

## PDF hosted at the Radboud Repository of the Radboud University Nijmegen

The following full text is a publisher's version.

For additional information about this publication click this link.

<http://hdl.handle.net/2066/93643>

Please be advised that this information was generated on 2019-09-15 and may be subject to change.

# NIJMEGEN MIGRATION LAW WORKING PAPERS SERIES



2012/01

Ricky van Oers &  
Paul Minderhoud

The Dutch position in the ‘battle for  
brains’

An overview of Dutch policy and  
legislation on highly skilled labour  
migration

ISSN            2212-7526

Nijmegen Migration Law Working Papers Series 2012/01

Centre for Migration Law  
Faculty of Law  
Radboud University Nijmegen  
P.O. Box 9049  
6500 KK Nijmegen  
The Netherlands

Editors        Carolus Grütters  
                  Ashley Terlouw

Lay-out        Hannie van de Put

Cover photo   Erik van 't Hullenaar

© 2012, Ricky van Oers, Paul Minderhoud

url: <http://www.ru.nl/law/cmr/research/working-papers>

# THE DUTCH POSITION IN THE 'BATTLE FOR BRAINS' AN OVERVIEW OF DUTCH POLICY AND LEGISLATION ON HIGHLY SKILLED LABOUR MIGRATION

*Ricky van Oers & Paul Minderhoud\**

## **1. Executive summary**

The present report is one of five national reports drafted in the framework of the project entitled "Integration of Highly Skilled Third Country Nationals in Europe. A new Proposal for Circular Talent Management". The project, which is funded by the European Integration Fund, aims to define integration processes adapted to different highly skilled immigration patterns and the socio-economical needs of European countries. The present report will contribute to achieving this aim.

The Netherlands intends to make the policy for highly skilled immigrants as attractive and enabling as possible. For that reason, it has infringed on the regular procedure for labour migrants: employers are exempt from the requirement to have work permits for their highly skilled migrants. The Highly Skilled Migrants Scheme (HSM Scheme) hence benefits the employers, but also the government: to be able to profit from the Scheme, the employers need to perform a number of tasks and duties that were previously dealt with by the government. The government thus uses the employers as 'extended arm'.

Immigrants who benefit from the HSM Scheme are referred to as 'knowledge migrants'. To be designated as knowledge migrant, and to profit from the HSM Scheme, the migrant needs to fulfil a salary criterion: the knowledge migrant needs to earn at least a minimum gross wage. This criterion is the core criterion of the HSM scheme; fulfilling an education criterion is not required. This means that the Highly Skilled Migrant Scheme is more favourable to highly skilled migrants than the EC Blue Card Directive. To get a Blue Card, the immigrant namely needs to meet an education criterion. Furthermore, the salary criterion is higher.

Immigrants defined as knowledge migrants under the HSM scheme can profit from speedy procedures, which are the result of the fact that the employers have carried out part of the tasks of the government, and of the fact

---

\* The sole responsibility for the information included in this report lies with the authors. [r.vanoers@jur.ru.nl](mailto:r.vanoers@jur.ru.nl); [p.minderhoud@jur.ru.nl](mailto:p.minderhoud@jur.ru.nl).

that the IND (Immigration and Naturalisation Service) has opened up a special desk to deal with applications from knowledge migrants. Furthermore, at the so-called Expat centres, 'one-stop-shop' procedures have been provided for, allowing the knowledge migrants to both collect the residence permit and register at the Municipal Base Administration. This means that the knowledge migrant can start working immediately after the visit to the Expat centre.

Statistics show that the extra responsibilities the employers need to undertake have not scared them off. Starting from 2006, most residence permits for labour migration were granted to knowledge migrants. The success of the Scheme can inter alia be explained by the fact that the Scheme has been amended on various occasions, allowing for extra categories of immigrants to be able to profit from the Scheme. Even though the Scheme is generally perceived to be a success, an extra check in the form of a 'market conformity test' was introduced in 2012.

Not only the knowledge migrants, but also their family members receive a beneficial treatment: they can profit from the speedy procedures, and they have free access to the labour market (i.e. no work permit is required). The fact that family members have unrestricted access to the labour market is considered to make the Netherlands an attractive country of destination for knowledge workers. The lack of accessible information on the right to work for family members has however been reported as a problem.

As regards the profile of the knowledge migrants, statistics show that the large majority is male (78 per cent), and often aged between 25 and 29 years. The most common nationalities are Indian, US, Chinese, Japanese and Turkish. Since there is no education requirement to be fulfilled by the knowledge migrants, there are no reliable statistical data regarding the level of education followed by the knowledge migrants. Surveys however show that the large majority of the knowledge migrants followed University education, followed by higher vocational training. As regards the level of education, the profile of 'ordinary' third-country national labour migrants will not differ much from that of the knowledge migrants. Since a work permit is only awarded to those who are of special value to the Dutch labour market, the 'ordinary' third country national labour migrants will generally be high educated. Migration for low skilled jobs therefore mainly originates from within the EU. Also as regards age and gender does the profile of the ordinary third country national labour migrants not differ much from that of the knowledge migrants. The immigrants in the former category are also mostly aged between 21 and 29, and more often male (60 per cent) than female.

Information regarding the countries of destination of the knowledge migrants and other highly skilled migrants is not available, since these data are

not systematically registered. Neither is it registered for how long the highly skilled migrants generally stay in the Netherlands.

Whereas the Dutch policy is all about creating the appropriate climate of attracting highly skilled migrants to come to the Netherlands, the official reading is that these migrants will only be in the Netherlands temporarily. For this reason, these migrants, as well as their family members, are exempt from the requirements to pass integration exams and to follow integration courses under the Integration Abroad Act and the Integration Act. However, once the highly skilled migrants and their family members, after five years of legal residence, decide to apply for permanent residence or naturalisation, they are required to pass an integration examination, which they might experience as a barrier. The duty to pass the examination might therefore hinder their more permanent orientation to the Netherlands. At the same time, in view of the level and the content of the examination, passing the exam is not a guarantee for an increased level of integration.

Policies aimed at the better integration of highly skilled immigrants exist at the municipal and private levels. Whilst municipalities have developed a range of activities which target the integration of the highly skilled workers, which they hope to have and to hold, research has shown that the highly skilled migrants are often not aware of the initiatives deployed under the municipal hospitality policies. At the private level, companies deploy activities to help their foreign workers settle in their new countries. This 'relocation assistance' will however end once the migrant has arrived and settled in.

Policy plans and recommendations regarding temporary and circular migration do not apply to highly skilled labour migrants, but to those in the middle and bottom segments. A pilot project for circular migration launched in 2009 was however stopped before the envisaged end date, because problems were encountered finding Dutch employers willing to participate.

The issue of brain drain has been a prominent theme in Dutch public and political debate on migration from developing countries. To prevent and combat brain drain, a Governance Code for Socially Responsible Business Practices and a Quality Mark for Intermediary Agencies for Foreign Workers have been developed.

Statistics regarding over-qualification, or 'brain waste', show that in the Netherlands, foreign citizens are twice as likely to be overqualified as nationals. To prevent brain waste, initiatives have been deployed at the central level, as well as at the level of private foundations, such as the Foundation for Refugee-Students UAF. These initiatives exclusively target refugees.

As regards projects or networks aiming at the transfer of knowledge of highly skilled migrants, the IOM the Netherlands has launched two projects with regard to temporary return of migrants to their countries of origin for the pur-

pose of strengthening capacity which explicitly target high or medium skilled immigrants. Furthermore, the PSO (Personal Cooperation in Development Countries) has developed projects aiming at the exchange of knowledge by highly skilled migrants.

## 2. Introduction

On 5 July 2010, the Dutch senate adopted the Act on Modern Migration Policy, which will enter into force the moment the new IND computer system (INDIGO) has become fully operational (EMN 2010a: 15).<sup>1</sup> The core notion reflected in the Act is that of 'selectivity': the migration policy will be inviting to migrants needed for the Dutch economy and restrictive to others.<sup>2</sup>

The overall approach to legal migration reflected in the Act on Modern Migration Policy thereby has not fundamentally changed from the policy which had already been followed in previous years. Whereas numerous restrictions have been introduced in the field of family reunification, access to the Netherlands has been opened up for the highly skilled, to the extent that this policy figures among the most liberal admission policies for knowledge migrants in the EU, and probably even worldwide (De Lange 2007: 331).<sup>3</sup>

The Dutch 'Kennismigrantenregeling' (Highly Skilled Migrants Scheme) was adopted in 2004.<sup>4</sup> This Highly Skilled Migrants Scheme (HSM Scheme) is a result of the Lisbon strategy to attract more highly skilled workers and the government's wish to fulfil the ambition to 'transform the Netherlands into a knowledge economy'.<sup>5</sup> To this end, next to investing in Dutch and European 'knowledge workers', the admission policy regarding these workers from outside the EU needed to be transformed.<sup>6</sup>

The HSM Scheme is not so much a scheme as it is the addition in the legislation of an article saying that highly skilled workers are exempt from the requirement to have a work permit.<sup>7</sup> Immigrants who can profit from the HSM

---

1 Initially, the new policy was expected to enter into force on 1 January 2012. The entry into force has however been postponed. Estimates regarding the new date of entry into force have not been published.

2 Changes that will be brought about to the procedures regarding knowledge migrants by the Act on Modern Migration Policy will be discussed below.

3 An example of a restriction introduced in the field of family reunification is the Integration Abroad Act, which entered into force on 15 March 2006, and which obliges family migrants to pass an integration abroad exam in order to obtain a visa.

4 *Staatsblad* 2004, 481. The HSM Scheme entails an amendment of the Implementation Decision of the Labour Act for Aliens (adding article 1 d).

5 TK 2003-2004, 29 200 VI, nr. 164.

6 TK 2003-2004, 29 200 VI, nr. 164.

7 Article 1 d of the Executing Decree of the Labour Act for Aliens.

Scheme benefit from speedy procedures. The Scheme will be treated in detail in paragraph 4.

Departing from the presumption formulated in the second Handbook on Integration for policy-makers and practitioners that 'rules related to the admission can be considered a starting point for the integration', the Dutch legal framework relating to highly skilled migrants, or 'knowledge migrants' as they are referred to in the Dutch legal definition, must be seen as the most integration enabling framework in Europe (European Commission 2007). At the same time, however, research has shown that, whilst it played a certain role, national admission policies have little impact on the choices of highly skilled migrants, whose decision to migrate is mainly driven by employment possibilities and the possibilities to develop a career (Berkhout, Smid & Volkerink 2010: 37).

In the Dutch legal definition, highly skilled migrants, i.e. those who can profit from the HSM Scheme, are those immigrants who receive a certain income, equalling about one and a half time the average wage in the Netherlands.<sup>8</sup> The Dutch government at the time had chosen for the salary criterion as the criterion for admission, since this criterion, in the government's eyes, was objective. Choosing the salary criterion as the core criterion on which the decision on admission is based however also reflects that the contribution the immigrant is supposed to make to the Dutch economy is primarily derived from the level of the income which will be gained, instead of the level of skills or knowledge (De Lange 2007: 333).

The government nevertheless deliberately chose not to require a certain level of education.<sup>9</sup> According to the government, the level of education would not be determining for the migrants' level of productivity and the extent to which they would be innovative. Furthermore, a practical consideration appeared to play a role: according to the Ministers concerned, it would be difficult to relate the level of the foreign education to the Dutch system. The evaluation of diplomas therefore would lead to a lengthening of the process and a higher administrative burden for companies.<sup>10</sup> Consequently, knowledge migrants in the Netherlands are not defined according to knowledge, but according to their market value: the salary that they will earn.<sup>11</sup> The Dutch system in this respect significantly deviates from policies in countries that apply a points

---

8 Special income requirements apply for those aged below 30, as well as scientific researchers and doctors studying to become specialists.

9 Explanatory memorandum, Staatsblad 2004, 481.

10 TK 2010-2011, 32144, no. 5, p. 14-15.

11 For this reason, rather than referring to the 'Highly Skilled Migrants Scheme', De Lange has referred to the 'Highly Paid migrant workers scheme' (see, for instance, De Lange 2011a: 196).

system for the admittance of migrants, where value in the form of points is attached to diplomas.

Apart from being inviting to labour migrants with a certain wage, the Dutch policy is inviting to students. An inviting policy is thought to contribute to the internationalisation of higher education in the Netherlands, which in turn is considered necessary for the country's international competitiveness and which may contribute to an international orientation among Dutch students (EMN 2010a: 15). The basic principle in respect of migration for study purposes is that it is temporary in nature. Nevertheless, the student is offered the opportunity to seek a job in the Netherlands after completing the study (during a so-called 'search year').

The Netherlands implemented the Blue Card Directive on 20 June 2011. As the HSM Scheme offers a more favourable position for highly skilled migrants, the Blue Card Scheme is barely used.

In the present report, an overview will be given of the admission and residence regimes (Paragraph 4) and integration policies (paragraph 5) applying to highly skilled migrants. Furthermore, attention will be paid to skilled migrants unable to profit from the HSM Scheme, thereby facing difficulties to enter, reside and find appropriate work in the Netherlands (paragraph 6). Special attention will be paid in this regard to refugees. Paragraph 6 also touches on the issue of 'brain drain', caused by the Dutch policy and activities of private actors (hospitals) recruiting staff in third world countries, and on projects aiming at the transfer of knowledge and technology. The report will start with an overview of the national context, presenting data on migration in general, and data regarding highly skilled migration.

### **3. National context**

#### **3.1 General figures relating to migration**

This paragraph gives an overview of the most important data regarding migration in the Netherlands. The focal point of the overview will lie on labour migration, since knowledge migrants can be ranged among this category, and because labour migration, since 2007, is responsible for the largest share of immigration to the Netherlands.

#### **EMPLOYMENT AND UNEMPLOYMENT RATES**

Employment and unemployment rates for nationals and foreigners have been calculated for the year 2008, when 4,2 per cent of the population consisted of foreign nationals.<sup>12</sup>

---

<sup>12</sup> In 2011, 4,6% of the population consisted of foreign nationals.

In 2008, the unemployment rate for foreign nationals aged between 25 and 54 in the Netherlands (five per cent) was three percentage points higher than the unemployment rate for nationals (two per cent).<sup>13</sup> In turn, the unemployment rate of recently established foreign citizens (seven per cent) in 2008 was higher than for settled foreign citizens (five per cent). In this sense, the Netherlands differs from the overall situation in the EU Member States, where the unemployment rate of recently established foreign citizens was similar to that for settled foreign citizens (Eurostat 2011: 88). Compared to nationals, recent immigrants have an unemployment rate which is five percentage points higher (Eurostat 2011: 88).<sup>14</sup>

The employment rate of nationals aged between 25 and 54 in the Netherlands in 2008 was 88 per cent, which is 18 per cent points higher than the employment rate of foreigners in the same age category (Eurostat 2011a: 99).<sup>15</sup> In this sense, the situation for foreigners in the Netherlands is less favourable than the overall situation in the EU 27, where the difference in employment rate between nationals and foreigners is 'only' ten percentage points, to the benefit of the nationals (Eurostat 2011a: 94). While the employment rate of EU citizens in the Netherlands (85 per cent) was only three percentage points below that of nationals, the situation of third country nationals was clearly less favourable (i.e. 28 percentage points below the level of nationals). The situation in the Netherlands in this sense is comparable to the situation in the entire EU, where the third country nationals have a lower employment rate than both nationals and EU citizens. However, whereas the average difference between the employment rate of nationals and that of third country nationals is thirteen percentage points, this difference is much higher in the Netherlands: 28 percentage points (Eurostat 2011a: 94, 99).

#### TYPES OF IMMIGRATION

In the years 2000 to 2009, 830,292 persons immigrated to the Netherlands. The figure below depicts the share of the different types of immigration.

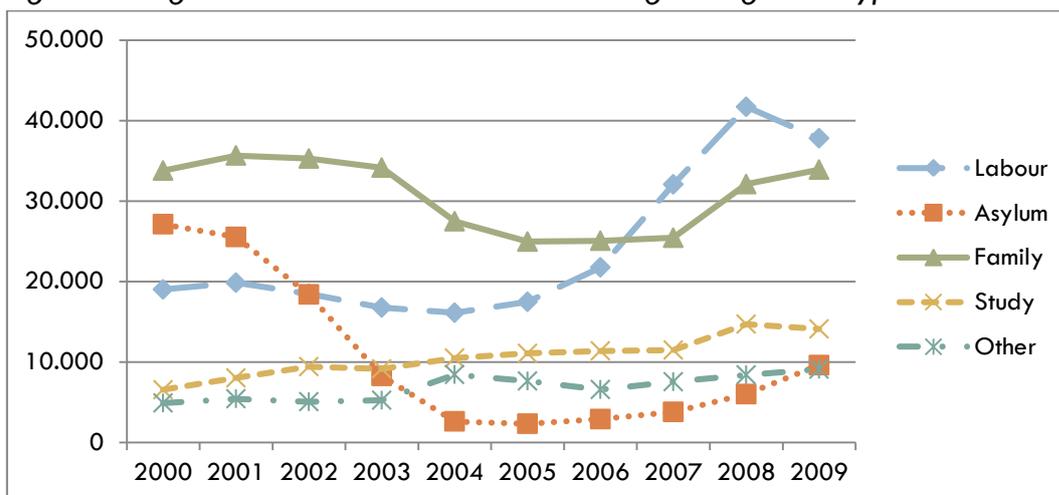
---

13 The unemployment rate is calculated as the ratio between the unemployed population and the economically active population (i.e. employed and unemployed persons). Contrary to the activity or employment rates, the inactive population does not for part of this ratio (Eurostat 2008: 88).

14 The unemployment rate for EU-27 citizens in the Netherlands is unknown.

15 The employment rate is computed as the ratio between the employed population and the total population.

Figure 1. Migration to the Netherlands according to migration type



Source: CBS, WODC 2012.

The figure above shows that in the years 2000 to 2006, the most important type of immigration to the Netherlands was family migration. However, starting from 2004 and until 2008, the number of family migrants was significantly lower than in the years 2000 to 2003.<sup>16</sup> The lower number of family migrants in these four years was probably caused by the introduction of stricter conditions for family reunification and formation: starting from 1 November 2004, the income requirement for family formation was raised to 120 per cent of the minimum wage, and the age to qualify for family formation was raised from 18 to 21.<sup>17</sup> Furthermore, in 2006, the integration abroad requirement was introduced. After 2007, the number of family migrants coming to the Netherlands however started to rise again, which can be explained by the fact that many family migrants from Middle and Eastern Europe started to follow their family members who had started to come to the Netherlands since 2004, the year in which eight Middle and Eastern countries accessed the EU (Jennissen 2012: 60).

