DRAFT REPORT on the Free Movement of Workers in The Netherlands in 2005

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General remarks

1. The same two issues that dominated the political debate on the implementation of Community law on free movement of persons in the Netherlands in 2004, continued to be the focus of most public and political attention. Firstly, the employment of workers and service providers from the EU-8 Member States during the transitional period after 1 May 2004 (see Chapter VIII on Enlargement). The political debate on the status of workers of the EU-8 Member Status under the transitional rules after 1 May 2006 will be discussed in the section on draft legislation of Chapter VIII. Secondly, in the prolonged and heated debate on the new Dutch integration policy the question to what extent EU nationals, Turkish nationals and their family members can be required to fulfil the conditions imposed on immigrants by the different elements of the new Dutch policy or whether they have to be exempted from those new measures, because the new obligations are incompatible with equal treatment and standstil clauses or other provisions of Community law (see Chapter VII on Policies of a General Nature).

2. The only visible sign of implementation of Directive 2004/38/EC in 2005 was the decision by the government in October 2005 to propose a change of the law on public assistance (*Wet werk en Bijstand*) to assistance-tourism (*bijstandstoerisme*) by Union citizens, i.e. making sure that Union citizens do not have a claim to public assistance during the first three months of their residence in the Netherlands. Thus the exception allowed under article 24(2) of the Directive will be the first to be implemented in the Netherlands. The relevant Bill (TK 30493) was introduced in Parliament in March 2006. It is unlikely that this change will come into force before 30 April 2006. The other legislative changes required by Directive 2004/38/EC have not yet been introduced in Parliament and, most probably, will only be discussed and enter into force after the end of the transposition period provided in article 40 of the Directive. According to press releases of the Immigration and Naturalisation Service (IND) and of the Association of officials of the municipal population registers, it is the intention of the Minister for Aliens Affairs and Integration that under the Directive 2004/38/EC Union citizens and their third-country national family members still will have to report both with the municipal population registration and with the IND. They will have to make an appointment with the IND for an interview in order to allow the IND to establish whether the person concerned has a residence right under the directive or not.

3. The judgments of the ECJ in *Akrich*, *Bidar* and *Oulane* have been interpreted and implemented in a rather restrictive manner by the Dutch authorities or by the Judicial Division of the State Council; for details see the Chapters I, V and VI.

4. In August 2005 the ministerial instructions to the immigration service on the implementation of the provisions under the Association EEC-Turkey were amended and extended, taking into account the case-law of the Court of Justice. However, with regard to the grounds for loss or withdrawal of the residence rights under Decision no. 1/80 the new instructions are clearly deficient, since they do not take into account the full consequences of the judgment in *Cetinkaya*, both with respect to special protection of admitted family members and those born in the Netherlands and the limited grounds for loss of that status, especially protecting the second and third generation. Moreover, the new instructions could not take into account the more recent judgments in *Aydinli* and *Torun*.

5. The situation, described in earlier reports, that the implementation of EC free movement law under the Aliens Act 2000, as under its predecessor the 1965 Aliens Act, is partial, complex, poorly organized and sometimes plainly incorrect, still holds true for 2005. To a large extent the provisions of Community law on free movement of persons are implemented only in the instructions to the immigration authorities in the Aliens Circular 2000 and not in binding statutory law, as required by the constant case law of the Court of Justice. This situation is not helpful for the correct application of the relevant Community law by the national authorities and by the national judges. This applies to an even larger extent for the implementation of the rules on the residence rights of Turkish citizens and their family members under the Association Treaty EEC-Turkey. The only statutory provision on the issue is one single sentence in the Aliens Act, stating that Turkish nationals with a residence right under

Association Council Decision no. 1/80 are having lawful residence in the Netherlands (Article 8, sub l Aliens Act 2000). The instructions in the Aliens Circular on this issue are incomplete and repeatedly in clear contradiction with the case law of the Court of Justice. This results in the Association rules being often disregarded or incorrectly applied by the immigration authorities and by the courts.

Internetsites

The main portal to legislation, draft legislation and other official government documents is: www.overheid.nl

The main portal to Dutch case law is: www.rechtspraak.nl

Most of the case law mentioned in this report can be found on this website, using the LJN number mentioned in the reference.

Other websites of interest are:
- The website of the Justice Department: www.justitie.nl
- The website of the Department of Social Affairs: www.szw.nl
- The website of the Immigration and Naturalisation Service: www.ind.nl

Chapter I
Entry, residence, departure and remedies

Entry

Texts in force

The judgment of the Court in case C-215/03 (*Oulane*) resulted in a change of policy. No longer proof of identity and nationality is required by means of a valid identity card or valid passport. Other means which unequivocal prove identity and nationality are also allowed for. However, the new policy states on several instances that 'unequivocal' is to be understood as "without any doubt" (WBV 2005/22, *Stcrt*. 2005, no. 89, 11 May 2005). This is not in line with the aforementioned *Oulane* judgment. The administrative practice and policy is on several other points also not in conformity with *Oulane*.

