially work; while income provision for the fully and permanently disabled, IVA (*inkomensvoorziening volledig en duurzaam arbeidsongeschikten*) is meant for those unable to work and have a low chance of recovery.

### **5.8 Unemployment benefit for the elderly, IOAW, IOW, IOAZ (*Uitkering oudere werklozen*)<sup>101</sup>**

The long-term unemployed between the ages of 50 and 60 are entitled to an IOAW benefit after their unemployment benefit ends. Unemployed people older than 60 years of age are entitled to an IOW benefit. The IOAZ targets older self-employed people who close their businesses.

#### **5.8.1 Pension benefits**

- person-specific: depends on the labour and personal arrangements
- general, AOW (*Algemene ouderdomswet*)<sup>102</sup>

Everyone between 15 and 65 years of age who lawfully resides or works in the Netherlands is automatically insured for old age benefit, the AOW. Persons who have been insured for the entire period, i.e. for 50 years, receive the full benefit. The

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<sup>100</sup> <http://www.rijksoverheid.nl/onderwerpen/wia> (accessed on 4 May 2012).

<sup>101</sup> <http://www.rijksoverheid.nl/onderwerpen/uitkering-oudere-werklozen-ioaw-iow-ioaz> (accessed on 4 May 2012).

<sup>102</sup> <http://www.rijksoverheid.nl/onderwerpen/algemene-ouderdomswet-aow/basisinkomen-en-aio;http://www.rijksoverheid.nl/onderwerpen/algemene-ouderdomswet-aow/vraag-en-antwoord/ben-ik-verzekerd-voor-de-aow-als-ik-later-in-nederland-ben-komen-wonen.html> (accessed on 27 April 2012).

amount of the benefit depends on each individual's situation. Persons who have lived or worked abroad between these ages build up less AOW, which amounts to 2% less for every year they lived or worked abroad. If a person has migrated to the Netherlands after 1<sup>st</sup> January 2001, they may buy into the program for the years they were not insured for periods between their 15<sup>th</sup> birthday and the year they came to the Netherlands. A person can buy in to AOW if they are between 15 and 65 years old and if they have lived or worked in the Netherlands for less than 10 years at the time of the application.

## 6. Healthcare<sup>103</sup>

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The same rules governing healthcare for Dutch citizens apply to legal migrants with a residence permit. Thus migrants need to be covered by a Dutch health insurance program within four months after their permit has been issued. The insurance covers the costs starting from the date of issue of the permit, which means that the insurance company may ask for the fee for the months preceding the application for the insurance. In the period in between receiving the residence permit and being in physical possession of the insurance card, migrants are only covered for emergency care. Legal migrants have right to all health care provisions that fall under the basic insurance package.

It is mandatory for everyone in the Netherlands to have at least a basic insurance (*basisverzekering*); people without insurance run the risk of incurring warnings and fines. However, everyone is free to choose their own health insurer (*zorgverzekeraar*) and they can change companies once a year. Children under 18 are included under their parents' insurance plans. A Dutch insurance company cannot refuse to cover individuals for the basic package, regardless of their age or state of health. Although the standard basic coverage is roughly equivalent across all providers, costs may vary. If a person's income is under a fixed minimum level, they can apply for a healthcare allowance (*zorgtoeslag*) from the tax authorities. The basic insurance covers general medical care (visits to the family doctor (*huisarts*), for example), hospital stays, dental care for people up to age 18, prescription medicine, and various appliances. In the Netherlands there is an annual own risk fee, determined at the beginning of each calendar year, which the patient has to pay for using medical services: this fee includes specialist visits but not visits to GPs.

Illegal migrants are only entitled to medically indispensable (*medisch noodzakelijk*) care. The treating doctor determines what counts as medically necessary.