Figure 1 above furthermore shows that immigration to the Netherlands for the purpose of study in the years 2000 to 2009 has more than doubled. Apparently, the efforts to come to an increased international acknowledgement of diplomas and the attempts, mainly undertaken by the European Commission, to stimulate the international mobility of the students, have started to produce results (Jennissen 2012: 60).

<sup>16</sup> Also prior to 2000 and starting from 1976 the number of family migrants was high and relatively stable.

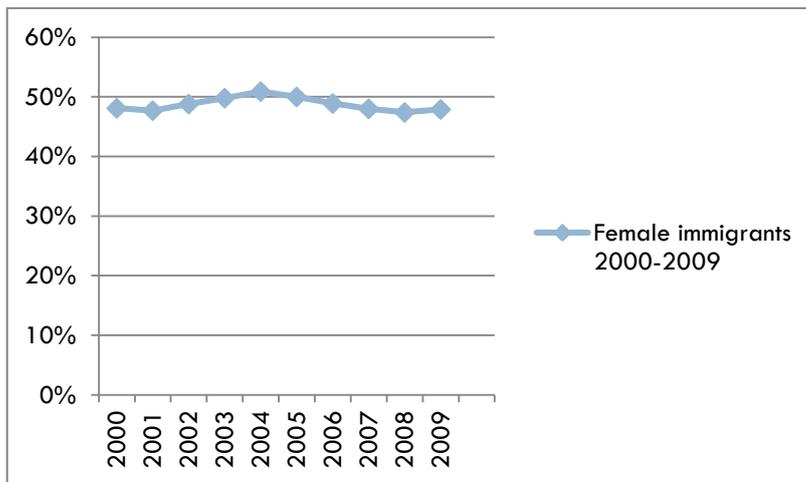
<sup>17</sup> The requirement to earn 120 per cent of the minimum wage was repealed after the ECj's *Chakroun* judgment.

Lastly, labour migration to the Netherlands has increased, and since 2007 has been the most important type of immigration to the Netherlands. The increase has taken place since 2004, and can probably be explained by the introduction in the same year of the HSM Scheme, which appeared to have attracted a new group of labour migrants (see below for further details).

WOMEN

Figure 2 below depicts the share of female immigrants among the total.

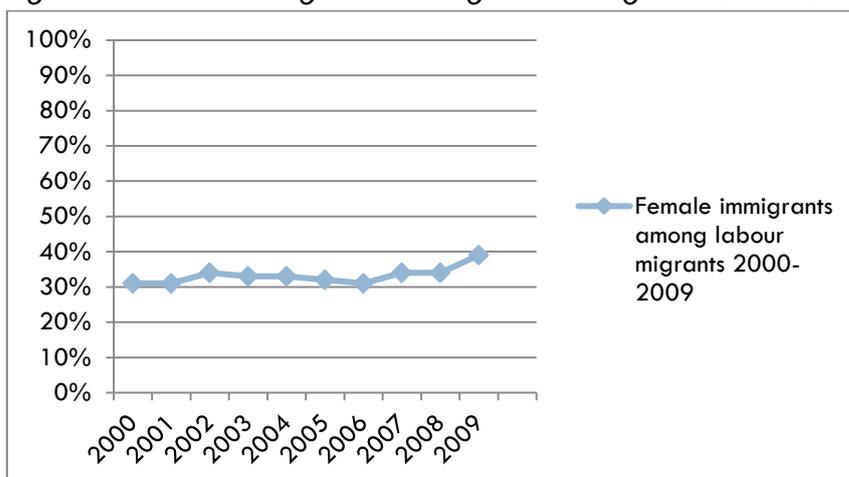
Figure 2. Female immigrants in the Netherlands as percentage of total, 2000-2009



Source: CBS, WODC 2012

Figure 2 above shows that, in the years 2000 to 2009, most immigrants were male, even though the differences are not very large. The only exception is the year 2004, in which more women migrated to the Netherlands than men. The share of women in the immigration hardly fluctuated in the period 2000 to 2009 (between 47.4 per cent and 50.9 per cent). Nevertheless, a pattern relating to the motives for immigration can be distinguished: until 2005, the share of family migration, a type of migration where women are highly over-represented, in the total influx of immigrants has risen. This in turn can be explained by a drop in the share of immigration of asylum seekers, where men are strongly over-represented. The explanation for the decrease after 2004 is the rise of the share of labour migrants among the total number of immigrants. Labour migration also is a type of migration where men are highly over-represented, as represented in figure 3 below (Jennissen 2012: 57-58).

Figure 3. Female immigrants among labour migrants 2000-2009



Source: CBS, WODC 2012

In the years depicted in the figure above, the share of female labour migrants in the total of labour migrants (EU as well as third countries) has been significantly lower than the share of men. In the years 2000 to 2008, around one third of all labour migrants were female. The share of female labour migrants has risen since 2006. In the years depicted, a peak was reached in 2009, when almost 40 per cent of the total number of labour migrants were women. The rise in the share of female labour migrants since 2007 is explained by the fact that more female labour migrants from the EU, especially from Poland and Hungary, have come to the Netherlands to work (Nicolaas, Verschuren, Wijkhuis & Jennissen 2012: 94)

The table below depicts the professional level of third-country national labour migrants, differentiated by gender.

As the table below shows, third-country national men represent about 60 per cent of the total labour force of third-country nationals, except for the year 2009, when male third-country nationals made up 55 per cent of the total third-country national labour force. An equal subdivision applies to the categories of highly qualified, qualified, and semi-qualified persons. The difference between the men-women relationship in the category of scientific researchers is, however, generally rather small. Furthermore, the difference has become smaller for the semi-educated category. Whereas in 2004, the men-women division was 60-40, this division was 50-50 in 2009 (EMN 2010b: 35).

*Table 1: Division between economically active men and women from third countries by professional level, 2004-2009 (x 1000)*

|                                      | 2004 |    | 2005 |    | 2006 |    | 2007 |    | 2008 |    | 2009 |    |
|--------------------------------------|------|----|------|----|------|----|------|----|------|----|------|----|
|                                      | M    | F  | M    | F  | M    | F  | M    | F  | M    | F  | M    | F  |
| Highly qualified <sup>18</sup>       | 21   | 14 | 19   | 14 | 20   | 15 | 18   | 17 | 18   | 16 | 18   | 16 |
| Scientific Researchers <sup>19</sup> | 13   | 9  | 10   | 10 | 9    | 9  | 12   | 10 | 12   | 11 | 11   | 10 |
| Qualified <sup>20</sup>              | 57   | 34 | 49   | 29 | 54   | 32 | 57   | 34 | 59   | 31 | 56   | 38 |
| Semi-qualified <sup>21</sup>         | 28   | 19 | 25   | 17 | 25   | 19 | 26   | 19 | 28   | 24 | 21   | 21 |
| Total                                | 119  | 76 | 109  | 69 | 109  | 76 | 114  | 79 | 116  | 82 | 105  | 84 |

Source: EMN 2010b: 35.

#### AGE

Figure 4 below depicts the age of the immigrants coming to the Netherlands.

The figure below shows that most migrants to the Netherlands are aged between 18 and 40 years, whereas immigrants aged over 60 are least represented. In the years 2000 to 2009, the share of under aged immigrants among the total number of immigrants has become smaller. The share of the other three age categories however rose, especially the category of immigrants aged between 18 and 40. An explanation can probably be sought in the decreasing number of migrants for asylum reasons, and the increased labour migration: whereas the number of under aged immigrants is relatively large among the immigrants who come to the Netherlands as refugees, the number of

18 According to the international occupation classification of the International Labour Organisation (ILO), ISCO-88 (International Standard Classification of Occupations 1988), this concerns persons who can be classified among the following professional groups (groups 1-3): managers, science and engineering specialists/technicians, associate professionals. As regards migrants, this concerns for example a manager or a technician active in the international labour market of transnational corporations and international organisations (EMN 2010b: 10).

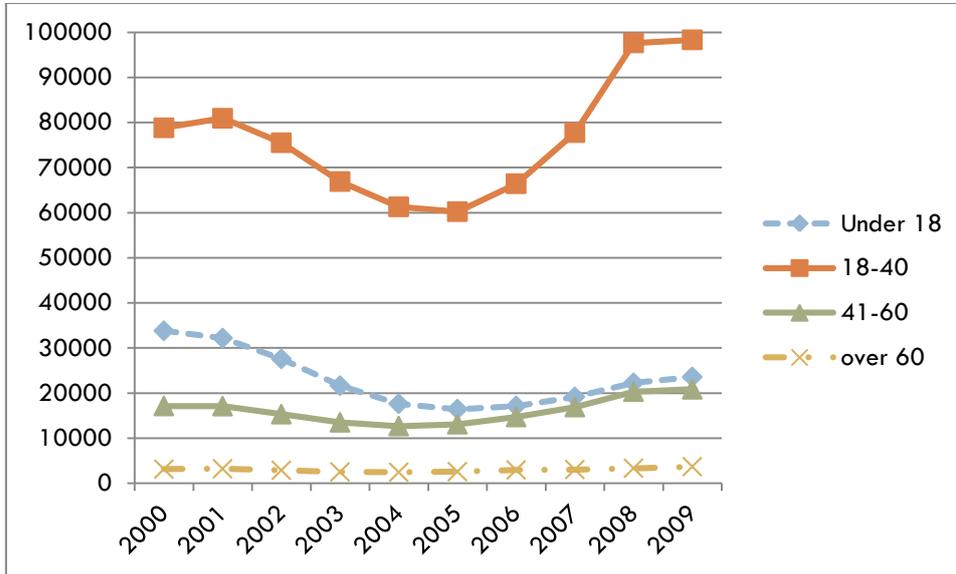
19 This term is derived from Directive 2005/71/EC in which it is often used to refer to a citizen of a third country who holds a suitable higher education diploma that grants access to university degree programmes. Scientific researchers are classified in professional group 2 of the ISCO-88 occupation classification, but in the present table concerns an independent, separate category (EMN 2010b: 11).

20 Professionals groups 4 to 8 of the ISCO-88 occupational classification are included in this category. This concerns the following groups: clerical support workers, service and sales workers, skilled agricultural, forestry and fishery workers, craft and related trades workers, factory workers; Plant and machine operators, and assemblers (EMN 2010b: 11).

21 This refers to labourers who are classified under professional group 9 of the ISCO-88 occupational classification ('elementary occupations'). This concerns low-skilled or unskilled workers.

immigrants in their twenties and thirties among labour migrants is high, and labour migration by under aged immigrants is non-existent (Jennissen 2012: 57).

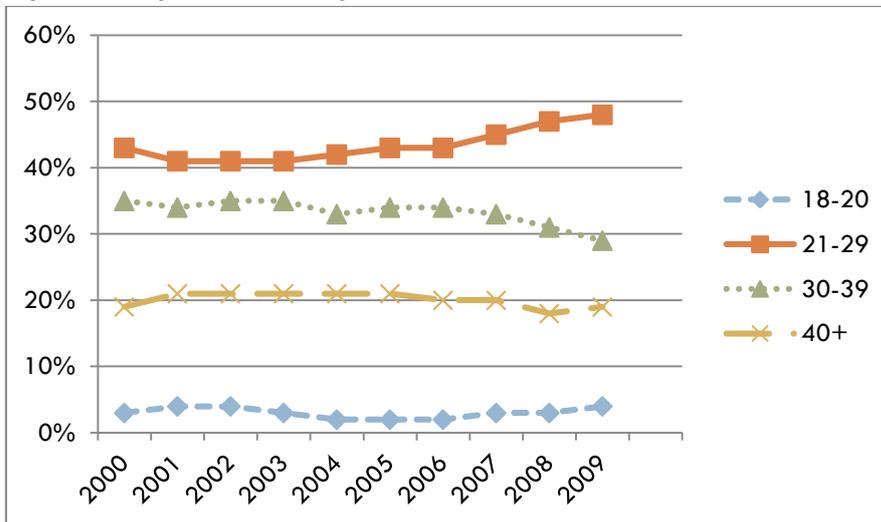
Figure 4. Age of the immigrants, 2000-2009



Source: CBS, WODC 2012.

Figure 5 below gives an overview of the labour migrants according to age.

Figure 5. Age Labour Migrants, 2000-2009



Source: CBS, WODC 2012.

The figure shows that in the years 2000 to 2009, the age division among the labour migrants has hardly changed, even though the number of immigrants aged between 21 and 29 has risen to the expense of those aged between 30 and 39. In 2009, immigrants in their twenties made up for almost half of all

labour migrants. Another 30 per cent was aged between 30 and 39. This division is connected to the fact that most labour migrants come to the Netherlands as singles (Nicolaas, Verschuren, Wijkhuis & Jennissen 2012: 94).

#### NATIONAL ORIGIN OF LABOUR MIGRANTS

As regards the national origin of labour migrants, the division is depicted in the table below, for the years 2000 to 2009.

*Table 2: National origin of labour migrants to the Netherlands, 2000-2009*

|                              | 2000   | 2005   | 2006   | 2007   | 2008   | 2009   |
|------------------------------|--------|--------|--------|--------|--------|--------|
| Total                        | 19,040 | 17,452 | 22,350 | 31,974 | 41,688 | 37,758 |
| Europe                       | 14,148 | 13,305 | 16,976 | 25,059 | 33,218 | 31,637 |
| Of which                     |        |        |        |        |        |        |
| • EU                         | 12,937 | 12,411 | 15,979 | 23,765 | 31,445 | 30,226 |
| • Turkey                     | 241    | 266    | 303    | 366    | 593    | 458    |
| Asia                         | 1,671  | 1,982  | 2,762  | 4,120  | 5,127  | 3,643  |
| America                      | 1,804  | 1,366  | 1,744  | 1,821  | 2,112  | 1,532  |
| Africa                       | 1,051  | 609    | 616    | 742    | 968    | 716    |
| Oceania                      | 365    | 191    | 252    | 231    | 263    | 230    |
| Top 5 countries<br>2000-2009 |        |        |        |        |        |        |
| Poland                       | 565    | 3,337  | 4,648  | 6,414  | 9,721  | 8,777  |
| UK                           | 3,550  | 1,582  | 1,792  | 2,199  | 2,629  | 2,331  |
| Germany                      | 2,118  | 1,839  | 2,351  | 2,850  | 3,018  | 3,349  |
| France                       | 1,090  | 914    | 1,037  | 1,209  | 1,767  | 1,503  |
| Italy                        | 952    | 810    | 939    | 1,089  | 1,645  | 1,718  |

Source: IND, CBS, WODC 2012.

The table above shows that labour migration to the Netherlands has risen in the years 2000 to 2008, and that in the year 2009 a small decrease took place. An explanation for this decrease can be sought in the economic crisis, which primarily affected Bulgarian and Polish immigrants. In 2009, labour migration from Poland decreased by ten per cent, compared to a 20 per cent decrease of labour migration from Bulgaria. Considering the fact that labour migration from Poland is significant (in 2009, a quarter of the total of labour migration came from Poland), a decrease in the labour migration from this country immediately affects the total number of labour migration.

The majority of the labour migrants originated from Europe. The strong increase in the number of labour migrants since 2005 can be explained by the favourable economical climate of the Netherlands, and the expansion of the EU in 2004, when 8 middle and eastern European countries accessed the Union,

and 2007, when Bulgaria and Romania joined the EU.<sup>22</sup> In 2009, immigrants from Poland formed the largest group of immigrants: they constituted almost a quarter of the total number of labour migrants (Nicolaas, Verschuren, Wijkhuis & Jennissen 2012: 93).

Labour migration from Asia has also increased until 2009. This increase can partly be explained by a rise in the number of highly skilled workers originating from countries such as India and China, who made use of the Highly Skilled Migrants Scheme (Nicolaas, Verschuren, Wijkhuis & Jennissen 2012: 93). The Central Bureau of Statistics expects the number of immigrants, notably highly skilled, from Asia to keep increasing in the years to come (Van Duin & Nicolaas 2010).

Even though labour migration from Europe, especially from the 'new' EU countries, makes up the largest share in the total of labour migration, data on the total labour force show that third-country nationals make up a larger share of the labour force than EU nationals. In the years 2004 to 2009, third country nationals made up nearly 2.5 per cent of the total labour force, whereas EU nationals formed 1.5 per cent of the total (EMN 2010b: 34).

#### EDUCATION LEVEL OF THE LABOUR FORCE

The table below depicts the education level of the total labour force (Dutch nationals included), for the years 2004 to 2009.

As we have already seen above, third-country nationals make up a larger share of the labour force than EU nationals (EMN 2010b: 34). As the table below shows, third-country nationals are mainly employed in qualified and semi-qualified jobs, where they comprise a higher percentage of the total than EU nationals. However, at the 'top end', i.e. in the jobs that require highly qualified workers and the jobs for scientific research, the EU nationals are either (almost) equally represented as the third country nationals (highly qualified jobs), or constitute a higher share (scientific researchers) of the total than the third country nationals.<sup>23</sup>

---

22 Due to transitional arrangements, Bulgarian and Romanian citizens however do not have free access to the Dutch labour market. Until 1 January 2014, employers require a work permit to employ Bulgarian and Romanian nationals.

23 As regards the jobs which required highly educated workers, the table below shows that, for the years 2004 to 2009, third country nationals, until 2008, comprised a higher percentage than EU nationals, even though the difference was only small. In the years 2008 and 2009, third country nationals and EU nationals, both constituting 1,4% of the highly educated occupations, however are equally represented. As regards the occupation as scientific researchers, third country nationals in all the years depicted represented a lower percentage (above 1%) than the EU nationals (approximately 2%).