There is a separate healthcare arrangement for **asylum seekers** and their families. Asylum seekers waiting for status adjudication stay in an asylum seekers centre

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<sup>103</sup> <http://www.rijksoverheid.nl/onderwerpen/asielbeleid-en-immigratie/vraag-en-antwoord/krijgen-asielzoekers-vluchtelingen-of-illegalen-medische-zorg.html> (accessed on 9 May 2012)

where they are collectively insured and entitled to all care falling under the basic insurance package.

The following categories of migrants cannot apply for a health insurance:

- illegal migrants;
- migrants whose first regular residence permits have not yet been granted;
- migrants who have submitted an objection or appeal against a rejected residence permit application;

In these cases, medically indispensable care can still be provided. The migrants pay for the costs themselves. If that is not (totally or partly) possible, the service-provider can in some cases apply for compensation.

## 7. Housing

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### 7.1 Housing for new family members

Family members need to be registered on the same address as the sponsor. Those joining for family reunification or family formation join already-formed households that are subject to local housing market restrictions. Many couples live first with family and friends or are co-tenants until they find independent housing (Bolt and Van Kempen 2002: 411).

### 7.2 Criteria for access to public/social housing

In some municipalities, a housing permit is needed to access public/social housing. The municipality grants housing permits designed to assure a fair distribution of scarce cheap housing. In general, a housing permit is required to rent an independent apartment but not for renting a room. A license is also required if one wants to buy a house below the annual fixed price limit.<sup>104</sup> Usually, there are long waiting lists for social housing, particularly in large cities where most migrants live in the Netherlands.

Although in principle everybody can apply for social housing if there is physical and economic need for it, in practice the chances of actually obtaining social housing are low. The reasons for these low chances are the existence of long waiting lists based on length of registration on the list. It is usually the sponsor who applies for social housing, and the sponsor is either a citizen or a permanent resident. Thus, in cases where the sponsor is already renting an apartment or is otherwise able to obtain social housing, the joining family member can enjoy this entitlement without personally making recourse to public funds.

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<sup>104</sup> [http://overheidsloket.overheid.nl/index.php?p=product&product\\_id=1000522](http://overheidsloket.overheid.nl/index.php?p=product&product_id=1000522)

### 7.3 Criteria for access to rental subsidy

To be entitled to receive the rental subsidy, the rent of the house must be lower than €664.66 per month. For persons younger than 23 years of age, the rent needs to be lower than €366.37 per month. Personal savings and capital will also be taken into consideration.

### 7.4 Criteria for access to (temporary) free/publicly-funded housing

Shelters are available for short- and long-term stays for victims of domestic violence and their children. These shelters are gender-specific.<sup>105</sup> The length and nature of accommodation (shelter, independent house, or emergency shelter) depend on the seriousness of the situation at home. After a period of care, the affected family member returns back home or goes to live independently.<sup>106</sup> There is an emergency procedure that prioritizes victims of household violence or single parents with minor children on the otherwise long waiting lists.

### 7.5 Criteria for obtaining mortgages

The two general conditions for obtaining a mortgage of up to four or five times of a salary are: (i) a permanent residence permit (although, depending on nationality and employment contract, this may not be applicable); and (ii) full-time employment or a statement from the employer regarding the possibility of contract renewal. If one is self-employed or a contractor, one needs to provide certified income proofs for the last three years and a probable expected income for the following year.

The requirement for obtaining a mortgage from a bank or other financial agents offering loans is a permanent work contract. The maximum amount of the loan is decided on the basis of the annual salary (about 3-4 times the annual gross salary).

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<sup>105</sup> <http://www.rijksoverheid.nl/onderwerpen/huiselijk-geweld/vraag-en-antwoord/wat-moet-ik-doen-bij-huiselijk-geweld.html>

<sup>106</sup> <http://www.opvang.nl/site/item/vrouwenopvang>

## 7.6 Anti-discrimination clauses for housing

The General Equal Treatment Act (*Algemene Wet Gelijke Behandeling*) prohibits discrimination grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation, or civil status by institutions working in the field of housing, welfare, health, culture and education in providing access to goods or services and in giving information or advice.<sup>107</sup> However, the Commission on Equal Treatment (*Commissie Gelijke Behandeling*) has argued that the General Equal Treatment Act does not apply to housing policy on the grounds that the Dutch government has purposefully chosen to implement an unequal treatment of tenants (*eenzijdig overheidshandelen*) (*Stichting Gelijke Behandeling Volkshuisvesting* 2012: 54). Nevertheless, as the Netherlands is a party to anti-discrimination laws and treaties, the Commission on Equal Treatment has stressed that this does not mean that discrimination is allowed.

Yet, the Foundation on Equal Treatment in Housing has argued that the root causes of the current major problems in the housing market are in the different treatment of tenants and owners (*ibid.*) Tenants have many obligations and few rights. This creates direct and indirect discrimination between tenants and owners. According to the Foundation, the Netherlands is in breach of the European Treaty on Human Rights Protection and European Social Charter both on the issues of non-discrimination and the availability of affordable social housing (*Stichting Gelijke Behandeling Volkshuisvesting* 2012: 46).

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<sup>107</sup> [http://wetten.overheid.nl/BWBR0006502/geldigheidsdatum\\_19-03-2013](http://wetten.overheid.nl/BWBR0006502/geldigheidsdatum_19-03-2013) (accessed on March 2013)



## 8. Civic participation:

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### 8.1 Access to voting in local/provincial/national/European elections (*actief kiesrecht*)<sup>108</sup>:

Every Dutch citizen who is 18 years of age or older has the right to vote in all elections. All other legal residents who have lived in the Netherlands for at least five consecutive years may vote in local elections. The current Coalition agreement has announced plans to increase the residence requirement for the right to vote in municipal elections from five to seven years.<sup>109</sup> EU residents have the right to vote in European elections for Dutch European Parliamentarians. Every legal resident who is 18 years of age or older may vote for the water regulatory authority (*waterschap*) of their region.<sup>110</sup>

### 8.2 Rules for running for office in elections (*passief kiesrecht*)<sup>111</sup>

Every Dutch citizen who is 18 years of age or older has the right to be elected to office for the Second (*Tweede Kamer*) and First Chambers (*Eerste Kamer*) of the National Parliament and for the Provincial Parliament (*Provinciale Staten*) in their own province. The following persons may be elected to office for the local town council (*Gemeenteraad*):

- all Dutch citizens who are 18 years of age or older living in the municipality in question;
- all EU citizens 18 years of age or older living in the municipality concerned; and
- all other legal residents 18 years of age or older who are living in the municipality concerned and have been legally residing in the Netherlands for at least five consecutive years.

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<sup>108</sup> <http://www.rijksoverheid.nl/onderwerpen/verkiezingen/vraag-en-antwoord/wat-is-kiesrecht-en-wie-mogen-er-stemmen-of-gekozen-worden.html> (accessed on 27 April 2012).

<sup>109</sup> *Bruggen Slaan. Regeerakkoord VVD-PvdA*, 29 October 2012, p. 31.

<sup>110</sup> This is a separate administrative layer in the Netherlands.

<sup>111</sup> <http://www.rijksoverheid.nl/onderwerpen/verkiezingen/vraag-en-antwoord/wat-is-kiesrecht-en-wie-mogen-er-stemmen-of-gekozen-worden.html> (accessed on 27 April 2012).

The following persons may be elected to the European Parliament:

- all Dutch citizens who are 18 years of age or older; and
- all citizens of other EU countries residing in the Netherlands except those who are excluded from being elected in their country of origin.

Every legal resident who is 18 years of age or older may be elected for the water regulatory authority (*waterschap*) of their region.

### 8.3 Access to party membership

Parties expect aspiring party members to accept the party principles.