Table 3: Education level of the labour force, 2004-2009.

|                                      | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|--------------------------------------|------|------|------|------|------|------|
| Highly qualified <sup>24</sup>       |      |      |      |      |      |      |
| NL                                   | 97,2 | 97,1 | 97,1 | 97,1 | 97,2 | 97,2 |
| EU                                   | 1,3  | 1,4  | 1,3  | 1,4  | 1,4  | 1,4  |
| TCN                                  | 1,5  | 1,5  | 1,6  | 1,5  | 1,4  | 1,4  |
| Total                                | 100  | 100  | 100  | 100  | 100  | 100  |
| Scientific Researchers <sup>25</sup> |      |      |      |      |      |      |
| NL                                   | 96,6 | 96,6 | 96,7 | 96,4 | 96,6 | 96,8 |
| EU                                   | 1,8  | 2    | 2,1  | 2,1  | 2    | 1,9  |
| TCN                                  | 1,6  | 1,4  | 1,2  | 1,5  | 1,4  | 1,3  |
| Total                                | 100  | 100  | 100  | 100  | 100  | 100  |
| Qualified <sup>26</sup>              |      |      |      |      |      |      |
| NL                                   | 96   | 96,4 | 96,2 | 96,2 | 96,2 | 96   |
| EU                                   | 1,3  | 1,4  | 1,3  | 1,2  | 1,3  | 1,3  |
| TCN                                  | 2,7  | 2,2  | 2,5  | 2,6  | 2,5  | 2,7  |
| Total                                | 100  | 100  | 100  | 100  | 100  | 100  |
| Semi qualified <sup>27</sup>         |      |      |      |      |      |      |
| NL                                   | 91,8 | 93,2 | 92,9 | 92,6 | 91,7 | 92,6 |
| EU                                   | 1,6  | 1,1  | 1,3  | 1,6  | 1,6  | 1,8  |
| TCN                                  | 6,6  | 5,7  | 5,8  | 5,8  | 6,7  | 5,6  |
| Total                                | 100  | 100  | 100  | 100  | 100  | 100  |

Source: EMN 2010a: 34.

24 According to the international occupation classification of the International Labour Organisation (ILO), ISCO-88 (International Standard Classification of Occupations 1988), this concerns persons who can be classified among the following professional groups (groups 1-3): managers, science and engineering specialists/technicians, associate professionals. As regards migrants, this concerns for example a manager or a technician active in the international labour market of transnational corporations and international organisations (EMN 2010b: 10).

25 This term is derived from Directive 2005/71/EC in which it is often used to refer to a citizen of a third country who holds a suitable higher education diploma that grants access to university degree programmes. Scientific researchers are classified in professional group 2 of the ISCO-88 occupation classification, but in the present table concerns an independent, separate category (EMN 2010b: 11).

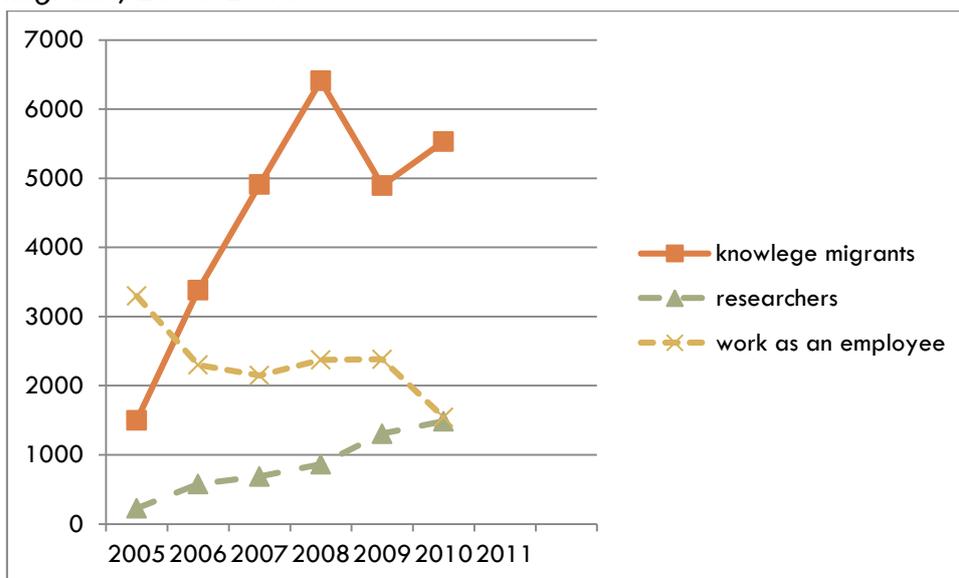
26 Professionals groups 4 to 8 of the ISCO-88 occupational classification are included in this category. This concerns the following groups: clerical support workers, service and sales workers, skilled agricultural, forestry and fishery workers, craft and related trades workers, factory workers; Plant and machine operators, and assemblers (EMN 2010b: 11).

27 This refers to labourers who are classified under professional group 9 of the ISCO-88 occupational classification ('elementary occupations'). This concerns low-skilled or unskilled workers.

### 3.2 Data relating to High Skilled Migrants

The figure below depicts the number of applications for residence permits granted to third country national labour migrants. A differentiation is made between knowledge migrants, researchers, and 'ordinary' labour migrants ('work as employee').

Figure 6. Number of residence permits awarded to third country national labour migrants, 2005-2010<sup>28</sup>



Source: EMN 2010, INDIAC 2011.

In the years 2008 to 2010, in the category labour migration by third country nationals, most permits have been granted to knowledge migrants under the Highly Skilled Migrants Scheme, even though the economic crisis has, in 2009, caused a considerable lowering in the number of applications and grants (EMN 2010b: 39). The numbers have gone up in 2010 (5,531 grants), but have not yet reached the peak of 2008 (6,525 grants). It is expected that in the future, the number highly skilled immigrants coming to the Netherlands will continue to rise (Nicolaas, Verschuren, Wijkhuijs & Jennissen 2012: 99-100).

An explanation for the rise in the numbers of residence permits granted under the HSM scheme can be sought in the growing familiarity with the Scheme among employers and the increasing demand of the technological in-

<sup>28</sup> Data prior to 2005 have not been included, since prior to 2005, part of the regular migration fell under the responsibility of various aliens services that applied their own registration systems, as a result of which a complete picture is lacking (EMN 2010b: 32). As they do not require residence permits, information regarding labour migrants originating from EU countries has not been included. Romanian and Bulgarian nationals still require a work permit.

dustry (EMN 2010b: 39). Furthermore, the Scheme has increasingly been expanded (see below).

As the figure above shows, the number of residence permits granted to researchers has, since 2005, only been rising. A peak was reached in 2010, when 1,485 residence permits were awarded. An explanation for the rise in the number of researchers coming to the Netherlands can be sought in the implementation of Directive 2005/71/EC, which simplifies the admission of researchers (EMN 2010b: 39). Furthermore, prior to the implementation of said Directive, researchers may have been granted residence permits on other grounds, such as study, for which reason they do not show in the statistics regarding researchers.<sup>29</sup> Another cause for the rise in the number of residence permits may lie in the policy applied following the Lisbon strategy, which has been launched by the European Commission in 2000, and the *Europe 2020 Strategy*, launched in 2010, which entails an intensification with respect to Research & Development (R&D) (EMN 2010b: 39).<sup>30</sup> Attracting top talent from abroad forms an essential part of this policy (INDIAC 2011: 27).

The number of residence permits issued to 'ordinary' labour migrants ('work as an employee') has been decreasing. An explanation can be sought in the fact that, since 1 January 2007, while still requiring a work permit, Romanians and Bulgarians no longer require a residence permit. An explanation can furthermore be sought in the economic crisis (EMN 2010b: 37). Lastly, the introduction of the HSM Scheme can be used to explain the drop in the number of residence permits allowed for 'work as an employee'. However, the number of successful applications for a residence permit for 'ordinary' labour migrants did not drop significantly, especially not in the years 2006-2009. This means that with the HSM Scheme, a new group of immigrants is attracted (IND 2009: 28).

#### PROFILE OF THE KNOWLEDGE MIGRANTS

The table below depicts the numbers of applications granted under the Highly Skilled Migrants Scheme in the years 2005 to 2010 according to nationality.

The table below shows that, in the years 2005 to 2010, a total of 21,752 applications for a residence permit were granted to knowledge migrants. The top 5 of nationalities that profited from the Highly Skilled Migrants Scheme was constituted in the same way: Indians profited from the Scheme the most often, followed by US, Chinese, Japanese and Turkish nationals. An explanation for the dominance of Indian nationals as beneficiaries of the HSM Scheme

---

<sup>29</sup> Information obtained from email contact with IND staff member, 6 February 2012.

<sup>30</sup> *Kabinetsreactie op SER-advies Europa 2020: de nieuwe Lissabonstrategie*. The Hague: Ministry of Economic Affairs, 2009.

can be sought in the fact that India has a large supply of IT specialists who speak English (EMN 2010b: 39).

*Table 4: Number of granted applications from highly skilled migrants by nationality 2005-2010*

|               | 2005  | 2006  | 2007  | 2008  | 2009  | 2010  | Total  |
|---------------|-------|-------|-------|-------|-------|-------|--------|
| India         | 280   | 935   | 1,514 | 2,115 | 1,585 | 1,902 | 6,429  |
| United States | 286   | 527   | 734   | 838   | 704   | 797   | 3,089  |
| China         | 71    | 142   | 267   | 349   | 310   | 349   | 1,488  |
| Japan         | 88    | 189   | 259   | 317   | 313   | 306   | 1,472  |
| Turkey        | 79    | 160   | 256   | 341   | 255   | 444   | 1,091  |
| Other         | 695   | 1,429 | 1,881 | 2,450 | 1,728 | 1,733 | 8,183  |
| Total         | 1,499 | 3,382 | 4,911 | 6,410 | 4,895 | 5,531 | 21,752 |

Source: IND, EMN Netherlands 2010a: 43.

Knowledge migrants are often young adults, aged between 25 and 29 years old (35 per cent in 2010), who are more often male (78 per cent) than female (22 per cent in 2010) (INDIAC 2011: 27). Since an education criterion does not form part of the HSM Scheme, the level of education of the migrants using the Scheme is not systematically registered. Therefore, it is impossible to produce a systematic overview of the level of education of the migrants who obtained a residence permit as knowledge migrants under the HSM Scheme. Based on information gathered from a web survey among companies and institutions who signed the covenant which enables them to make use of the Scheme, conducted in 2008, an idea of the level of education of the knowledge migrants can however be obtained (INDIAC 2009).<sup>31</sup> According to the survey, the large majority (77.4 per cent) of the knowledge migrants followed university education, followed by higher vocational training (17.3 per cent) and, at a distance, secondary education (1.4 per cent). The relative number of knowledge migrants who had followed less than secondary education was very low (0.1 per cent), and for that reason almost negligible (INDIAC 2009: 28).

As regards the level of education, the profile of the regular labour migrants will in this regard hardly differ from the profile of the knowledge migrants: since regular labour migrants, who cannot benefit from the HSM Scheme, need to apply for a work permit, which will only be awarded in case they are of special value to the Dutch labour market, these migrants will generally be high educated. Migration for low skilled jobs therefore mainly originates from within the EU (WODC 2012: 97-98).

---

31 The survey was conducted among 4450 companies. Eventually, 911 companies responded by completing the survey.

The web survey from 2008 showed that the top 3 of types of education/specialisations followed by the knowledge migrants were Economy, Commercial management and Administration (36.9 per cent), Mathematics, Science and IT (32.9 per cent) and Engineering (32.7 per cent).<sup>32</sup> As regards the sectors which make use of the knowledge migrants regulation the most, the top four is as follows: 1) IT and business services, 2) Industry, 3) Commerce and 4) Education and Research. Finally, the survey revealed that the knowledge migrants most often worked in the position of manager (38.7 per cent), followed by IT worker (27.4 per cent), Research & Development worker and consultant (16.6 per cent) (INDIAC 2009: 28).<sup>33</sup>

A spot check conducted among 1,200 highly skilled immigrants for the purpose of a research commissioned by the Ministry for Economic Affairs, published in 2010 (Berkhout, Smid & Volkerink 2010) however shows a different picture.<sup>34</sup> This research showed that the majority of the knowledge migrants followed exact studies, especially those from Asia. The studies that were followed most were engineering (33 per cent), economy, law and administration (21 per cent) and mathematics and IT (18 per cent) (Berkhout, Smid & Volkerink 2010: 30). The same research showed that most knowledge migrants (33 per cent) worked in the financial and business service sector, followed by industry and public service corporations (21 per cent) and education and research (17 per cent) (*Ibid.*: 32). Most of the knowledge migrants in the research indicated to have been posted in the Netherlands by their foreign employers (*Ibid.*: 32).

#### PROFILE OF THE RESEARCHERS

Below, the numbers of granted applications from third country nationals for work as a scientific researcher are depicted, according to nationality, for the years 2005 to 2010.

---

32 As the the division adds up to more than 100%, it is possible that a mistake was made, or that some of the knowledge migrants followed more than one type of education.

33 The top 4 based on a web survey. It is not registered which sectors make use of the HSM Scheme.

34 The definition of knowledge migrants applied in the study deviates from the definition of knowledge migrant in the HSM Scheme. For the spot check, both immigrants who entered the Netherlands under the HSM Scheme and immigrants in the sector 'concern staff, scientists and guest teachers', who entered the Netherlands with a work permit, were interviewed (Berkhout, Smid & Volkerink 2010: 27).

*Table 5: Number of granted applications from third-country nationals for work as a scientific researcher, by nationality, 2005-2010<sup>35</sup>*

|           | 2005 | 2006 | 2007 | 2008 | 2009  | 2010  | Total |
|-----------|------|------|------|------|-------|-------|-------|
| China     | 57   | 125  | 151  | 228  | 349   | 383   | 1,293 |
| Indonesia | 12   | 23   | 38   | 54   | 74    | 85    | 286   |
| Brazil    | 10   | 25   | 29   | 49   | 78    | 68    | 259   |
| Pakistan  | 5    | 35   | 82   | 51   | 17    | 10    | 200   |
| Iran      | 4    | 14   | 24   | 52   | 94    | 115   | 303   |
| Other     | 139  | 356  | 362  | 430  | 693   | 824   | 2,804 |
| Total     | 227  | 578  | 686  | 864  | 1,305 | 1,485 | 5,145 |

Source: IND, EMN Netherlands 2010a: 44.

In the years 2008 to 2010, the number of scientific researchers coming to the Netherlands has risen: from 864 in 2008 to 1,485 in 2010. The percentage of applications granted is high: above 98 per cent. As regards admitted researchers, the most common nationalities in the years 2008 to 2010 are Chinese, Iranian, Indonesian, American and Brazilian. The Chinese nationality ranks high above the other nationalities and continues to rise. This is because Chinese top-talent is directly targeted in policies aiming to attract top talent to come to the Netherlands (INDIAC 2011: 27). In 2009 (76) and 2010 (85), US citizens gathered a place in the top 5. In the years prior to 2009, the number of scientific researchers coming from the US was lower, i.e. below 50.<sup>36</sup> However, since prior to the implementation of Directive 2005/71, the numbers of researchers were not as duly registered as they are since, it is possible that more US citizens were admitted as researchers than registered.

Most researchers are aged between 25 and 35 years old (38 per cent in 2010), who are more often male (62 per cent) than female (38 per cent in 2010) (INDIAC 2011: 27).

#### STUDENTS

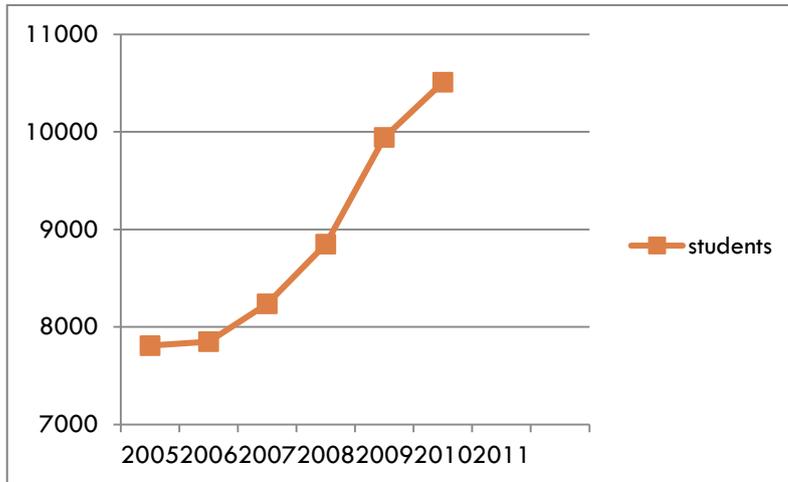
In recent years, migration from third-country national students to the Netherlands has increased. This is depicted in the figure below.

---

35 It has to be noted that, prior to the implementation of Directive 2005/71/EC, the numbers of researchers were not as duly registered as they are now. It is hence possible that researchers obtained a residence permit for study, and have hence been registered as students.

36 In 2005, 3 US citizens were admitted as scientific researchers, compared to 17 in 2006 and 11 in 2007.

Figure 6. Number of granted applications for study at higher education institute, 2005-2010



Source: EMN Netherlands 2010a: 45, INDIAC 2011.

As possible causes for this increase, the active promotion of Dutch education, both by the government and the education institutes themselves, and the growing supply of students from countries such as China are mentioned.<sup>37</sup> In 2009, the Netherlands held a share of 2 per cent in the total of study-migration to the EU (INDIAC 2011: 8). The causes for the increased study migration to the Netherlands are supported by the more streamlined application procedure: starting from 1 August 2008, applications for residence permits for foreign students can only be filed by education institutes that have concluded a covenant with the IND. This means that students can no longer file an application independently (INDIAC 2011: 21).<sup>38</sup> As a result of the introduction of the system of covenants, fewer applications for residence are denied, since the covenant holders (education institutes) are often better aware of the procedures and conditions for residence than students themselves, which means that fewer incomplete applications are filed with IND. Since the covenant holders also pay the fees, more applications are being dealt with (INDIAC 2011: 22): in the

37 As regards the promotion of Dutch education abroad, the Ministry for Education, Culture and Science actively promotes the Netherlands as a country of destination for students. For China, this happens through the Netherlands Education Support Office (Neso) for China, an organisation which has been created by the Dutch organisation for international cooperation in higher education (Nuffic) in cooperation with the Chinese Service Centre for Scholarly Exchange. Apart from China, Neso's are actively engaged in the promotion of Dutch education in other upcoming economies, such as Brazil, India, Russia and Indonesia. What helps is that much of the Dutch education is in English, and that the education generally is of high quality.

38 The system of the covenants anticipates the 'Modern Migration Policy', which will introduce the system of acknowledged referents. TK 2007-2008, 30 573, no. 10.

years 2008 to 2010, 99 per cent (29,304 applications) of all applications for residence as a student have been granted. Most students originated from China (22 per cent), followed by North America (12.5 per cent), Turkey (6 per cent), Indonesia (6 per cent) and India (4 per cent) (INDIAC 2011: 23).