- PvdA (Partij van de Arbeid), D66 (Democraten 66), CDA (Christen Democratisch Appèl): no formal restrictions
- VVD (Volkspartij voor Vrijheid en Democratie): Every person can become an aspiring member before the age of 18 years, after which they become a full member.<sup>112</sup>
- SGP (Staatkundig Gereformeerde Partij): Everyone 18 years or older may become a member.
- PVV (Partij voor de Vrijheid): This party has no party members except the party leader Geert Wilders. Volunteers may help the party.
- PvdD (Partij voor de Dieren): The party management team can refuse persons' applications for membership after research.

### 8.4 Access to NGO membership

No formal restrictions.

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<sup>112</sup>See Statuten, <http://www.vvd.nl/over-de-vvd/detail/19/partijreglementen> (accessed on 27 April 2012).

## 8.5 Access to local democratic participation

No formal restrictions.

## 8.6 Access to holding public office

Every legal resident may be appointed for public office as long as s/he has a working permit or does not need one.<sup>113</sup> The only exceptions are so-called ‘confidentiality functions’ (*vertrouwensfuncties*) for which one needs to be a Dutch citizen to be eligible.<sup>114</sup> A confidentiality function is a function through which it is possible to use knowledge or powers that could lead to threatening national security or other vital interests of the state.<sup>115</sup> These functions involve dealing with confidential information involving the security or other major interests of the state. It is the responsible minister who decides which functions are classified as confidentiality functions.<sup>116</sup> In case it is in the interest of the employer, however, a non-Dutch citizen may also be appointed. All military positions at the Ministry of Defence and all functions at the Royal Military Police are public trust functions, for which candidates also need to go through a thorough security check.<sup>117</sup>

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<sup>113</sup> Algemeen Rijksambtenarenreglement, 2010, Chapter 2, Article 5, paragraph 3.

<sup>114</sup> Ambtenarenwet, 1929, Article 125e.

<sup>115</sup> [http://www.aivdkennisbank.nl/jaarverslag-2011/aDU2328\\_Wat-is-een-vertrouwensfunctie.aspx](http://www.aivdkennisbank.nl/jaarverslag-2011/aDU2328_Wat-is-een-vertrouwensfunctie.aspx) (accessed on 2 May 2013).

<sup>116</sup> [http://www.aivdkennisbank.nl/jaarverslag-2011/aDU2328\\_Wat-is-een-vertrouwensfunctie.aspx](http://www.aivdkennisbank.nl/jaarverslag-2011/aDU2328_Wat-is-een-vertrouwensfunctie.aspx) (accessed on 2 May 2013).

<sup>117</sup> Militaire Inlichtingen- en Veiligheidsdienst, 2007, *De vertrouwensfunctie & het veiligheidsonderzoek*, Militaire Inlichtingen- en Veiligheidsdienst, Bureau Personele Veiligheid.

## 9. Other rights & restrictions:

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This section examines member state-specific empirical findings of restrictions encountered by TCN family migrants that do not fit neatly into the previous subheadings.

### 9.1 Right to legal assistance for victims/perpetrators of criminal offences

All applicants for legal assistance whose income is below the minimum level and are encountering a legal problem that they cannot solve on their own, can apply for subsidized legal help.<sup>118</sup> Further, a system of free legal advice (*juridische loketten*) and information is available for all people who might need it. Legal assistance is free for those in custody for a criminal case.<sup>119</sup>

### 9.2 Tax benefits

As a general rule, all taxpayers are entitled to tax benefits valid at a particular point in time. Highly-skilled migrants may get an income tax reduction of 30% in the first 10 years of their stay in the Netherlands. The employer has to co-sign the request for the 30% ruling. To qualify for the 30% ruling, an employee must be:

- assigned from abroad or recruited abroad (those who study in the Netherlands during recruitment do not qualify);
- hired because of specific knowledge being unavailable or scarcely available on the Dutch labour market;
- sent to the Netherlands on the basis of job rotation; or

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<sup>118</sup> <http://www.rijksoverheid.nl/onderwerpen/gesubsidieerde-rechtsbijstand/vraag-en-antwoord/wat-zijn-de-inhoudelijke-voorwaarden-voor-gesubsidieerde-rechtsbijstand-of-mediation.html>

<sup>119</sup> Wet op de rechtsbijstand, 1993, Article 43.

- employed by a (foreign or Dutch) employer paying payroll tax to the Netherlands Revenue and willing to cooperate on the application of the 30%-ruling.

The agreement on the 30% ruling between the employee and the employer must be signed at the start of employment and sent to the tax office. In practice, the application may be approved years after the employment began.<sup>120</sup>

### 9.3 Inheritance

- personal: depends on the individual circumstances
- general: survivor benefit (*Nabestaandenuitkering*)<sup>121</sup>

This entitlement is for individuals whose partners have died. This is a general entitlement that family migrants can also accrue. If the deceased partner lived and worked in the Netherlands, the surviving partner has the right to receive a so-called 'survivor benefit' (*Nabestaandenuitkering*). The surviving partner is also entitled when the deceased partner was insured for a survivor benefit in either an EU or EEA country or another country with which the Netherlands has a treaty with regard to social security. The survivor has to be younger than 65 years of age and fulfil at least one of the following conditions:

- be born before 1950;
- have a child younger than 18 years of age; or
- be at least 45% unfit to work (*arbeidsongeschikt*).

The survivor need not be married to the deceased partner to be entitled to a survivor benefit. Any survivor with a durable partner with whom the deceased partner was maintaining a shared household at the time of death is entitled to a survivor benefit. This applies also to unmarried partners living together (regardless of their sex), and for brothers and sisters. One can only be entitled to a survivor

<sup>120</sup> <http://holland.jobserver.org/olanda.html>

<sup>121</sup> <http://www.rijksoverheid.nl/onderwerpen/algemene-nabestaandenwet-anw/vraag-en-antwoord/wanneer-heb-ik-recht-op-een-nabestaandenuitkering-anw-uitkering.html> (accessed on 27 April 2012).

benefit as a former marriage partner on the condition that one was receiving alimony. The survivor benefit is never higher than the alimony. The former partner also needs to fulfil all the conditions for surviving partners.

#### **9.4 Restrictions in the private sector (e.g. access to bank accounts)**

Anyone who is 18 years of age or older can open a bank account if s/he has an address in the Netherlands and a valid identity card. For those younger than 18 years of age, the parents can open a bank account.

## SECTION 3: EXPLORING RATIONALES

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The Dutch government's aim of quantitatively reducing the inflow of family migration has influenced the tightening of the immigration rules. The state sees family migrants as the most likely to cause integration problems and are selected before entry into the Netherlands through the civic integration test. The government tries to select family migrants who can easily "fit" into Dutch society on the basis of their chances for a successful integration (Bonjour 2006). The government stresses that migrants who want to stay long in the Netherlands must be equipped so that they can successfully integrate.<sup>122</sup> Pre-integration tests would enhance the integration of groups such as family migrants with a perceived integration deficit (Kulu-Glasgow and Leerkes 2009: 13). The government expected a decrease in the number of family migrants (idem).

The main rationale behind the present policies regarding family migration in the Netherlands is thus to facilitate the integration of future migrants, of sponsors with a migrant background, and of migrants' children. In particular, the rationale depends on integration efforts, such as increasing the requirements for the basic civic integration examination abroad and increasing the referee's responsibility for the integration process of their partner by financing the preparation materials and courses where necessary. The government thus does not explicitly choose the right to family reunification as a starting point; it rather takes decisions and justifies them in light of the purpose of the measures needed for promoting integration.<sup>123</sup>

In practice, the new admission requirements for adults - predominantly as for family reunification migrants or family formation with a Dutch citizen or a foreigner legally residing in the Netherlands - state that the vast majority of non-citizens need to be in possession of a valid provisional residence permit (MVV) before coming to the Netherlands. This measure allows the government to assess whether the alien can be eligible for a residence permit in the Netherlands before his or her arrival. The MVV, for which the alien applies while residing outside the Netherlands, examines the migrant with the same evaluation used for the application for a temporary

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<sup>122</sup> Tweede Kamer, vergaderjaar 2008–2009, 32 052, nr. 3, p. 5.