#### 4. Legislative review of immigration policies

The admission and employment of labour migrants is regulated in the Aliens Act (*Vreemdelingenwet*) and the Labour Act for Aliens (*Wet Arbeid Vreemdelingen*). The Acts, and subordinate legislation, stipulate the conditions under which immigrants are permitted to come to the Netherlands and are permitted to work there.<sup>39</sup> In order to be admitted to the Netherlands, third country nationals are required to have an authorisation for temporary stay (mvv or visa), unless they originate from a country that is exempt from this requirement.<sup>40</sup> In case the foreigners intend to stay for longer than three months, which will be the case if they intend to work, a residence permit is required. The Labour Act for Aliens determines that third-country nationals will only be admitted to work as employees if their presence will serve a vital Dutch interest. The main rule contained in the Labour Act for Aliens is that an employer is not allowed to let a foreign national work in the Netherlands without a work permit.<sup>41</sup> A work permit can be granted, in case the employer can prove that there are no (suitable) candidates originating from the Netherlands, or an EU or EEA Member State, the so-called priority work force, available.<sup>42</sup> Consequently, an employer will need to prove that he has first made efforts to recruit staff in the Netherlands and the EEA (EMN 2010a: 6).<sup>43</sup> After three years of residence on the basis of a residence permit to perform work, the foreign national will be entirely free to work on the Dutch labour market. This means that, after that time, the employer of said foreign national will no longer need a work permit (EMN 2010b: 19).

---

39 The Aliens Act has been elaborated in, successively, the Aliens Decree, the Aliens regulations, and the Aliens Act Implementation Guidelines. The Labour Act for Aliens has been elaborated in, inter alia, the Implementation Decision of the Labour Act for Aliens.

40 Article 17(1) of the Dutch Aliens Act provides that the Dutch Minister for Foreign Affairs can list countries that are exempt from the mvv requirement. Currently, the following countries are exempt: USA, Canada, Australia, New Zealand, South-Korea, Japan.

41 Article 2(1) Labour Act for Aliens.

42 Article 8(1)(a) Labour Act for Aliens.

43 Citizens from EU and EEA Member States, as well as Switzerland, profit from the right to free movement. Consequently, they are free to engage in work on the Dutch labour market. They do not come under the Labour Act for Aliens, and consequently do not need a work permit. Currently, an exception is made to persons with Bulgarian or Romanian nationality, since the Netherlands has made use of a transitional regime (EMN 2010b: 18). This entails that employers will need work permits for their Bulgarian and Romanian workers until 1 January 2014.

Special rules apply to highly skilled workers and students. These rules will be discussed below.

#### 4.1 Highly Skilled Migrants Scheme

The HSM Scheme entered into force in October 2004. Its goal is to facilitate and speed up the procedure for the knowledge migrants interested in working in the Netherlands. Knowledge migrants are exempt from the work permit requirement, which means that the employer does not need to prove that there is no priority work-force (i.e. workers from the Netherlands or EEA countries) available. To speed up the admission procedure, the IND has opened up a special counter 'Knowledge and Labour migration', which applies an accelerated procedure of two weeks for applications for residence made by knowledge migrants (IND 2009: 22).<sup>44</sup> This accelerated procedure also applies to family members of the knowledge migrants.<sup>45</sup> In order for a good execution of the HSM Scheme, the IND reportedly had to 'let go of its restrictive attitude and adopt a more customer-oriented attitude, in which the knowledge migrant would occupy centre stage' (IND 2009: 26). By making this statement, the IND in fact admitted that the organisation is to blame for the long procedures which apply in cases where the applications are made by migrants who are not knowledge migrants, due to the restrictive attitude in such cases.

To profit from the HSM Scheme, the knowledge migrant needs to have entered into an agreement with an employer established in the Netherlands, and have a contract to earn at least a specific minimum income (see below) (EMN 2010a: 28). Companies that want to profit from the Scheme need to have signed a covenant with the IND (see below). Only companies that are registered in the Netherlands and can show they have paid their taxes and employee benefits as required can be admitted to profit from the Scheme.

The knowledge migrant can be allowed a residence permit for the duration of his or her contract, with a maximum term of five years, after which he or she can apply for permanent residence.<sup>46</sup> Dutch policy is not aimed at meas-

---

44 The accelerated procedure only applies in case the application is complete (<http://www.ind.nl/Werkgevers/Nieuwsbrieven/2010/201003alleen-volledige-aanvragen-snel-afgehandeld.aspx>, site accessed 2 February 2012).

45 Initially, the accelerated procedure would only apply in case the family members would have filed their applications together with the knowledge migrant. If they would have filed their applications later, the 'regular' units would decide on the application, applying the regular legal term in which the application would need to be decided upon. However, the accelerated procedure now also applies to those family members who did not file their applications together with the knowledge migrant, but on a later moment.

46 Article 3.59a Aliens Decree. Other regular residence permits will be issued for the period of one year, and can each time be extended for a maximum period of one year (Article 3.57 Aliens Decree).

ures to enforce the temporary nature of the highly skilled migration (EMN 2010a: 41).<sup>47</sup> The other forms of labour migration are on the other hand intended to be of a temporary nature, to allow to partly solve temporary bottlenecks in the labour market while at the same time preventing future reliance on collective benefit schemes.

Whereas the knowledge migrant is exempt from the requirement to have a work permit, the immigrant needs to obtain a visa (authorisation for temporary stay, *MVV*), unless, as mentioned above, he/she originates from a country which has been designated by the Minister for Foreign Affairs as being exempt from the visa requirement. The costs that are payable for the visa are considerable, but also significantly lower than those that need to be paid by family migrants. Whereas the latter pay € 1.250, knowledge migrants are required to pay € 750 for their *MVV* application.<sup>48</sup> Another advantage is that the knowledge migrant can immediately be awarded a residence permit for five years, which means that he or she does not have to pay the amount of € 375 for prolonging the validity of the residence permit.

To be able to profit from the HSM Scheme, immigrants, as stated above, do not have to fulfil an education requirement. Neither does it matter what type of profession the knowledge migrant will carry out, unless this profession is football player or religious servant: for football players there exists a separate admission policy based on income, and the government wanted to retain the possibility to terminate the residence of religious ministers, who are only entitled to a temporary residence (De Lange 2007: 333).<sup>49</sup>

Since their stay is defined as temporary in the law, knowledge migrants, as well as 'ordinary' labour migrants, are exempt from the integration obligations in Dutch law. This means that labour migrants are not required to pass the 'integration abroad exam', introduced by the Integration Abroad Act, which tests a basic knowledge of Dutch language and society, as a condition for admission. They furthermore are exempt from the integration requirement under the Integration Act, which obliges immigrants who envisage to stay in the Netherlands on a permanent basis to pass an integration examination after arrival.

---

47 Research has indeed shown that problems related to the prolongation of the residence permit are hardly mentioned as a factor in the decision to leave the Netherlands (Berkhout, Smid & Volkerink 2010: 41).

48 Other migrant workers need to pay € 600. Amounts payable on 19 January 2012, [www.ind.nl](http://www.ind.nl).

49 After protest uttered by the Second Chamber, it was also decided that prostitutes (those who perform work that consists entirely or in part of the performance of sexual acts with or for third parties) would not come under the scope of the knowledge migrant regulation. TK 2004-2005, 29 523, no. 17 and TK 2004-2005, 29 523, no. 18, quoted in De Lange 2007: 333.

The Integration Abroad Act and the Integration Act respectively target family migrants who intend to come to the Netherlands or who are in the Netherlands. Family members of knowledge migrants are, however, like the knowledge migrants themselves, exempt from the integration obligations, both under the Integration Abroad Act and the Integration Act. This has been referred to as the application of a double standard: whereas one group is required to adapt socially and culturally, for which they have to pay themselves, another group is not.<sup>50</sup>

Whereas knowledge migrants and their family members are exempt from the integration obligations stemming from above mentioned Acts relating to integration, the Aliens Act obliges those, who, after five years of legal residence, apply for a permanent residence permit or naturalisation, to pass the integration examination.<sup>51</sup> The consequences of the obligation to pass the examination will be discussed more in depth in paragraph 5.

#### THE SALARY CRITERION

The requirement that the knowledge migrant needs to earn a specific minimum income, the so-called salary criterion, is the core component of the definition of 'knowledge migrant' in the Highly Skilled Migrants Scheme. The salary criterion singles out three different categories: immigrants aged under 30, who, as of 1 January 2012, need to earn at least € 37.575, those aged over 30, who need to earn at least € 51.239, and immigrants who graduated from a Dutch University or higher professional education institute.<sup>52</sup> Immigrants in the latter category need to have found employment within less than one year after hav-

---

50 Aniek Smit, 'De kansrijke migrant bestaat niet', in *de Volkskrant* 25 October 2011. The price of the integration abroad exam, which family members of 'ordinary' labour migrants, as well as refugees, are required to pass, is € 350. Costs for the preparation for the exam are not funded either. The integration examination the family migrants of labour migrants have to pass in the country, as well as the preparatory courses, are currently paid by the municipalities. A proposal of law formulated by the centre-right Government of Prime Minister Rutte (Conservative Liberals) however aims to end this practice (TK 33086). In the future, immigrants will hence need to pay for the integration courses and examination themselves.

51 Unless they are exempt on the basis of a diploma. Only Dutch diplomas qualify for exemption, as well as diplomas attained in Surinam and Belgium. Furthermore, those who obtained an international or European baccalaureate may be exempt. For the diplomas attained in Belgium, Surinam and the baccalaureates counts that a pass mark needs to be attained in the subject 'Dutch'.

52 The income requirement for those aged 30 or over has been determined as being about one and a half times the average income (TK 2011-2012, Appendix 274, p. 2). In case doubts are raised regarding the accuracy of the wage that has been mentioned, it can be controlled later on whether the agreement has indeed been met. If not, the residence permit can be withdrawn, and the employer excluded from the ability to profit from the HSM scheme.

ing completed their studies, and need to gain a gross annual salary which is at least equal to the income requirement applicable to recently graduated students who will qualify for residence as a Highly Educated Migrant.<sup>53</sup> The third wage criterion applies since end 2007.

Certain categories of knowledge migrants are exempt from the salary criterion. This applies to scientific researchers, since end 2006 defined as foreigners who will be employed in the Netherlands for the purpose of doing scientific research, and to doctors who are studying to become specialists. For both categories applies that they need to be associated to an acknowledged research institution.<sup>54</sup>

#### EMPLOYERS AS 'EXTENDED ARM'

Since knowledge migrants are exempt from the requirement to have a work permit, the employer who can afford a salary ranking above the level set by the HSM Scheme has automatically proven that the employee is necessary to the Dutch labour market. Verification against the priority workforce (i.e. workers from the Netherlands or EU/EEA countries) by state agents is not necessary. Hence, rather than reviewing the employee, the state in the Highly Skilled Migrants Scheme reviews the company. Once the company receives the government's trust it can make use of the beneficial provisions in the HSM Scheme, such as fast-track procedures.<sup>55</sup> This is also stated in the Aliens Circular, which stipulates that the fact that the employer takes on a number of obligations, makes it possible for the IND (Immigration and Naturalisation Service) to speed up the procedure in which the application for admission is dealt with (De Lange 2007: 334).<sup>56</sup>

Whereas this system benefits employers, by using them as 'extended arm', the state also profits (De Lange 2011a: 195). Since employers, in order to profit from the Scheme, need to adopt a number of tasks that were previously dealt with by the state, De Lange has referred to the Highly Skilled Migrants Scheme as a form of 'privatisation' of the selection of migrant workers (De Lange 2007: 332-334). To be eligible, employers need to submit a completed

---

53 Currently, a minimum amount of € 26.931 applies.

54 *Staatsblad* 2006, 521. The scientific researchers need to be employed by a funded or designated educational institution or a research Institute financed or subsidised in whole or in part by the government, either directly or indirectly (article 1d(1)(b) Implementation Decision Labour Act for Aliens). The foreign nationals who work as doctors training to become specialists need to be stationed at a training institute designated by the Medical Specialists Registration Committee, the Public Health Officers Registration Committee or the General Practitioner and Nursing Home Physicians Registration Committee (article 1d(1)(c) Implementation Decision Labour Act for Aliens).

55 The IND will decide on applications for temporary stay within two weeks.

56 B15/3, article 4.1 Aliens Circular 2000.

and signed declaration at the IND, in which they guarantee that the conditions for admission as knowledge migrant are met and that the migrant, during the stay in the Netherlands, will not come at the expense of the Dutch state.<sup>57</sup> The employers furthermore need to take on the obligation to inform the IND the moment the situation of the migrant worker changes.

From the number of granted applications under the HSM scheme one can deduce that the extra obligations and responsibilities have not scared off employers. Whilst initially, the number of residence permits granted to knowledge migrants stayed behind the number of permits granted to workers to whom a work permit had been granted, since 2006 the number of permits granted to knowledge migrants is (much) higher (see above figure 6).

On its website, the IND publishes a list with companies which have been approved under the Scheme.<sup>58</sup> The list was dominated by large corporations and universities, but also included a good number of Chinese restaurants, dentists and hairdressers (De Lange 2011a: 196).

#### FAMILY MEMBERS OF KNOWLEDGE MIGRANTS

To make the Netherlands more attractive to knowledge migrants, their family members also receive a beneficial treatment. The family members for instance profit from the accelerated admission procedure.<sup>59</sup> Furthermore, as we have seen above, the family members of the knowledge migrants are exempt from the integration abroad requirement, which means that they can obtain a visa (MVV) without having passed the integration abroad test.<sup>60</sup>

The family members of knowledge migrants will initially receive a residence permit with a validity of one year.<sup>61</sup> In this sense, the Blue Card directive (see below for more details) offers a more beneficial treatment to family members, who will receive a residence permit for the same duration of validity

---

57 The declaration is only signed by the employer. In this process, the IND can in principle not refuse the employer access to the HSM Scheme. Employers who want to participate in the Scheme are not extensively checked beforehand with a view to select them or to exclude them from participation (IND 2009: 27).

58 <http://www.ind.nl/Werkgevers/index.aspx>. The list shows companies which have been admitted to the knowledge migrants regulation and that since 1 July 2010 have successfully filed minimally one application for residence.

59 A 'bottleneck' in the procedure was formed by the 'M46' form, which is used to register a marriage and to obtain a residence permit for the spouse. This form used to cause considerable delays. Due to a new procedure employed by the expat centres, the IND and the municipality will register the marriage, allowing for the issuing of a residence permit to the spouse, thereby eliminating the delays ([http://www.iamsterdam.com /en/living/expatcenter/expatcenter-procedure](http://www.iamsterdam.com/en/living/expatcenter/expatcenter-procedure), site accessed 2 February 2012).

60 Article 3(1)(a) Integration Act jo 3.3.5(2)(a) Aliens decree.

61 Article 3.57 Aliens Decree.

of the residence permits issued to the Blue Card holders.<sup>62</sup> The period of validity of the residence permit of the family members of knowledge migrants not being Blue Card holders may, after the first year, be extended for a period of at most five years.<sup>63</sup>

Last but not least, as of April 2005, family members of knowledge migrants have unrestricted access to the employment market, which means that they do not need a work permit.<sup>64</sup> It was decided to give these family members the right to work, since this would increase the preparedness of a knowledge migrant to work in another country, making the Netherlands more attractive for the knowledge migrants.<sup>65</sup> This assumption is confirmed by an interviewed staff member of the Outpost service of a large multinational company, who stated that the Netherlands, in comparison to many other countries, is very attractive for those knowledge migrants who value 'dual careers'.<sup>66</sup> An interviewed staff member of the permits foundation however pointed at the lack of information on the right spouses and partners of knowledge migrants have to free access to the Dutch labour market.<sup>67</sup> This staff member, who referred to the Dutch policy as 'the best practice in this field' and who stressed the value of the right to work for the integration, not only for the spouse or partner who is entitled to work, but for the whole family, regretted the fact that it is very hard to find out about the unrestricted access of spouses and partners to the Dutch labour market:

---

62 Article 15(5) 2009/50/EC, Article 3.59c, paragraph 2, Aliens Decree.

63 Article 3.67(1)(a) Aliens Decree.

64 *Staatsblad* 2005, 187. Article 2(a)(1e) of the Executing Decree of the Labour Act for Aliens. The family members of the knowledge migrant have unrestricted access to the labour market as long as they have a residence permit which allows them to stay in the Netherlands by virtue of them being a family member of a knowledge migrant. In case the knowledge migrant loses the residence permit, or in case the family members apply for a different residence title, the partner/spouse will lose the right to unrestricted access to the labour market, in case he or she has not had a residence permit which allowed him or her to work, for a period of at least three consecutive years.

65 *Staatsblad* 2005, 187, p. 6.

66 Interview conducted 6 February 2012. The Outpost service of this large multinational company offers inside information and professional services on most aspects of living abroad, thereby supporting the employees, their partners and family members facing the challenges of global mobility.

67 Interview conducted 2 February 2012. The permits foundation is an international non-profit corporate initiative to promote access of accompanying spouses and partners of international staff to employment through an improvement of work permit regulations. <http://www.permitsfoundation.com/home.htm>, site accessed 2 February 2012.

*'It is not clearly posted on the IND website, nor on the website of the Expat centre. We regularly receive emails from knowledge workers asking us whether their spouses will have the right to work in the Netherlands.'*<sup>68</sup>

The staff member feared that, in the worst case scenario, the lack of information on the right to work for spouses and partners could lead highly skilled workers from the other side of the world who are looking on the internet for information to give up their wish to come to the Netherlands to work. Better information hence needs to be provided in this field.

#### ADAPTATIONS TO THE SCHEME

After its introduction, the HSM Scheme has been adapted on numerous occasions. In all but one instance, the rules regarding the admission of knowledge migrants under the HSM Scheme and of other highly skilled migrants have been further facilitated. The target group of the HSM scheme has for instance been extended, and starting companies have been allowed to profit from the Scheme.<sup>69</sup> Furthermore, end 2007, a so-called 'search year' has been introduced for foreign students who graduated in the Netherlands from a University or higher education institute. They can profit from a lower wage criterion.<sup>70</sup> In January 2008, the Self-Employed Migrants Scheme became effective. Under this Scheme, highly skilled migrants who want to start their own company in the Netherlands qualify for admission on the basis of a points system, which is mainly focused on personal characteristics, the business plan and added value for the Netherlands (EMN 2010b: 16). On 1 January 2009, a points-system has been introduced for higher educated immigrants, the Highly Educated Migrants Scheme.<sup>71</sup> Lastly, on 1 January 2012, a pilot for short term residence of knowledge migrants started. The goal of this pilot project is to facilitate and accelerate the procedure to acquire a work permit for those knowledge migrants who will stay in the Netherlands for a period not exceeding three out of six months.<sup>72</sup> The new regulation will apply until December 2013, and will sub-

---

68 Staff member Permits Foundation, interviewed by phone on 2 February 2012.

69 This extension applies since 1 January 2007.

70 *Staatscourant*. 2007, 245. During the one year period, the graduated students have access to the Dutch labour market without a work permit being required. Previously, the period during which these students could look for a job was 3 months.

71 *Staatscourant* 2008, no. 2595. On the basis of the Scheme, immigrants who are high educated and who have obtained at least one Masters degree, can obtain a residence permit for the duration of at most one year to find a job in the Netherlands or to start an innovative company.

72 Unlike 'ordinary' knowledge migrants, the 'short term' knowledge migrants are required to have a work permit. Under the project, a work permit will be issued without the employment market test applying. Furthermore, in case the immigrants can profit from the new regulation, the vacancy does not need to be notified, and the visa, CV, and diploma

→

sequently be evaluated. Below, more attention will be paid to the extension of the target group of the HSM scheme, and the Highly Educated Migrants Scheme.

- *Extension of the target group*

As regards the extension of the target group, as of 1 January 2007, the category of 'scientific researcher' has been extended. Prior to 1 January 2007, only PhD researchers, independent of their age, working for education or research institutions, as well as university teachers and postdoctoral researchers aged below 30, were designated as knowledge migrants. As of 1 January 2007, the definition of 'scientific researcher' has been extended as meaning a foreigner who will be employed in the Netherlands for the purpose of doing scientific research, independent of their age.<sup>73</sup> Furthermore, doctors who are studying to become specialists have been added to the category of knowledge migrants. Both categories are exempt from the wage criterion.<sup>74</sup> They are however required to be associated to an acknowledged research institute and need to have sufficient means of existence.<sup>75</sup>

- *The Highly Educated Migrants Scheme*

The Highly Educated Migrants Scheme was introduced on 1 January 2009, and was created to facilitate foreign top-talents' access to the Netherlands (INDIAC 2009: 4). This (pilot) regulation entails that those who have completed a masters degree or doctoral research will be awarded a residence permit for at most one year to find a job as knowledge migrant or to start an innovative company. Foreign nationals can apply for this so-called orientation year during the period of up to three years after completion of the masters degree or the doctorate process.

The Scheme not only applies to students who graduated in the Netherlands, but also to those who graduated from a University ranking in the top 150 of two internationally acknowledged rankings.<sup>76</sup> The higher educated migrant who wants to profit from the regulation is tested on a number of issues such as the level of the education followed, age, and issues related to the success in the

---

do not need to be submitted (<http://www.antwoordvoorbedrijven.nl/wetswijziging/vereenvoudiging-procedure-kort-verblijvende-kennismigranten>).

73 *Staatsblad* 2006, 521.

74 *Staatsblad* 2006, 521.

75 Article 3.30(1)(b) Aliens decree. Aliens Circular B1/4.3.

76 These rankings are the rankings published by the 'Times Higher Education Supplement' and the 'Jiao Tong Shanghai University'. Immigrants who have completed an acknowledged education at Master's level at a Dutch institution, or those who obtained a PhD degree from a Dutch institution can also profit from the regulation.

Netherlands.<sup>77</sup> In case a score of at least 35 out of 40 is reached, a residence permit can be granted.<sup>78</sup> High educated immigrants who want to profit from the regulation are not tested on their means of subsistence. For family reunification, the regular conditions apply, including the condition that the sponsor needs to dispose of sufficient means of existence.

Migrants who fall under the Highly Educated Migrants Scheme are exempt from the requirement that they need to prove that they will be employed in the Netherlands. Instead, they can start looking for work once they have been awarded a residence permit. The high educated immigrant is however not free to engage in work during the orientation year. She can perform paid labour, but only in case the employer has a work permit.<sup>79</sup> The same applies to the family members.

In order to be acknowledged as a knowledge migrant, the lower salary criterion applies. As soon as a job as knowledge migrant has been found, the highly educated immigrant can change the residence permit to a permit as knowledge migrant. In that case, the work permit requirement will no longer apply, not for the knowledge migrants, nor for the family members.

#### A RESTRICTION: THE MARKET CONFORMITY TEST

Despite the positive evaluation of the HSM Scheme by the government on the basis of a study by SEO Economic Research (University of Amsterdam), and indications that it was hardly abused, the need was felt for a restriction of the Scheme (De Lange 2011b: 432).<sup>80</sup> On 19 June 2011, the 'market conformity test' has been introduced, which opens up the possibility for the IND to deny a knowledge migrant's application for (the renewal of) a residence permit or a visa in case the agreed wage is not 'market conform', i.e. higher than usual on the Dutch employment market.<sup>81</sup> The extra check was thought necessary as 'safety net', functioning as a check of the only requirement of the HSM Scheme,

---

77 Masters titles will deliver 25 points, and Doctor's titles 30. Immigrants aged between 21 and 40 are awarded 5 extra points. In case the foreigner has worked or studied in the Netherlands before or in case he or she speaks Dutch or English or in case the diploma has been awarded by a country which has signed the Bologna declaration, five extra points are awarded.

78 From the start of the Scheme until August 2010, 254 applications have been granted pursuant to the Scheme. Most (170) applications concerned applications from immigrants already residing in the Netherlands (EMN 2010b: 39).

79 The same applies to the family members. Once the high educated immigrant has found a job a knowledge migrant or self employed person, the family members are exempt from the work permit requirement.

80 TK 2010-2011, 32144, no. 5, p. 12.

81 *Staatscourant* 2011, no. 10662, p. 30, which published the decision that introduced Article 3.30a in the Aliens Decree.

the salary requirement.<sup>82</sup> The test will only be applied in the exceptional circumstance where the IND suspects that abuse is made of the HSM Scheme. The choice was explicitly made to not still add an education requirement, based on similar concerns which played a role when the Scheme was first introduced: the evaluation of diplomas would lead to longer procedures and increased administrative burden, and a diploma does not necessarily say something about a migrant's added value for the labour market (De Lange 2011b: 432).<sup>83</sup>

Following the introduction of the new test, employers' organisations complained that it would be harder to recruit new high educated staff: if the market conform salary is below the level of the income requirement in the HSM Scheme, employers will not be able to benefit from the Scheme.<sup>84</sup> The problem was said to be especially urgent in sectors such as ICT and the steel industry, where a shortage in high educated staff exists.

#### EXPAT CENTRES: A 'ONE STOP SHOP' PROCEDURE

Starting from May 2008, four expat centres have been opened up. These expat centres are based in Amsterdam, Rotterdam, the Hague and Eindhoven.<sup>85</sup> The expat centres are the result of a joint initiative of the IND and the municipalities. In the expat centres, a new procedure is applied for admission to and residence in the Netherlands for knowledge migrants, whose employers are admitted to the HSM Scheme, as well as their family members. The procedure entails that the employer is able to file an application for residence whilst the migrant is still residing abroad.<sup>86</sup> Approximately four weeks later, the highly-skilled migrants can visit the Expat centre to collect their residence permits, reg-

---

82 TK 2011-2012, Appendix 274, p. 2.

83 TK 2010-2011, 32144, no. 5, p. 14.

84 Carien ten Have, 'Bedrijven: import vaklui te lastig', *de Volkskrant* 30 August 2011.

85 The expat centres have been created by the municipalities and the IND. The expat centre Amsterdam covers the whole Amsterdam region, including the cities of Amstelveen, Almere and the municipality of Haarlemmermeer. The expat centre of Eindhoven is linked up with the city of Tilburg and forms the Expat centre Brabant. With the International Service Desk Maastricht, this Expat centre covers the whole of the Southeast of the Netherlands.

86 Normally, the following 9 steps need to be taken: (1) the employer will request advice on obtaining a MVV (visa) from the IND, after which (2) the IND can send the embassy and the employer a positive advice. The third-country national will then (3) apply for a visa at the Dutch embassy in his home country. The embassy will subsequently (4) check the documents and issue the visa. The expat will then (5) enter the Netherlands, and (6) file an application for a residence permit at the IND-office via the employer. The IND will then (7) take a decision on the application, after which (8) the IND will send word that the residence card is ready to be picked up. Finally (9), the third-country national will visit the IND office to collect the residence card. There is no legal term in which a decision on the application for a visa needs to be taken, but the General Administration Act provides that the term in any case needs to be 'reasonable' (article 4:13 read in conjunction with article 4:14 General Administration Act).

ister with the municipality (Municipal base administration, GBA) and receive a *Burgerservicenummer* (BSN). The goal of the accelerated procedure is to reduce the 'hassle' for the knowledge migrant and the accompanying family members: instead of visiting two separate government institutions, they will only need to visit one counter to arrange both the registration in the GBA and to receive the residence permit (INDIAC 2011: 26). The benefit of this 'one-stop-shop' procedure is that the employees can start working directly after their visit to the expat centre.

Apart from the 'one-stop-shop' procedure, the Expat centres recently expanded their services to offer the formal IND approval of the application for a residence permit, instead of the residence permit itself. This 'two-stop-shop' procedure enables the migrant to start working in the Netherlands already two weeks after the IND has received their original application.<sup>87</sup>

### 30% TAX BENEFIT

Apart from the special admittance procedure, employers who employ knowledge workers, as well as other foreign workers, can profit from tax benefits, the so-called '30% rule'.<sup>88</sup> This rule entails that 30 per cent of the wage can be paid to the employee untaxed.<sup>89</sup> The regulation was introduced to enable Dutch companies to compete with companies in countries such as the USA and the UK, which generally pay higher salaries. In 2002, 32,000 persons profited from the rule, compared to 40,000 in 2009.

As of April 2011, the Expat centre Amsterdam formed an official cooperation with the tax department regarding the '30% rule': applications from companies that are registered under the HSM Scheme can be processed at the Expat centre, where once a week an employee of the tax department will be present.

As of 1 January 2012, restrictions to the 30% ruling took effect. A salary criterion was introduced, stating that only those employees who have a taxable

---

87 <http://www.iamsterdam.com/en/living/expatcenter/expatcenter-procedure>, site accessed 1 February 2012.

88 The conditions that have to be met in order to be able to profit from the 30% rule are the following: 1) The employee has to work for an employer, which means that self-employed persons are excluded; 2) Employer and employee have to agree in writing that the 30% rule is applicable; 3) The employee has to be transferred or be recruited from abroad to a Dutch employer; 4) The employee has to have specific experience or expertise which is not or rarely available in the Netherlands. The scarcity of the skills is determined by a combination of factors, such as salary, age, employment history, education and level of employment.

89 The employer can pass on the advantage of the '30% ruling' to the employee, but is not obliged to do so. In practice, the employer can hence partially or fully take the benefit.

income of at least € 35.000 a year can profit from the ruling.<sup>90</sup> The salary standard will be used to determine whether the employee has specific expertise which is in short supply within the Dutch labour market: those earning more than € 35,000 were thought to have this expertise, those earning less not.<sup>91</sup>

Furthermore, as of 1 January 2012, the 30% rule will apply for a maximum period of eight instead of ten years. Lastly, only those who lived more than 150 kilometres from the Dutch border prior to moving to the Netherlands in order to work there will be able to benefit from the rule.

Companies, universities and municipalities criticised the restrictions to the 30% rule, fearing that the Netherlands would no longer stand a chance in the competition for talent with countries such as Germany and the UK.<sup>92</sup>

#### CHANGES THAT WILL BE BROUGHT ABOUT BY THE ACT ON MODERN MIGRATION POLICY

As stated above, a new Act on 'Modern Migration Policy', amending the current Aliens Act, was adopted in Summer 2010. The new Act was supposed to enter into force in 2011, but has not yet because the new IND computer system was not fully operational.

The new Act was adopted because the current (labour) migration policy no longer proved to be sufficient. In 2006, the government therefore decided to modernise the policy. Whereas selectivity in the admission is central to the new policy, at the same time, the admission of immigrants whose skills are required in the Netherlands is supposedly made simpler, quicker and inviting. This mainly concerns highly educated migrants, whose participation in the Dutch labour market is thought to provide a quality impulse to the Dutch knowledge economy. Selectivity will however continue to be combined with restrictiveness for the middle and lower segments of the labour market, as is currently the case (EMN 2010b: 16).

The Modern Migration Policy distinguishes three types of labour migration: regular labour migration, (strictly) temporary labour migration and knowledge/talent migration. The third category concerns those migrants who make use of the Highly Skilled Migrants Scheme, the Highly Educated Migrants Scheme and the Blue Card (EMN 2010b: 16).

The new Act will strengthen the position of the sponsor, i.e. the natural person or entity (company, research institute) that has an interest in the immigrant

---

90 Employees who have a Master's degree and are aged below 30 meet the salary criterion if they have a taxable income of € 26.605.

91 Academic research staff need not meet the salary standard to be designated as having specific expertise.

92 Jonathan Wittenman, 'Kennismigranten verliezen hun voordeeltjes', *de Volkskrant* 26 October 2011.

being admitted to the Netherlands, in the case of labour migrants the employer. The introduction of the new system will entail even more immigration control responsibilities and duties (the duty to care, to provide and retain information, and a duty of administration) for the employers to be able to profit from the lenient admission procedures. As a result, the sponsor will become (partly) responsible for the immigrant's compliance with the statutory rules, and for his/her return. Large companies don't fear these responsibilities, but as smaller ones may not be able to comply with the administrative requirements, they risk being excluded from applying for work permits (De Lange 2011c).

Employers who want to function as sponsors will need to be acknowledged. Employers who have been registered under the HSM Scheme will automatically become acknowledged sponsors in case they have filed at least one application for residence in the previous year which has been granted.<sup>93</sup>

It is thought that the adjustment of the supervision and enforcement instruments will lead to quick and effective detection of fraud and abuse. An important change is the sponsor's information and retention obligation, which will allow the government to supervise the immigrant during the time he or she requires a sponsor in order to be allowed to reside in the Netherlands. Sponsors who do not comply with the information obligation can be subjected to administrative fines. Furthermore, costs that come along with repatriation of the immigrant can be recovered from the sponsor. Another sanction is the withdrawal of the status of recognised sponsor (EMN 2010b: 24).

#### **4.2 The EC Blue Card Directive**

In the Netherlands, the European Blue Card Directive was implemented on 20 June 2011.<sup>94</sup> The Blue Card Scheme is complementary to the HSM Scheme; with the implementation of the Blue Card Directive, the HSM Scheme hence was not abolished. Compared to the HSM Scheme, the Blue Card scheme provides less benefits for employers and employees, even though the latter are awarded increased intra-EU mobility possibilities when opting for a EC Blue Card.

The article in the Aliens Decree which implements article 5 of the Directive, containing the conditions for admission for a Blue card, is formulated imperatively.<sup>95</sup> This means that a residence permit *must* be issued in case the migrant fulfils the requirements. The Directive itself however does not provide that a

---

93 Following the Association Agreement and the protocol, as well as decision 1/80, Turkish immigrants who are knowledge migrants or scientific researchers under Directive 2005/71 are exempt from fulfilling the requirement of working for an acknowledged sponsor.

94 *Staatsblad* 2011, 291.

95 Article 3.30b Aliens Decree.

Blue Card has to be issued in case all conditions are met. The Netherlands has furthermore not implemented those articles in the Directive that provide that a Blue Card can be refused in case the quota for Blue Cards has been achieved or in case a Member State has chosen to first look for work force on the national or European markets (Groen & De Lange 2011: 342).<sup>96</sup> In this sense, the Dutch implementation of the Directive hence appears to be more profitable for the immigrants than the Directive prescribes.

The most important conditions for being granted a Blue Card permit are a salary criterion and a formal education criterion. The requirements for obtaining a Blue Card are hence stricter than those for acquiring a residence permit as knowledge migrant under the HSM Scheme: the latter after all do not have to fulfil an education requirement.<sup>97</sup> Furthermore, the salary criterion for applicants for a Blue Card is higher than the criterion as formulated under the HSM Scheme: € 60,000 a year, instead of € 51.239 for those aged over 30, and € 37.575 for those aged below, in the HSM Scheme.<sup>98</sup> The Netherlands has not implemented the possibility, offered in Article 5(5) of the Directive, to lower the salary threshold to 1,2 times the average gross annual salary for employment in professions which are in particular need of third-country national workers (Groen & De Lange 2011: 342). Like knowledge migrants, migrants, or, more specifically, their employers, applying for a Blue Card are exempt from the work permit requirement.

Besides the absence of an education requirement and the lower salary criterion, the HSM Scheme is also more favourable in a number of other ways: whereas the applicant for the Blue Card is required to have a valid employment contract, or a binding job offer for a highly qualified job, for at least one year, knowledge migrants under the HSM scheme can profit from the Scheme in case they have a contract or binding offer for three months (Groen & De Lange 2011: 347).<sup>99</sup> Moreover, whereas the Blue Card is issued for a maximum period of four years, or for a duration of three months after the termination of the employment contract, the residence permit for knowledge migrants

---

<sup>96</sup> Article 8 paragraph 2 and 3 Directive.

<sup>97</sup> As regards the education criterion, following article 2(b) of the Directive, migrants wanting to exercise a non-regulated profession, need to have the required higher professional qualifications. Those wanting to exercise a regulated profession, need to fulfil the supplementary requirement to have recognised professional qualifications, as provided for in the General Act Acknowledgement of EC-professional qualifications, which is the result of the implementation of Directive 2005/36/EC.

<sup>98</sup> Article 3.30 paragraph 1 Aliens Decree, which refers to article 1i Buwav (Executing Decree Labour Act Foreigners). As regards holders of a European Blue Card, coming from another Member State, the Netherlands applies the same salary criterion, even though Member states are allowed to apply a lower criterion for second admissions.

<sup>99</sup> Article 3.30 paragraph 1, Aliens Decree.

under the HSM scheme can be issued for a term of five years.<sup>100</sup> Lastly, compared to the regulations for knowledge migrants, the provisions for Blue Card holders provide that the holders of such a card need to themselves inform the authorities in case of a change of employer. The employers of the knowledge migrants under the HSM scheme are on the other hand required to inform the IND in case the migrant does no longer work there.

Family members of holders of a European Blue card, like the family members of knowledge migrants under the HSM scheme, have unrestricted access to the labour market.<sup>101</sup> The period of validity of the residence permit of the family members is linked to that of the holder of the Blue Card. In that sense, the Blue Card Directive offers a benefit compared to the HSM Scheme, where the residence permits of family members are initially valid for one year (Groen & de Lange 2011: 348). Another benefit offered by the Directive is that the Blue Card holder who loses his or her job, whether she is to blame for this or not, is allowed to look for another job for three months. Those who have obtained a residence permit under the HSM Scheme are only offered a three month search period in case they are not to blame for their unemployment (*Ibid.*). Lastly, the Directive benefits the residence status of the immigrants, who see their chances of intra-EU mobility increased and offers them interesting possibilities for circular migration, both during the first five years and after, as long-term residents (Groen & De Lange 2011: 339). However, holders of a European long-term resident status may be subjected to a labour market test, even though they are former Blue Card holders (Groen & De Lange 2011: 346).