<sup>123</sup> TK 2009–2010, 32 175, nr. 9, p.2.

regular residence permit. An MVV will only be granted after the alien has successfully passed a pre-entry test at the Netherlands embassy in the country of origin. This test is supposed to prepare and motivate the candidate for life in the Netherlands. If these preliminary conditions are not met, the alien is temporarily excluded from asking for the right of residence.<sup>124</sup>

The Dutch government has argued that this preliminary selection is conducive to integration or 'effective participation in Dutch society, for example, by active participation in employment, education and voluntary work'.<sup>125</sup> The Dutch government justifies the differing pre-entry conditions between 'Western' and 'non-Western' TCN family migrants as follows: on the one hand, 'Western' countries are socio-economically comparable to the Netherlands, as a result of which migrants from these countries "do not lead to undesirable and uncontrollable migration flows to the Netherlands and to substantial integration problems in Dutch society" (Strik, Luiten and van Oers 2010: 19); however, on the other hand, imposing pre-entry conditions would be "potentially harmful to [Dutch] foreign and economic relations".<sup>126</sup>

Persons wanting to reside permanently in the Netherlands must have a basic level of Dutch language and be aware of Dutch values and standards. Any newcomer who voluntarily comes to the Netherlands is subject to the Civic Integration Act (*Wet Inburgering*). This Act introduced a first set of obligatory civic integrations exams abroad for migrants before entering the country and a second set of civic integration exams upon which the right to (long-term) residence in the Netherlands depends.

The Christian Democratic Party introduced the second facet on family migration and integration with gendered family migration. Here, the focus is on the migration of women who come to the Netherlands unprepared, without knowledge of the Netherlands. These predominantly Moroccan or Turkish women were seen by the Party as becoming socially isolated and dependent on benefits. Their children were seen as 'lagging behind'. In order to meet these perceived problems, the pre-entry requirements were considered "good preparation before coming to the Netherlands, which will probably increase self-reliance and improve the chances for

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<sup>124</sup> TK 2003–2004, 29 700, nr. 3, p. 8

<sup>125</sup> TK 2003–2004, 29 700, nr. 3, p. 6.

<sup>126</sup> TK 2004–2005, 29700, nr. 6, p. 32.



social participation”.<sup>127</sup> A key issue concerning family migration from the two aforementioned countries is thought to be the discrepancy between gender norms in the country of origin versus the Netherlands: immigrant men, mostly already Dutch citizens, wish to marry women coming from a traditional environment who are thought to be able to take care of the home and children, referred to as future ‘import brides’. Yet, many women with migrant backgrounds, probably already Dutch citizens themselves, are emancipated and envision an equal division of labour, care, and free time. They are mostly well-educated and expect the same from their partners, thus they only seldom ‘import’ grooms.<sup>128</sup>

The ‘import bride’ debate contains the additional problem for the Dutch government of abandoned families in Morocco. Here, the issue is that Moroccan men leave their wives, female children (for marriage), and other family members abandoned in Morocco while they return to the Netherlands with a different wife, to form a new family.<sup>129</sup> The differences between family law in the Netherlands and in Morocco make it possible that families can be abandoned without any repercussions. The Dutch state feels that it should intervene in this situation both because it possibly affects Dutch citizens but also because it is a potential cause of further family migration on the part of the new spouses. One of the proposed measures is assurance that a new marriage/new migration cannot take place in a short period of time. Furthermore, Minister Verdonk suggests that the alimony paid by referees should be deducted from the income associated with the income requirement of 120% of the minimum wage that applies when a partner joins from abroad (TK 2004–2005, 29 742, nr. 16: 5).