In view of the above, especially from the point of view of the employers, the Blue Card Directive does not add much to what was already provided to highly skilled workers by the HSM Scheme (Groen & De Lange 2011: 348). This probably explains the low number of applications for a Blue Card, which remained below ten on 14 October 2011 (De Lange 2011b: 428).

### **4.3 The Researchers Directive**

With the introduction of the HSM Scheme, the Netherlands, as far as the admission of the majority of the scientific researchers is concerned, met the requirements of Directive 2005/71/EC (De Lange 2007: 334). Scientific researchers can make use of the HSM scheme, provided they have concluded an employment contract or have an appointment. As already stated above, they are exempt from the salary requirement.

---

<sup>100</sup> Article 3.59c, paragraph 1, Aliens Decree. Like the knowledge migrant, as well as other labour migrants, the holder of a Blue Card has unlimited access to the employment market after three years.

<sup>101</sup> Article 2(a)(1<sup>e</sup>)(2<sup>e</sup>) Implementing Decision Labour Act for Aliens.

With the implementation of the Researchers Directive on 12 October 2007, scientific researchers can benefit from accelerated procedures. The reason why they can benefit from speedy procedures is that a system of privatisation of migration control comparable to the system in the framework of the Highly Skilled Migrants Scheme can be found in the Researchers Directive (De Lange 2011a: 197). Research institutions, in exchange of efficient procedures for the third-country national researchers they want to hire, can profit from fast-track and single application procedures in case they have been approved by the state in advance.<sup>102</sup> In exchange, the institution needs to act as a 'state agent', checking on the migrant: within two months of expiry of the hosting agreement, the institution must inform the government that the work has been carried out. If the research institution does not fulfil this requirement, it can be excluded from the efficient procedures.

The information obligation the research institutions need to comply with does not appear to be against their interests: an increasing number of researchers have obtained a residence permit on the base of the Directive (De Lange 2011a: 197). Whereas 227 residence permits were granted in 2005, this number rose to 1,485 in 2010 (see above, table 5).

As of June 2010, research institutions based in the Amsterdam or Rotterdam area can make use of a special accelerated procedure, comparable to the Expatprocedure for highly skilled migrants, through the Amsterdam or Rotterdam Expat centres for their incoming scientific researchers within the meaning of the Researchers Directive.<sup>103</sup> As explained above, some advantages of the Expatprocedure are less administrative work, completion of the application in four weeks or less, and obtaining a residence permit (one-stop-shop) or the decision that a residence permit will be issued (two-stop-shop) together with the possibility to register in the municipality.

#### **4.4 Diploma recognition**

Highly skilled migrants who cannot profit from the HSM Scheme will generally face the need to have their foreign diplomas acknowledged before becoming eligible for jobs at their level in the Netherlands. In the Netherlands, two expertise centres are operating in the area of diploma evaluation. These are Nuffic (Netherlands Organisation for International Cooperation in Higher Edu-

---

<sup>102</sup> A list of companies, institutions and organisations which have been approved under directive 2005/71/EC has been published on the IND website: <http://www.ind.nl/Werkgevers/index.aspx>. Some research institutes have been recognised by operation of the law, others have to submit an application to that effect.

<sup>103</sup> <http://www.iamsterdam.com/en/living/expatcenter/latest-news/expatcenter-extends-target-group>, <http://english.ind.nl/nieuws/2010/uitbreiding-doelgroep-expatcentra-amsterdam-en-rotterdam.aspx>, websites accessed 1 February 2012.

cation) and SBB (Foundation for the Cooperation of Institutes for Vocational Training). Together, these organisations set up the International Credential Evaluation ([www.idw.nl](http://www.idw.nl)), which has an information centre where those who do not want to exercise a regulated profession can have their diplomas evaluated. When asked to do so, the expertise centres for the evaluation of diplomas issue written statements about the value in the Netherlands of foreign diplomas or, in case a diploma has not been obtained, education followed abroad.<sup>104</sup> The written statement contains an indication about which value can be attributed to a certain diploma or education. The written statement is merely an advice, from which no rights can be derived.<sup>105</sup>

Those who want to practice a regulated profession (lawyer, nurse, teacher), need to contact one of the 29 competent authorities. Dutch academic titles can be awarded by the Service Implementation Education (DUO) of the Ministry for Education, Culture and Science.

## 5. Description of national policies of integration processes adapted to highly skilled migrants

- *At the central level*

No governmental integration policies are specifically targeted at highly educated and highly skilled migrants. The point of view of the government has always been that these immigrants do not constitute a risk when it comes to integration. The knowledge migrants, as well as their family members, are exempt from the requirement to pass the integration abroad examination prior to arrival, because they are expected to be very well capable of preparing for their arrival to the Netherlands. They are also exempt from the integration duty under the Integration Act, which regulates the integration of foreigners after arrival.<sup>106</sup> Highly skilled or highly educated immigrants who are not knowledge migrants (i.e. who have not acquired their residence permit under the HSM Scheme) are also exempt from the integration obligation under the Integration Abroad Act, and in most cases also from the integration obligation under the Integration Act.<sup>107</sup> Their family members will however need to pass the integra-

---

104 Costs for the declaration are € 123. The written declaration is usually issued between six to eight weeks (<http://www.idw.nl/tarieven-en-behandeltijd.html>, site accessed 19 June 2012). Education institutes can ask for free written declarations regarding the value of foreign diplomas and education for foreign students.

105 <http://www.idw.nl/faq.html>, site accessed 19 June 2012.

106 They are exempted from the obligation to pass the integration abroad exam of the Integration Abroad Act and the obligation to pass the integration examination in the country of the Integration Act because, in the law, the residence of these migrants is defined as 'temporary'.

107 Only immigrants who come to the Netherlands or are staying in the Netherlands for a non-temporary purpose of stay are obliged to integrate. This means that most labour

tion abroad exam prior to coming to the Netherlands, and will also face an integration obligation once they are in the country.<sup>108</sup>

Whilst the labour migrants (knowledge migrants as well as 'ordinary' labour migrants) and the family members of knowledge migrants are exempt from the integration obligations under the Integration Abroad Act and the Integration Act, the Aliens Act and the Dutch Nationality Act require them to pass the integration examination the moment they, after five years of legal residence, decide to file for permanent residence or naturalisation. These immigrants might experience the duty to pass the integration examination as a barrier for applying for permanent residence or naturalisation, as they have not been following integration programmes. Hence, as the situation is now, the integration examination will probably hamper rather than promote the integration of the highly skilled, both knowledge migrants and those not meeting this definition, as it might stand in the way of their application for a permanent status or a Dutch passport.

Attention to this problem has been paid by Socialist Party MPs in the framework of the discussions on the Act on Modern Migration Policy. These MPs pointed at the problems highly skilled migrants would have when applying for a permanent residence permit or naturalisation, in view of their being exempt from the integration obligations.<sup>109</sup> The Minister answered that in these cases, the immigrant would need to independently, i.e. without the (financial) help of the municipality, prepare for the integration examination. A change in policy was not envisaged.

---

migrants are exempt. So-called 'oldcomers' (*oudkomers*), i.e. those migrants who came to the Netherlands prior to the entry into force of the Act, can however be subjected to an integration duty under the Integration Act. A proposal of law has been prepared to abolish the integration duty of the *oudkomers* (TK 33086 nos. 1-3).

108 This obligation does not apply to those family members that originate from a country which is exempt from the visa requirement (USA, South-Corea, Japan, Australia, Canada, New Zealand). The integration abroad requirement entails that the family member has to pass the integration abroad test, which comprises a Dutch language test, testing speaking, listening, and, since 1 April 2011, reading skills, as well as a test on Dutch society. The level of the test is A1 of the European Council's Common Framework for Reference (CEF) ([http://www.coe.int/t/DG4/Portfolio/?L=E&M=/main\\_pages/levels.html](http://www.coe.int/t/DG4/Portfolio/?L=E&M=/main_pages/levels.html), site accessed 14 February 2012). The test costs €350, and can be taken at Dutch embassies or consulates.

The integration obligation under the Integration Act, which regulates the integration of the immigrants once they arrived in the country, comprises that the immigrant needs to pass an integration examination within three years after arrival. The integration examination is taken at level A2 of the CEF and comprises a test of Dutch language skills (listening, speaking, reading, writing and conversation skills) and a knowledge of Dutch society test.

109 TK 2005-2006, 30573, no. 2, p. 29.

Prior to the introduction of the Integration Act, several MPs had voiced their concerns about the negative effect the introduction of the obligation to pass the integration examination would produce for highly educated immigrants, who would possibly be deterred from choosing the Netherlands as country of settlement.<sup>110</sup> In reply, the Minister for Aliens Affairs and Integration stated that the highly educated workers would only be confronted with the obligation to pass the integration examination in case they would choose to settle in the Netherlands permanently, something which is not obligatory. Their choice for the Netherlands would hence not be affected by the integration obligation, which in the first instance does not apply to them.<sup>111</sup> The Minister furthermore stated that highly educated labour and knowledge migrants would not have 'insurmountable difficulties passing an exam, which would also be feasible for un- and low educated unemployed family migrants'.<sup>112</sup> Finally, the Minister pointed at the attractiveness of the Netherlands for the highly educated labour and knowledge migrants once the Integration Act would come into force: countries with large integration deficits would experience social problems, which would consequently be less attractive for these immigrants.<sup>113</sup>

Lastly, there is a group of highly skilled migrants who are subjected to the integration obligations under Dutch law, namely those who have not come to the Netherlands as labour migrants, but as family members or refugees. These immigrants will not face the integration examination the moment they apply for permanent residence or naturalisation, but at an earlier moment. It is however questionable to what extent the obligation to pass the integration examination actually improves integration. Research has shown that a positive effect on the integration could not be confirmed (Strik, Luiten & Van Oers 2010: 97). Complaints have been uttered about the content and the uniform level of the test. Preparation for the knowledge of society part of the examination appeared to take up too much time, at the expense of learning the language. Due to the uniform level of the test, the test could not meet the demands of higher educated immigrants, who are mainly interested in improving their chances of finding a (better) job. As an integration course teacher put it, the courses and the examination are a 'big disappointment' for the candidates, mainly those with higher intellectual capacities.<sup>114</sup> The possibility to offer intensive Dutch language courses to higher educated immigrants or immigrants with higher intellectual capacities with an integration obligation is provided for, but hardly

---

110 TK 2006-2007, 30308 E, p. 6.

111 TK 2006-2007, 30308, F, p. 26.

112 TK 2006-2007, 30308, F, p. 27.

113 TK 2006-2007, 30308, F, p. 27.

114 Anja Sligter, 'Allochtoon leert geen Nederlands op cursus' [*Immigrant does not learn Dutch in course*], *de Volkskrant* 23 October 2009.

used by municipalities in practice.<sup>115</sup> This means that the integration obligations have only marginally contributed to the integration of highly skilled migrants.

#### MUNICIPALITIES AND COMPANIES

Whereas there is no explicit integration policy at the central level targeting highly skilled (labour) migrants, companies and municipalities offer these migrants numerous products and services which aim to support their stay in the Netherlands.<sup>116</sup> Examples of this 'hospitality policy' are mentioned below.

- *Municipal initiatives*

Not only at the central level, but also at the de-central, municipal or regional levels the need is felt to attract highly skilled migrants, by creating a favourable climate for companies and a pleasant environment for knowledge migrants (Van Bochove, Rusinovic & Engbersen 2010: 9).<sup>117</sup> Research has indeed shown that municipal policy can make knowledge migrants feel more welcome, leading them to decide to stay in the city to live and work for a longer period of time (Van Bochove, Rusinovic & Engbersen 2010). For that reason, Dutch cities have in recent years developed policies that explicitly target knowledge migrants. Information centres for expats have for instance been opened in The Hague, Amsterdam, Nijmegen, Leiden and Eindhoven, and, as mentioned above, in cooperation with the IND, expat centres have been created. In 2009, the Amsterdam Expat centre started a Partnership Programme, the aim of which it is to direct expats to reliable service providers in a number of expat related sectors, which include banking, childcare, language courses, media and legal services.

Whereas there are differences in the services offered to immigrants, the goals of the policies developed by the cities are similar: municipal websites show that they want to offer the expats a 'warm welcome' by 'rolling out the red carpet' so that they 'feel at home' (Van Bochove, Rusinovic & Engbersen 2010: 9). The larger municipalities have created special web-sites for knowledge migrants, or 'expats', directing them to services which might be of help. The city of Rotterdam, which profiles itself as 'World Port World City' has opened an 'expat desk' which provides information on a range of topics, including government policy, settling in, leisure and family matters. Furthermore,

---

115 Lea Ward & Bernadette Kuiper, 'Dit gaat veel te langzaam voor technicus Khalid. Overheid moet inburgeringsles op verschillende niveaus aanbieden.' [*This goes much too slowly for Khalid the technician. Government should offer integration lessons at different levels*], *NRC Next* 7 April 2010.

116 Aniek Smit, 'De kansrijke migrant bestaat niet', *de Volkskrant* 25 October 2011.

117 Rotterdam, for instance has created a special agency, the Rotterdam Investment Agency (RIA), which supports international companies during their establishment in Rotterdam (<http://www.rotterdam.nl/rotterdamaantrekkelijkvoorinternationalebedrijven>).

a monthly meet-up for internationals is organised in a café.<sup>118</sup> In similar vein, the city of The Hague has opened up the The Hague International Centre, which offers the 'welcome to the Hague programme' six times a year. During this meeting, expats will be offered a better understanding of The Hague, and at the same time provides an opportunity for the expats to expand their networks and meet other members of the international community. The programme includes a guided tour of the city of the Hague.<sup>119</sup> The city of Eindhoven on the other hand has conducted a research into the wishes of the international knowledge workers in the region of South-East Brabant regarding accommodation<sup>120</sup> and the wishes of the growing Indian society in the city.<sup>121</sup>

From this brief overview it becomes apparent that municipalities intend to give their knowledge migrants a 'red carpet welcome'. Research conducted by the Nicis institute into the integration of knowledge migrants in the municipalities of The Hague and Rotterdam however showed that many of the interviewed highly skilled migrants from Rotterdam were not aware of the website and the expat desk, services which had been especially created for them (Van Bochove, Rusinovic & Engbersen 2010: 47). The research furthermore showed that, despite the welcoming attitude of the municipalities, the knowledge migrants experienced several barriers in their integration, the most important barrier being language (Van Bochove, Rusinovic & Engbersen 2010).<sup>122</sup> Whereas they can mostly cope perfectly using English, many of the interviewed migrants felt that they are disconnected from important aspects of life, such as contacts with Dutch citizens (Van Bochove, Rusinovic & Engbersen 2010: 39).

Whilst the fact that most Dutch citizens speak good English is generally considered an advantage, this advantage transforms into a disadvantage when the migrant wants to learn Dutch. Many follow language courses, but in order to properly learn the language, it is necessary to practice in real life, something which appears hard to do, since Dutch nationals tend to switch to English the moment they hear someone's Dutch is rather poor. This makes the process of

---

118 [www.rotterdam.nl/expatdesk](http://www.rotterdam.nl/expatdesk), site accessed 9 February 2012.

119 <http://www.denhaag.nl/en/residents/to/The-Hague-International-Centre.htm>, site accessed 9 February 2012.

120 [http://eindhoven.notudoc.nl/cgi-bin/showdoc.cgi/action%3Dview/id%3D169100/type%3Dpdf/Bijlage\\_\\_Huisvesting\\_van\\_de\\_International\\_Knowledge\\_Workers\\_in\\_Zuidoost-Brabant.pdf](http://eindhoven.notudoc.nl/cgi-bin/showdoc.cgi/action%3Dview/id%3D169100/type%3Dpdf/Bijlage__Huisvesting_van_de_International_Knowledge_Workers_in_Zuidoost-Brabant.pdf), site accessed 14 February 2012.

121 [http://www.hetkenniscentrum.nl/stedelijkeeconomie/Producten/Docbank/Innovatie/Kenniseconomie/"Steden\\_kunnen\\_bij\\_de\\_kenniseconomie\\_aanhaken\\_het\\_zelf\\_opbouwen\\_is\\_weinig\\_realistisch"](http://www.hetkenniscentrum.nl/stedelijkeeconomie/Producten/Docbank/Innovatie/Kenniseconomie/), site accessed 14 February 2012. Based on the conclusions of this research, it was decided to offer courses in classical Indian music on schools of music.

122 Another barrier that was mentioned was the fact that the Dutch, in the eyes of the highly skilled migrants, apply a strict separation between work and private life, and the 'closedness' of groups of friends (Van Bochove, Rusinovic & Engbersen 2010: 38).

integration harder (Van Bochove, Rusinovic & Engbersen 2010: 37). As both labour migrants and the family members of knowledge migrants do not fall under the scope of the acts relating to integration, existing legislation does not solve this problem. The Nicis research therefore recommended the municipalities to offer the knowledge migrants more opportunities to learn Dutch, while at the same time providing more information in English (Van Bochove, Rusinovic & Engbersen 2010: 52).

Even though they experienced difficulties in their integration, most of the interviewed migrants indicated to not have an end date of their stay in the Netherlands in mind, and to want to stay in the Netherlands for a longer period of time (Van Bochove, Rusinovic & Engbersen 2010: 23-24). At the same time, a research commissioned by the Ministry for Economic Affairs showed that the largest part (40 per cent) of the knowledge migrants did not know yet whether they would stay in the Netherlands or not. Twenty per cent of the interviewed knowledge migrants originating from the US and Canada indicated they wanted to leave the Netherlands before the residence permit ended, compared to ten per cent of the knowledge migrants originating from Asia (Berkhout, Smid & Volkerink 2010: 41-42).

- *Private companies*

According to an ex-employee of a large multinational company, who had ample work experience in the international mobility department, private companies 'do most' when it comes to integrating their foreign highly skilled workers:

*'They have to, because there is nothing. Companies need to do something to take care of their workers. The workers depend on what the companies offer.'*

According to this respondent, companies offer their foreign workers the assistance they need to settle in their new country. What they exactly offer will depend on the needs of the individual migrant: will he or she come alone, or with family? How long will the migrant stay? In most cases, the migrant will be assisted in matters such as finding appropriate accommodation, moving house, opening a bank account, finding a GP, finding a school for the children, etcetera. In case the partner comes along, possibilities are created for these partners to follow a study or to participate in networks required for social contacts. For these services the companies offer their highly skilled workers, they will generally hire companies specialised in offering so-called 'relocation assis-

tance'.<sup>123</sup> According to the respondent, such assistance is essential, since 'first impressions are important'.

Whereas the services provided to the immigrant will depend on the individual circumstances, companies will try to make the offer as uniform as possible, in order to make sure that everyone is treated fairly. This means that the services offered to an immigrant who is hired on a local contract and who intends to stay for a longer period of time or on a permanent basis will not differ much from those offered to immigrants hired on a so-called 'expat contract', who will be in the Netherlands for a shorter period of time. In both cases, services will be offered when the immigrant arrives. These can comprise a language course, but such a course will mostly be offered for a short period of time (40 hours) only, and teach the immigrant to 'get by' in daily life, to be able to make him- or herself understood when doing grocery shopping. Once the immigrant has settled in, the services provided are reduced and will soon come to an end.

*'All companies offer their migrant workers relocation assistance. This assistance will continue until the migrant has arrived, and will comprise a language course, but will end there.'*

Whereas for all highly skilled workers counts that they are very well able to manage at work and in their private lives using English and the language of origin, immigrants who settle in the Netherlands on a permanent basis will start to feel the need to learn Dutch eventually, especially the moment the children start to attend Dutch schools. According to the respondent, the immigrant will then need to find appropriate language courses by herself; the relocation services offered by the companies have by then already come to an end. According to the respondent, this works out fine in practice, as she has not come across specific problems in this regard.

A problem does occur when Dutch nationals, sent abroad to countries outside the EU by their companies, want to bring over their third-country national partners or spouses to live with them in the Netherlands. These spouses are then required to pass the integration abroad test before arrival. Once they arrived, they will be subjected to the integration obligation of the Integration Act. The knowledge they gathered in integration courses in the Netherlands will vanish

---

<sup>123</sup> Different companies can be hired for different tasks. For instance, when it comes to moving house, several companies have special 'relocation departments' specialised in moving expats. There are also companies who pick up the immigrants from the airport, if required in a car with special children's seats, and take things further from there (e.g. show the expats around the Netherlands, register the children in a school, show where the GP is, etc.).

once their partner is again placed in a foreign country, which means that the spouse or partner will have to start learning Dutch all over once they are back in the Netherlands. These specific problems however do not apply to highly skilled third-country nationals and their family members, since, as we have seen above, they are exempt from the integration obligations under Dutch law.<sup>124</sup> According to the respondent, these third-country national highly skilled workers, also those who are in the top segment of a Dutch multinational company or the Dutch office of a multinational company, 'do not have to comply with anything. They often do not even speak Dutch.'

## **6. The challenge of circular talent management of highly skilled migrants**

Promoting circular migration has been regarded in the Netherlands as a strategy combining the interests of the migrant, the country of origin, and the country of destination: the 'triple win' situation. Nevertheless, temporary and circular migration is considered the last option in a package of measures to be taken to reduce the shortages in the labour market. The general opinion is that the solution to the problem of the ageing labour market population should mainly come from an increase in labour participation of groups of people who currently are – either partly or entirely – still in the sidelines (EMN 2010a).

Since the residence permit of the highly skilled is not linked to a maximum period of residence, policy regarding temporary and circular migration policy does not apply to them. Policy plans and recommendations for temporary and circular migration particularly target labour migrants in the middle and bottom segments (medium educated and low educated migrants) (EMN 2010a: 5, 15). An example is the circular migration pilot project 'Blue Birds', launched in 2009 at the initiative of the Ministry for Foreign Affairs, the Ministry of Security and Justice, and the Ministry of Social Affairs and Employment and implemented by the HIT foundation. The upper limit for participation in the project was determined by the HSM scheme: immigrants who would be able to come to the Netherlands as knowledge migrants under the Scheme were excluded from participation (EMN 2010a: 20). The primary target group was constituted by immigrants with a secondary vocational training (MBO), who would be given the opportunity to live and work in the Netherlands for a maximum period of two years ('learning on the job'). The pilot encouraged labour migrants to develop increased self-sufficiency and to maximise their individual development (EMN 2010b: 52). The project's aim was to investigate whether temporary labour migration actually produces advantages for all parties concerned: the

---

<sup>124</sup> EU nationals are also exempt from the integration obligation.

migrant, the Dutch labour market, and the countries of origin (in casu South Africa and Indonesia). It was the government's hope that the project would prevent poverty and brain drain in the long term (EMN 2010b: 52). The project would run until 30 December 2012 (EMN 2010a: 20-21). In 2011, it was however decided that the pilot project would be stopped, because the HIT foundation had problems finding Dutch employers in the sectors for which workers could be contracted who were willing to offer a two year contract to educated workers from Indonesia and South Africa (De Lange 2011b: 433).

#### BRAIN DRAIN

In the Dutch public and political debate on migration from developing countries to industrialised countries, the fear of 'brain drain' has been a prominent theme for years. An example is the objection from members of the Socialist Party, expressed during the discussions in the Parliament on the Modern Migration Policy Bill, to the principle of 'enticing the best people from poorer countries to serve our own interests, the economic interests of the Netherlands'.<sup>125</sup> In Dutch politics and society, ethical concerns regarding the risk of brain drain have been expressed in particular in relation to employing medical staff from developing countries which experience a shortage of such staff (EMN 2010a: 16). Concerns relating the employment of medical staff from abroad also received attention in the media and the political debates because of concerns related to the quality of the Dutch health care (De Lange 2007: 353). This explains why, despite the low numbers of labour migrants in the health care sector coming to work in the Netherlands, labour migration in this sector has been receiving a fair amount of attention.

In order for medical staff to be able to work in the Netherlands, the regular conditions for obtaining a residence permit apply, which means that the immigrant will need to acquire a work permit.<sup>126</sup> Since December 2005, medical practitioners from outside the EEA are required to participate in an assessment procedure, on the basis of the results of which an education trajectory is determined.<sup>127</sup>

Whereas the Dutch government claims to exercise a high level of restraint when it comes to employing medical staff from third countries which experience shortages,<sup>128</sup> several hospitals appeared to have actively recruited OR (operating room) staff from India, a country which indeed experiences shortages of such staff. Several Socialist Party MPs asked questions in parliament, and

---

<sup>125</sup> TK 2009-2010, 53-4861, 10 February 2010.

<sup>126</sup> In case the salary criterion is met, the employee will however be qualified as a knowledge migrant, and by consequence not need a work permit.

<sup>127</sup> For further details, see below.

<sup>128</sup> TK 2009-2010 Appendix to proceedings 424, answer to questions 3 to 6.

spoke of 'neo-colonial practices of hospitals' (EMN 2010a: 17).<sup>129</sup> Concerns relating to practical problems, such as language barriers and cultural differences, were however also expressed. These concerns found their base in negative experiences with labour migration projects for nursing staff from Poland, Indonesia, the Philippines and South Africa, which proved to be unsuccessful: the recruited staff was found to be unreliable, and misunderstandings regarding the salaries, the educational levels, and work experiences, as well as insurmountable cultural differences and language problems had been reported (EMN 2010a: 16).<sup>130</sup>

To prevent and combat brain drain, a Governance Code for socially responsible business practices and a Quality Mark for Intermediary Agencies for Foreign Workers have been developed (EMN 2010a: 17).<sup>131</sup> At the European level, a comparable code of conduct for the ethical recruitment of medical staff from outside the EU has however hardly been developed.<sup>132</sup> Whereas different viewpoints in EU Member States will probably stand in the way of the development of such a code of conduct in the near future, the Dutch government has claimed to continue its efforts to 'intensify the current discussion on the EU level, aimed at reaching clear agreements on the conditions to recruit in developing countries'.<sup>133</sup> Furthermore, the Dutch government makes efforts for the global acceptance of the WHO's Code of Conduct to recruit medical staff in an ethically responsible way, something which the EU in general also strives for.<sup>134</sup> In this regard, the Netherlands strives for an amendment of the proposed Code, in order to include private organisations, which care institutes in the Netherlands are. The Netherlands is also setting up a separate fund for training domestic specialised hospital staff in order to prevent hospitals to recruit from outside the EU, which can prove to be an instrument to prevent brain drain in the future (EMN 2010b: 51). Lastly, projects to repair the consequences of brain drain have been developed by NGOs, who received financial support from the government (see below).

Following the wish of several political parties to set up compensation projects in the countries where brain drain was causing damage, a study was conducted into how brain drain could be prevented and combated (EMN 2010a:

---

129 TK 2009-2010 Appendix to proceedings 424 and TK 2009-2010, 2010Z12640, question number 8. Next to the hospital in Groningen, at least four other Dutch hospitals also recruited OR assistants in India in 2008 and 2009 (EMN 2010a: 16).

130 Advisory Committee on Aliens Affairs, May 2009, *Tijdelijke Arbeidsmigratie 2015-2035*.

131 A separate Governance Code, developed by the Care Sector Organisation, applies for the Care Sector since 1 January 2006.

132 TK 2009-2010, 30573, no. 54.

133 TK 2009-2010, 30573, no. 54, p. 9.

134 TK 2009-2010, 29282, no. 96, p. 2.

17).<sup>135</sup> According to the experts that carried out the study, policy to counter or compensate brain drain should be demand-driven by developing countries, and countering brain drain by means of inspections and discouraging measures would hardly be effective.<sup>136</sup> The former Secretary of State for Justice promised to work out the results of the study in concrete policy proposals (EMN 2010a: 17).

Whereas it is conscious of the negative effects recruiting staff from developing countries will cause, the Dutch government also emphasised the positive effects: money transfers, investments, knowledge exchange and commerce by the entrepreneurs among the migrants.<sup>137</sup> Consequently, it is of the opinion that migration may result in brain gain rather than brain drain.<sup>138</sup> The government pointed out that the question regarding the policy which needs to be applied to counteract brain drain needs to be answered taking account of the sector in which the labour migration takes place, as well as the country of origin.<sup>139</sup> Furthermore, the government has pointed at the limited number of high skilled migrants from developing countries, thereby claiming that the Dutch responsibility for the phenomenon of brain drain is only small.<sup>140</sup> Not implementing the article in the Blue Card Directive allowing for the denial of a residence permit in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin (Article 8(4) Directive) was however not justified in reference to the low responsibility for brain drain, but to the fact that there is no national policy regarding ethical recruitment (Groen & De Lange 2011: 344).<sup>141</sup>

#### BRAIN WASTE

As regards over-qualification, or 'brain waste', i.e. the state of being more skilled or educated than is necessary for a job, Eurostat statistics show that in 2008, the over-qualification rate for foreign citizens aged between 25 and 54 in the Netherlands was 24 per cent, compared to twelve per cent for nationals

---

135 TK 2009-2010, 30573, no. 15.

136 TK 2009-2010, 30573 no. 54, p. 10.

137 TK 2009-2010, 30573, no. 54, p. 9.

138 Policy memorandum 'International Migration and Development 2008'. In this memorandum, the government designated the strengthening of the relationship between money remittances and development as its prime focus priority (EMN 2010a: 17).

139 TK 2009-2010, 30573, no. 54, p. 9-10.

140 TK 2009-2010, 30573, no. 34. From this letter it became apparent that, in 2008, only for a few developing countries (Colombia, Egypt, Indonesia, Pakistan, Vietnam, South Africa, Surinam), had more than ten residence permits for knowledge migrants been granted. Looking at residence permits for knowledge migrants in the health care sector, less than ten permits had been granted to migrants from developing countries. These countries were Colombia, Georgia, Egypt, Indonesia, South Africa and Surinam.

141 *Staatsblad* 2010, 307, p. 129.

(Eurostat 2011a: 105).<sup>142</sup> In 2009, these percentages were 26 per cent compared to thirteen per cent (Eurostat 2011b: 84). Foreign citizens were thus twice as likely to be overqualified as nationals. In this sense, the situation in the Netherlands equals the situation in the EU-27 (Eurostat 2011a: 102).<sup>143</sup> The gap, which indicates a potential misuse of migrants' skills and qualifications, in the Netherlands, as in the EU in general, was particularly acute for third country nationals: compared to EU citizens, who had an over-qualification rate of 15 per cent, the rate for third country national foreigners in 2008 was 38 per cent (Eurostat 2011a: 102, 105). In 2009, this rate was 19 per cent for EU citizens, compared to 40 per cent for TCNs (Eurostat 2011b: 84).

The over-qualification rate however appears to diminish with length of residence. Whereas the over-qualification rate of recent third country national immigrants aged between 25 and 54 in 2008 was 49 per cent, this rate reduced to 31 per cent for settled TCNs. An explanation for this development is that as they spend more time in the host country, foreign nationals are more likely to have their qualifications and skills earned abroad recognised and should have gained proficiency in the Dutch language (Eurostat 2011a: 103). However, compared to the over-qualification rate of nationals, the rate of settled TCNs still lay almost 20 percentage points higher.

As in the EU-27 in general, there seems to be a double disadvantage for foreign women in the Netherlands (Eurostat 2011a: 130). Whereas in 2008 the proportion of overqualified national women (14 per cent) was three percentage points above the proportion of overqualified national men (11 per cent), the share of overqualified foreign women was seven percentage points higher than that of foreign men, and 28 percentage points higher than the over-qualification rate of national men (Eurostat 2011a: 105). In 2009, the difference in over-qualification rate of third-country national women aged between 25 and 54 (43 per cent) compared to the over-qualification rate of national men increased to 32 per cent.

#### INITIATIVES TO COMBAT BRAIN WASTE

- *Governmental level*

In 2006, in a motion, the parliament has requested the government to speed up the procedure regarding the acknowledgement of diplomas and competences that had been acquired abroad for higher educated refugees, and to improve

---

<sup>142</sup> The over-qualification rate is defined as the proportion of the population with a high educational level (i.e. having completed tertiary education, ISCED 5 or 6), and having low- or medium-skilled jobs (ISCO occupation levels 4 to 9) among persons having attained a high educational level.

<sup>143</sup> In the EU-27, the over-qualification rate for foreign citizens was 39%, compared to 19% for nationals (Eurostat 2011a: 102).

the employment perspectives of this group via short term language- and education trajectories.<sup>144</sup> In reply, the Minister stated that already in 2003, an agreement was reached with the Centre for Work and Income to mediate at the expertise centres (Nuffic and then Colo) for the recognition of international diplomas.<sup>145</sup> After the adoption of the motion, the Centre for Work and Income (CWI) has been spoken to regarding the speeding up of the diploma recognition. Furthermore, the possibility has been created to apply for diploma recognition at the CWI. The procedure for recognition of a diploma was said to be between four to six weeks.<sup>146</sup> Furthermore, the Minister, together with the Association of Dutch Municipalities (VNG), has asked municipalities to allow refugees to follow education whilst retaining their social security benefits. According to the Minister, the foundation for Refugee Students UAF more and more often reported of refugees being allowed by their municipalities to study whilst retaining their benefits. The UAF furthermore engaged in a project for higher educated refugees, subsidised by the department of Social Affairs and Employment, to increase the higher educated refugees' employment perspectives via short-term language and education trajectories. Lastly, the Dutch Council for Refugees, the Employment Centre for Refugees (the Emplooi Foundation), the UAF and the CWI on 1 January 2006 started the 'Job Offensive for Refugees'. The goal of this Offensive was to help 2,600 refugees find a job prior to 1 January 2009.<sup>147</sup> Eventually, 2,300 refugees managed to find a job, which is 90 per cent of the target number.<sup>148</sup>

- *UAF*

The Foundation for Refugee-Students UAF is a foundation the aim of which it is to support higher educated refugees to acquire an appropriate societal position by helping them realise their study plans and acquire a position on the job market that matches their education and capacities.<sup>149</sup> Together with other organisations, through the 'Job Offensive', the UAF strives to help refugees find a job. The department 'Job Support' provides information, guidance and advice to higher educated refugees who are looking for a job or an internship, or those who want to set up a business.

From September 1997 to August 2007, the UAF has helped more than 400 refugee doctors to obtain a registration in the BIG-register, which is re-

---

144 Motie Van Hijum (Christian Democrats), TK 2006-2007, 29544, no. 77.

145 TK 2007-2008, 29544, no. 133.

146 TK 2007-2008, 29544, no. 133, p. 2.

147 TK 2007-2008, 29544, no. 133, p. 2-3.

148 <http://www.uaf.nl/Portals/0/files/Eindrapport%20Banenoffinsief.pdf>, site accessed 13 February 2012.

149 [http://www.uaf.nl/over\\_het\\_uaf/missie](http://www.uaf.nl/over_het_uaf/missie), site accessed 7 February 2012.

quired to work in the Netherlands as a medical professional.<sup>150</sup> These fled doctors were already working as doctors or specialists in their country of origin. In 95 per cent of cases, their diploma, attained outside the EEA, was not acknowledged as equivalent to Dutch diplomas by the Ministry for Public Health, Well-being and Sports.<sup>151</sup> Until December 2005, the fled doctors were generally directed to one of the eight Dutch medical faculties, where they would, after having passed the State exam Dutch as a Second language, programme two, be able to follow a shortened two- to four year study-trajectory for medical students.<sup>152</sup>

Since December 2005, the procedure for foreign doctors has changed: every doctor from outside the EEA is required to follow an assessment procedure, on the basis of which an education trajectory is determined. Since this procedure proved to be inaccessible for many fled doctors, the influx of foreign doctors in the medical faculties stagnated.<sup>153</sup> The reason why the refugee doctors experience the assessment procedure as a hurdle lies in the first part of the assessment, in which Dutch language skills are tested at a higher level than before.<sup>154</sup> In 2008 and 2009, 19 of 77 students passed the new language examination (Herfs 2009b).

In December 2007, the UAF (Universitair Asiel Fonds; University Asylum Fund) started the project 'Latent Talents', a project which envisages to preserve fled doctors, dentists and paramedics for the Dutch health care. The project offers doctors, dentists and nurses a preparation trajectory for the assessment procedure. The UAF strives to build a good and constructive preparation trajectory, something which is lacking at the central level. For those doctors and dentists who, despite a proper preparation, are not admitted to the assessment, or who cannot participate in the assessment for personal reasons, the UAF looks for alternative education and professions in the Dutch health care system, in order not to lose medical talent (Both & Veltman 2010: 6).

---

150 *Wet Beroepen in individuele gezondheidszorg* [Act on Professions in Individual Health Care].

151 In respect to all medical professionals, the percentage of qualifications that are accepted is higher: 11% in 1999 and 10% in 2002 (Herfs 2009a).