The Dutch government introduced stricter conditions for ‘family forming migration’ on 1<sup>st</sup> November 2004. The Cabinet Balkenende II argued that a more restrictive policy was called for due to:<sup>130</sup>

- lagging integration among migrants;
- the “not unlimited societal support” for the reception of new migrants; and

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<sup>127</sup> TK 2003–2004, 29 700, nr. 3, p. 4

<sup>128</sup> TK 2003–2004, 29 700, nr. 3, p. 4.

<sup>129</sup> TK 2004–2005, 29 742, nr. 16, pp. 3-4

<sup>130</sup> Nota van Toelichting, Staatsblad, 2004, nr. 496.

- the majority of the ‘non-Western’ migrants who form families having (too) low social-economic positions.

The perceived integration deficit of ethnic minorities has become “a central social problem”. The theory is that, in the absence of new interventions or policies, the integration deficit would simply be transferred from generation to generation. This effect would result in the eventual marginalization of specific migrant groups, and, in turn, could lead to social segregation and the development of “anti-Western” feelings amongst certain groups. Another possible outcome is delinquency and the threatening of not only security but fundamental values such as equality of persons.<sup>131</sup>

The policy has two major goals: integration and limiting new (family) immigration. First, the new restrictions on age and income are thus to improve the integration of (second generation) ethnic groups already in the Netherlands, the new family migrants (first generation), as well as their children (third generation).<sup>132</sup> Second, the policy would restrict “follow-up immigration” of ethnic groups with a marginalized position (*achterstandspositie*).<sup>133</sup> Furthermore, the income requirements would also lead to improving the labour position of the sponsors and would thus be especially emancipatory for the female sponsors.<sup>134</sup>

The income requirement of earning at least 100% of the minimum income would ensure that new family migrants would not have recourse to public funds, as the sponsoring partner would not be able to apply for a subsistence assistance (*bijstandsuitkering*) (Kulu-Glasgow and Leerkes 2009: 8). By increasing the required income to 120% of the minimum income, the Cabinet aimed to decrease the chance that sponsors would be entitled to income-based benefits such as special assistance (*bijzondere bijstand*) and exemptions from municipal and waterworks levies. The income requirement in turn would facilitate integration by ensuring that the sponsor was acting from a good starting position at the time of family migration.<sup>135</sup>

This takes us to the Dutch government’s second measure taken to increase the probability of integration of the newcomers: namely, the role of the ‘referee’ or

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<sup>131</sup> Nota van Toelichting, op. cit., p. 8.

<sup>132</sup> Nota van Toelichting, op. cit., p. 9.

<sup>133</sup> TK 2004-2005, I 9 637, nr. 873.

<sup>134</sup> Nota van Toelichting, op. cit., p. 17.

<sup>135</sup> Nota van Toelichting, op. cit., p. 13.

sponsor. The referee provides information that is relevant to whether the alien may be granted residence in the Netherlands. S/he is also a guaranteeing that the alien will not have recourse to general resources. If the referee wants to bring a family member on a long-term basis to the Netherlands, the key condition is to have sufficient means of subsistence.<sup>136</sup>

By strengthening the importance of the position of the referee, responsibility has been shifted from the state to the new migrants. The referee has responsibilities in the process of regular migration because the migration of foreigners to the Netherlands has implications for the entire Dutch society. The referee serves a double intermediary role: first between the new migrants and the state by granting them entry and providing the terms and conditions for their stay; and, second, between the new migrants and the Dutch society into which they are required to integrate successfully.

The sponsor takes responsibility for the people residing as his or her family migrants. This responsibility includes a commitment to provide data about changing circumstances in the lives of the migrants. By demonstrating financial care and commitment towards the new migrant, the sponsors take ownership of some of the state's traditional responsibilities. For example, the sponsor provides information on, say, changes in the residence status of the alien. Furthermore, the sponsor must maintain records of data and documents relevant to the migrants' admission and residence as well as his or her position as a sponsor. These records must be kept for five years. Violation of these obligations can result in increased surveillance on the referent, the imposition of administrative penalties, and, in severe cases, criminal prosecution and suspension or revocation of the accreditation application as referees.<sup>137</sup>

Between these two measures, it is the first one regarding pre-selection through integration tests which has received the most criticism. This measure points to a potential conflict between the universal rights to choose a partner and establish family life versus the freedom of countries to impose conditions on family reunification or formation. In the view of the Dutch government, pre-entry

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<sup>136</sup> TK 2008–2009, 32 052, nr. 3, p. 3.

<sup>137</sup> TK 2008–2009, 32 052, nr. 3, p. 10.

integration tests lead to an increased capacity of successful integration in the Netherlands. The pre-entry conditions therefore focus both on the persons migrating to the Netherlands and their independent existence, and on the resident family to whom the condition of increased the income requirement is directed.<sup>138</sup> The incoming migrant partner needs to prove a basic knowledge of Dutch language and Dutch society, both implying a certain level of general literacy and a certain level of education. Thus, the measures taken with the goal of promoting integration may in fact impede the right of family life.<sup>139</sup> This has led the Dutch Advisory Commission Alien Affairs (*Adviescommissie voor Vreemdelingenzaken* - ACVZ) to suggest that, first, the effects of existing legislation regarding integration tests abroad and then their effect on integration need to be assessed in light of both the income and education requirements.<sup>140</sup>

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<sup>138</sup> TK 60 60-3885 2005.

<sup>139</sup> TK 2009–2010, 32 I 75, nr. 9, p. 2.

<sup>140</sup> TK 2009–2010, 32 I 75, nr. 9, p. 4

## 10. Conclusion

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The Dutch Aliens Law (*Vreemdelingenwet*) passed in 2000 does not mention the category of family migrants but distinguishes between legal and illegal migrants. As such, family migrants are entitled to all rights enjoyed by legal residents. Once on the territory of the Netherlands, family migrants have the status of temporary residents. After five years, if income and integration conditions are met, family migrants can become permanent residents. Family migrants do not encounter restrictions specific to their status as family migrants but rather on the basis of their types of residence permits. The only specific restriction is the waiting period for a residence permit during which time migrants cannot access the labour market; however, the Modern Migration Policy Law removes this restriction. Thus, family migrants do not experience restrictions different than those migrants with a comparable residence status. Once a permanent residence permit is obtained after five years, full access to public resources is granted. For some areas (such as social housing), family migrants do not encounter different restrictions than citizens in a comparable socio-economic situation.

In the Netherlands, the integration of TCN family migrants is mainly ensured through policies that target the selection of migrants before entering the country. Pre-selection works as a filtering mechanism: once the family bond has been proven, pre-entry integration tests have been successfully taken, and income requirements have been met, the migrant is allowed to enter the country. The requirements for the sponsor to take responsibility for providing for the family member in question ensures that migrants will not become a burden to the state. Highly-skilled migrants and their families are an exception to this rule as they can act as sponsors for family members immediately, thus increasing the possibility of entering the Netherlands with their family. Further, a pre-integration test is not required for them. The rationale for this exception is the assumption that their higher socio-economic position will ensure the successful integration of the whole family.

However, as the sponsor (or referee) has responsibilities towards family migrants that include financial and housing provisions, health insurance,, and the experience and knowledge s/he has acquired through a longer stay or citizenship in the

Netherlands, we may argue that the integration of family migrants may be both facilitated and restricted by their special connections to the sponsor. In the case of family migrants, access to resources is not always on an individual basis but may depend on other members of the family and their socio-economic situation.

Furthermore, there are other formal and informal barriers relevant to accessing the labour market. These barriers are applicable to migrants in general, and include insufficient knowledge of the Dutch language, lack of recognition of foreign qualifications, and discrimination by employers. These issues will be explored further during the fieldwork conducted under work package 4.

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