152 The State exam Dutch as a second language, programme two, tests Dutch language skills at CEF level B2, and assesses whether someone speaks sufficient Dutch to follow education, or have a job at university or higher vocational education level; [http://www.cve.nl/item/wat\\_is\\_het\\_staatsexamen\\_nt2](http://www.cve.nl/item/wat_is_het_staatsexamen_nt2), site accessed 6 February 2012.

153 Other, less important, reasons for the stagnating numbers of foreign doctors in medical faculties are the extension of the EEA, and the decrease in the number of refugees in the Netherlands (UAF 2010: 7).

154 The second part of the assessment tests the medical knowledge and practical skills. The second part can only be taken after the first part has been successfully completed (UAF 2010: 7).

In 2010, the UAF conducted a research into the career paths of those doctors who came to the Netherlands as refugees, and who, with support from the UAF, could start following medical training and subsequently conduct a medical profession under the old procedure (Both & Veltman 2010).<sup>155</sup> The aim of this research was to investigate what kind of talent was lost to the Dutch health care sector, now refugee doctors, due to the new assessment procedure, are excluded. An answer to this question appears to be especially urgent since the Netherlands, where international medical experts (IMGs) represent only two per cent of the doctor workforce, suffers from a shortage of doctors, especially in the fields of care for the elderly, general practice and psychiatry (Huijskens, Hoosharian, Van Der Vorst & Scherpbier 2010: 796).

The group of refugee doctors interviewed for the purpose of the UAF research appeared to have waited and studied for on average 6,6 years before they were allowed to conduct a medical profession. This amount of time was also required to come to terms with the flight, and with issues that cause sorrow such as the asylum procedure, family members that are left behind, problems to get diplomas and grade lists to the Netherlands, frustration caused by the fact that the original medical profession cannot be conducted, the lack of study facilities in the refugee centre, etc. (Both & Veltman 2010: 7). On average, a refugee doctor, in the period 1997-2007, had to have studied for an additional three years at a medical faculty before being able to work as a medical professional in the Netherlands. The average age of the doctors was 37 years. Due to the (relatively) high average age, the doctors could be confronted with barriers in the form of upper age limits for post-graduate specialist training of approximately 30-35 years for certain specialties, such as surgery and anaesthesiology. The refugee doctors therefore considered higher age the greatest barrier to finding a position as a trainee specialist (Huijskens et al. 2010: 798).

Next to age, financial problems appeared to constitute important and common barriers for refugee doctors: without a permanent residence permit, which takes at least five years to obtain, the Government offers little support (Huijskens et al. 2010: 798). Refugee doctors can however obtain grants from organisations such as the UAF, which applies different standards to recognise someone as a refugee than the Government. Furthermore, between 2002 and 2005, many municipalities provided financial assistance to international medical graduates with Dutch spouses (Huijskens et al. 2010: 798).

The UAF research showed that the large majority (96 per cent) of the refugee doctors, who, with the help of the UAF, managed to graduate from a Dutch medical faculty, had a job. Furthermore, most doctors (71.1 per cent) had followed, or were currently following, specialist training (Both & Veltman 2010:

---

<sup>155</sup> In total, 234 doctors were interviewed.

12-13). The majority of the doctors appeared to follow a different education in the Netherlands than the education which would lead them to the profession they had had in their country of origin.<sup>156</sup> This means that the competences which had been acquired were not used to the fullest (Both & Veltman 2010: 15). Most (60 per cent) of the interviewed refugee doctors however indicated to be satisfied in their current positions (UAF 2010: 24). A similar percentage indicated to have found the 'ideal job' (Both & Veltman 2010: 26).

The majority (75,2 per cent) of the refugee doctors interviewed in the UAF research had found a job within three months after graduating in the Netherlands. The respondents who were rejected for the application for their first jobs mentioned a number of reasons for their rejection, such as discrimination or being of foreign descent, the high age, the insufficient mastering of the Dutch language, or not having a residence permit on the moment of the application. In most cases, a combination of factors however appeared to have played a role (Both & Veltman 2010: 18). The research by Huijskens et al. has shown that refugee doctors could benefit from a course on how to apply for a job (Huijskens et al. 2010: 802). Some of the refugee doctors had reported that they had never been in a position where they had been required to apply for a job in their country of origin, and that for that reason, they were unsure how to behave during a job interview. Some of the refugee doctors mentioned the absence of a course on application skills as one of the reasons why they had difficulties in their job interviews.

#### PROJECTS AIMING AT THE TRANSFER OF KNOWLEDGE AND TECHNOLOGY<sup>157</sup>

As regards projects or networks aiming at the transfer of knowledge of highly skilled migrants, the IOM the Netherlands has launched three projects with regard to temporary return of migrants to their countries of origin for the purpose of strengthening capacity. In the context of these projects, immigrants are seen as 'agents of exchange', who will have little difficulty in assimilating, and are able to effectively work together with local organisations (EMN 2010: 23). Two of the projects explicitly target high or medium skilled immigrants. Projects aiming at the exchange of knowledge by highly skilled migrants have furthermore been developed by the PSO Association (Personal Cooperation in Development Countries). These projects will be briefly described below.

---

<sup>156</sup> Only two of the 35 specialists among the interviewed refugee doctors were currently working in their specialty.

<sup>157</sup> This paragraph is a summary of the pages 24 to 26 of the EMN Netherlands Report *Temporary and Circular Migration; Empirical Evidence, Current Policy Practice and Future Options in the Netherlands* (2010), and information obtained from [iom-nederland.nl](http://iom-nederland.nl).

- *IOM the Netherlands*

- *MIDA Ghana Health*

This project kicked off in 2003, and is currently in its third phase, which started in April 2008. The project will run until 2012. The project has been launched the IOM in close cooperation with the Ministry of Health of Ghana, the Dutch embassy in Accra and the Ghanaian diaspora in Europe. The reason for starting the project was the brain drain of, in particular, doctors and nursing staff in Ghana, and its consequences for the quality in the Ghanaian health care sector. The objective of the project is to contribute to the development of, and improvement in, the health sector in Ghana by simultaneously enabling Ghanaian migrants in EU countries to transfer knowledge, skills and experience through temporary assignments in Ghana and giving health workers in Ghana the opportunity to do specialised training at health care institutions in the Netherlands. Rather than aiming to end the exodus of medical staff from Ghana, assignments in the project relate to capacity building, which will in turn contribute to improving the working conditions for medical staff in Ghana, as a result of which it will become more attractive to work in Ghana.

Since the start of the project, the IOM has facilitated 200 temporary assignments. In total, in the course of the project, approximately 10 Ghanaians had travelled to the Netherlands or the United Kingdom for a short traineeship or training course in 2010.

- *Temporary Return of Qualified Nationals II (TRQN II)*

This project, financed by the Dutch Ministry for Foreign Affairs, aims at the reconstruction and development of Afghanistan, Bosnia and Herzegovina, Ethiopia, Georgia, Sierra Leone and Sudan. This is being realised by the temporary assignment to these countries of highly skilled migrants who live in the Netherlands or another EU country and who originate from Afghanistan, Bosnia and Herzegovina, Ethiopia, Georgia, Sierra Leone or Sudan. The objective of the assignments, which last between several weeks to a maximum period of three months, is to contribute to the capacity building of local institutions by means of a 'train the trainer' approach.<sup>158</sup> Virtual assignments which are intended for online transfer of knowledge have also been facilitated.

TRQN II ran until June 2011, but has been postponed until June 2012 for Afghanistan and Sierra Leone. In total, 450 assignments have been financed.

---

<sup>158</sup> In this formula, one employee is trained and he/she is subsequently assigned the task to train other employees.

- *PSO Association*

PSO is an association that consists of nearly 60 Dutch development organisations, which has as objective to facilitate the dispatching of professionals in the framework of development cooperation.<sup>159</sup> In 2006, PSO set up a stimulation fund named 'Cross Over', for the secondment of highly skilled and second-generation migrants to their countries of origin. The fund provides for possible supplementary courses, allowances as supplements to local salaries as well as allowances for the costs of family reunification, housing, and supplementary insurance. In 2008, four projects were completed successfully, and there were thirteen secondments.

## 7. Conclusions

Taking the presumption formulated in the second Handbook on Integration for policy-makers and practitioners that 'rules related to the admission can be considered a starting point for the integration' as point of departure, the Dutch legal framework relating to highly skilled migrants, or 'knowledge migrants' as they are referred to in the Dutch legal definition, must probably be seen as one of the most integration enabling frameworks in Europe. Knowledge migrants in the Netherlands can profit from the Highly Skilled Migrants Scheme, which allows them to work in the Netherlands without a work permit, and provides for speedy procedures. They are not defined according to their skills or level of education, but according to their salary. Despite the absence of an education criterion in the HSM Scheme, research has shown that the large majority of the knowledge migrants entering the Netherlands under the HSM Scheme had followed a higher education.

Not only the knowledge workers, but also their family members receive a beneficial treatment: they can profit from the speedy procedures, and they have free access to the labour market (i.e. no work permit is required). The fact that family members have unrestricted access to the labour market is considered to make the Netherlands an attractive country of destination for knowledge workers. The lack of accessible information on the right to work for family members has however been reported as a problem. The provision of information in this regard hence needs to be stepped up.

Labour migrants who do not meet the salary criterion need to enter the Netherlands using the regular procedure for labour migrants, meaning that they cannot profit from the speedy procedures, and that their employers need to dispose of work permits. Because of the narrow definition of 'knowledge migrant' under the HSM scheme, this also applies to highly educated migrants

---

<sup>159</sup> [www.pso.nl](http://www.pso.nl), site accessed on 25 January 2012.

who do not meet the salary criterion of the Scheme. Since a work permit will only be awarded in case the regular labour migrants are of special value to the Dutch labour market, most regular labour migrants will be highly educated. In this regard, the profile of the regular third country national labour migrants does not differ much from the profile of the knowledge migrants. Migration for low skilled jobs mainly originated from within the EU, as EU citizens do not require work permits (Nicolaas, Verschuren, Wijkhuijs & Jennissen 2012: 97-98).<sup>160</sup>

Knowledge migrants entering the Netherlands under the HSM scheme, as well as 'ordinary' TCN labour migrants, who, as we have seen, are generally highly educated, do not need to comply with the integration obligations under Dutch law. This means that they do not have to pass the integration abroad exam before arrival, and that they neither are subjected to the obligation to integrate once they arrived in the country. Family members of knowledge migrants are also exempt from both integration obligations, but family members from the other labour migrants are not. The fact that family members of knowledge migrants are exempt from the integration obligations in Dutch law that do apply to family members of other labour migrants has been referred to as the application of a double standard: whereas the latter group is required to adapt socially and culturally, the first group is not.<sup>161</sup> On the contrary: as we have seen, municipalities even organise events where they can meet other members of their own expat community, thereby implicitly promoting the knowledge migrants to stay in their own community, and not to look for contacts in the Dutch society. The double standard furthermore becomes apparent from the tax benefit offered to knowledge migrants. Whereas the knowledge migrants receive a 30 per cent tax benefit, 'ordinary' labour migrants and their family members are charged for the supposed socio-cultural 'threat' which goes out from their presence: they need to pay for the integration courses and the integration examination the law requires the family members to pass.<sup>162</sup>

The fact that knowledge migrants and their family members are exempt from the integration obligations provides a number of benefits: since they are not required to pass the integration abroad exam, they can more easily obtain a visa and come to the Netherlands. And since they are exempt from the integration obligations, these obligations will not negatively influence their decision

---

<sup>160</sup> Only Bulgarian and Romanian citizens require work permits, at least until 1 January 2014.

<sup>161</sup> Aniek Smit, 'De kansrijke migrant bestaat niet', in *de Volkskrant* 25 October 2011.

<sup>162</sup> Whereas currently, municipalities pay the courses and the tests for all immigrants who are required by law to pass the examination, a proposal of law formulated by the Rutte Government however aims to end this practice (TK 33086, nos. 1-3). In the future, immigrants will hence need to pay for the integration courses and examination themselves.

to come to the Netherlands. However, as we have seen, highly skilled migrants, be it knowledge migrants or other migrants, do experience integration problems, which are mainly due to the fact that they do not speak proper Dutch. For this reason, the highly skilled migrants, be it knowledge migrants or migrants to whom the HSM Scheme does not apply, might experience the obligation to pass the integration examination as a condition for naturalisation or permanent residence, both of which can be applied for after five years of legal residence, as a hurdle, hindering a more permanent orientation to the Netherlands. Before making a case for the inclusion of the highly skilled migrants or their family members in the target group of the acts relating to integration, it needs to be borne in mind that a link between an improved level of integration and the duty to pass the integration examination has not been established (Strik, Luiten & Van Oers 2010). Requiring highly qualified immigrants to pass the integration examination by virtue of the integration obligation of the Integration Act will hence not contribute to their integration.

Policies aimed at the better integration of highly skilled immigrants exist at the municipal and private levels. Whilst municipalities have developed a range of activities which target the integration of the highly skilled workers, which they hope to have and to hold, research has shown that the highly skilled migrants are often not aware of the initiatives deployed under the municipal hospitality policy. Again, a better provision of information appears to be required. At the private level, companies deploy activities to help their foreign workers settle in their new countries. This 'relocation assistance' will however end once the migrant has arrived and settled in.

As regards the issue of 'brain waste', it can be derived from statistics that a large number of the third-country national labour migrants are performing work which is below their qualifications. Due to the Dutch legislation regarding labour migration, most regular labour migrants will be highly educated. Statistics however showed that the majority of the third-country national labour force is performing qualified or semi-qualified labour. Eurostat statistics on overqualification confirm this conclusion: in the years 2008 and 2009, foreign citizens were twice as likely to be overqualified as nationals. The risk of overqualification was even higher for third-country national women. Activities should hence be deployed to get more out of the potential of the third country national labour force in the Netherlands.

As regards highly skilled immigrants who have not come to the Netherlands as labour migrants, the above has shown that initiatives have been deployed in order to prevent brain waste for these categories. These initiatives however mainly target medical experts and refugees. A foundation for highly educated refugees, the UAF, has deployed initiatives for the refugee doctors to pass the language test in the assessment procedure, required for medical staff from out-

side the EEA to participate in. The UAF also helps highly educated refugees who are not doctors. Similar initiatives regarding highly educated immigrants who are not refugees but family members or labour migrants, are unknown, whereas these immigrants will probably encounter similar problems as the refugees when they want to exercise a profession at their level in the Netherlands. In order to properly combat brain waste, attention should hence also be paid to these groups. This will not only benefit the immigrants, but also the Dutch economy.

## 8. Bibliography

- Berkhout, E., T. Smid & M. Volkerink (2010), *Wat beweegt Kennismigranten? Een Analyse van de Concurrentiekracht van Nederland bij het aantrekken van Kennismigranten*, Amsterdam: SEO Economisch Onderzoek.
- Bochove, M. van, K. Rusinovic & G. Engbersen (2010), *Over de rode loper. Kennismigranten in Rotterdam en Den Haag*, Den Haag: Nicis Institute.
- Both, J. & P. Veltman (2010), *Gevluchte artsen verrijken de Nederlandse gezondheidszorg. Een onderzoek naar de loopbaan van gevluchte artsen in Nederland*, Utrecht: Stichting voor Vluchteling-Studenten UAF.
- Duin, C. van & H. Nicolaas (2010), 'Bevolkingsprognose 2009-2016: Omslag naar lagere groei', *Bevolkingstrends* 58(1), p. 14-21.
- EMN Netherlands (2010a), *Temporary and Circular Migration; Empirical Evidence, Current Policy Practice and Future Options in the Netherlands*, Rijswijk: IND.
- EMN Netherlands (2010b), *Satisfying Labour Demand through Migration*, Rijswijk: IND.
- European Commission, DG justice, Freedom and Security (2007), *Second Edition of the Handbook on Integration for Policy Makers and Practitioners*, Luxembourg: Publications Office of the European Union.
- Eurostat (2011a), *Migrants in Europe. A statistical Portrait of the first and second Generation*, Luxembourg: Publications Office of the European Union.
- Eurostat (2011b), *Indicators of Immigrant Integration; a pilot Study*, Luxembourg: Publications Office of the European Union.
- Herfs, P. (2009a), *Buitenlandse artsen in Nederland*, Utrecht: Universiteit Utrecht.
- Herfs, P. (2009b), 'Buitenlandse arts in Nederland, Diplomabeoordeling, competenties en aanvullende opleiding na assessment', *Cultuur Migratie Gezondheid* 7(3), p. 130-137.
- Huijskens, E., A. Hooshiaran, F. van der Vorst & A. Scherpbier (2010), 'Barriers and facilitating factors in the professional careers of international medical graduates', *Medical Education* 44(8), p. 795-804.
- INDIAC (2009), *Monitor Kennismigrantenregeling 2008*, Rijswijk: INDIAC.
- INDIAC (2011), *Reguliere Migratietrends 2008-2010. De Reguliere Migratie van Onderdanen van derde landen naar Nederland en de EU in beeld*, Rijswijk: INDIAC.
- Jennissen, R. (2012), 'Internationale Migratie naar en vanuit Nederland: algemene trends', in: R. Jennissen (ed.), *De Nederlandse Migratiekaart. Achtergronden en Ontwikkelingen van verschillende internationale migratietypen*, Den Haag: Boom Juridische Uitgevers, p. 33-76.
- Lange, T. de (2011a), 'The Privatization of Control over Labour Migration in the Netherlands: In Whose Interest?', *European Journal of Migration and Law* 2011(13), p. 185-200.
- Lange, T. de (2011b), 'Kroniek Arbeidsmigratie', *Asiel- en Migrantenrecht* (2011)9, p. 426-433.
- Lange, T. de (2011c), *Migration Control through Public-Private Partnerships*, paper presented at the 'Markets for Migration and Development (M4MD): Trade and Labour Mobility Linkages – Prospects for Development' conference, Berne, 13-15 September 2011.

- Nicolaas, H., S. Verschuren, V. Wijkhuijs & R. Jennissen (2012), 'Arbeidsmigratie', in R. Jennissen (ed.), *De Nederlandse Migratiekaart. Achtergronden en Ontwikkelingen van verschillende internationale migratietypen*, Den Haag: Boom Juridische Uitgevers, p. 77-110.
- Strik, T., M. Luiten & R. van Oers (2010), *Country Report the Netherlands. Report published in the Framework of the INTEC Project: Integration and Naturalisation Tests: the new Way to European citizenship*, Nijmegen: Centre for Migration Law. Available at: <http://www.ru.nl/law/cmr/projects/intec/>.
- WODC (2012), *De Nederlandse Migratiekaart. Achtergronden en Ontwikkelingen van verschillende internationale migratietypen*, Den Haag: Boom Juridische Uitgevers.