On 16 March 2005 new application forms (model M35-E) were introduced for citizens of the Union and their family members. These forms, which can be used when requesting a residence permit on community law grounds, mention the obligation to show a passport or identity card.

After notification a citizen of the Union or his family member receives a (temporary) sticker (which says "residence on community law notice" (*"verblijfsaantekening Gemeenschapsonderdaan"*) as proof of legal residence. This sticker also contains information relating to the position on the labour market. The sticker is only distributed in case the applicant is in possession of a "document for border-crossing" (*grensoverschrijdingsdocument*) (*Staatscourant* 2005, no. 124, p.21).

The Integration Abroad Act (*Wet inburgering in het buitenland, Staatsblad* 2006, 28)is adopted by the Senate on 20 December 2005 and has come into force on 15 March 2006. This act amounts to a compulsory exam of Dutch language and knowledge of Dutch society and customs for migrants in their home country and refusal of a visa and residence permit if the exam is failed. During the debate in the Senate the Minister received the Commission's reaction on the Bill and the relation to Community law. For the time being, third country national family members will be exempted from the scope of the new act, see further Chapters V and VII.

Judicial practice

Most relevant published cases relate to the residence status of third-country national family members of EU migrants and thus are discussed in Chapter V.

The 's-Gravenhage Court (AWB 03/64285, 03/357, LJN AT4480) faced the question whether the merits of the *Oulane* judgment would also apply to third country nationals, being in this case a Siera Leone national without passport who travelled with his Austrian wife to the Netherlands. The Court generally agreed in conformity with *Oulane*; for third country nationals a passport requirement as only way of establishing one's identity and nationality is also contrary to community law. However, the Court judged the passport requirement as found in Dutch law and the way this requirement is used by the Minister, without stating grounds, to be in line with EC Court case-law.

Literature

Adviescommissie voor vreemdelingenzaken, *Toelating en verblijf voor religieuze doeleinden*, Den Haag.

Miscellaneous

The Netherlands Court of Audit published on 28 September 2005 a report on the use of border control in the fight against terrorism (*Algemene Rekenkamer, "Gebruik van grenscontroles bij terrorisme-bestrijding*"). This report is mainly on control of the outer borders (Schengen borders). The Court of Audit finds with regard to EU nationals a "minimal control" in accordance with the Convention Implementing the Schengen Agreement. A limitation of the control is the fact that EU nationals and EU documents are not systematically checked in SIS and the national OPS system (p.47). In response the

Ministers involved point at the legal impediments, but promised to raise the question of the registration of EU nationals on European level (p.50). The systematically checking of EU nationals and the "minimal control"-requirement would also be raised on European level (TK 2005-2006, 30315, no.3, p. 8).

In the explanatory memorandum on the Treaty between Germany and the Netherlands on cross-border police cooperation and cooperation in criminal justice affairs the use of article 2, paragraph 2 of the Convention Implementing the Schengen Agreement is mentioned (TK 2005-2006, 30407, no. 3, p.19). Article 17 of the treaty allows for cross-border pursuit in cases of evading exceptional border controls pursuant to article 2, paragraph 2. Examples of public order and national security grounds which allow for temporary border controls are said to be: outbreak of fowl pest or foot-and-mouth-disease, football events like the World Championship, European Council Meetings, massive demonstrations and terrorist threats.

Residence

Texts in force

On 1 January 2005 the Act on the identification requirement (*Wet op de uitgebreide identificatieplicht*) came into force. This Act (Stb. 2004, 300 and Stb. 2004, 583) creates the obligation to show on request to a police officer, a special investigator (*buitengewoon opsporingsambtenaar*) or the military police travel documents (as listed in the Act on passports), a driving license or a document as listed in the Aliens Act 2000. The above-mentioned civil servants are authorized to request the documents when "this is reasonably necessary for the exercise of police matters" (art. 8a Public Order Act (*Politiewet*)).

Draft legislation

A proposal for more restrictive public order-clauses (TK 2005-2006, 19637, no. 971) were critically received, for example by the Advisory Committee on Aliens Affairs (ACVZ – '*Openbare orde en verblijfsbeëindiging'*, 30 September 2005) and the Standing Committee of Experts on International Immigration, Refugee and Criminal law (letter of 10 October 2005). The underlying principle of this proposed policy is one of general prevention. Further possible breaches of community law concerning this proposal are: article 13 of Decision No. 1/80 of the Association Council and the equivalence of Citizens of the Union and Turkish nationals under the aforementioned Decision No. 1/80 regarding public order-clauses. In the proposal an incorrect interpretation of article 6 paragraph 2 and article 17 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification is found. A final point of criticism is the fact that these public order-clauses are elaborated in circulars.

On 21 September 2005 the Integration Bill (*Wet inburgering*, TK 2005-2006, 30308, nrs. 1-2 Kamerstuk 2005-2006, 30308, nr. 1, Tweede Kamer, Kamerstuk 2005-2006, 30308, nr. 2, Tweede Kamer) was submitted. This bill should replace the 1998 Newcomer Integration Act (*Wet Inburgering Nieuwkomers*). The bill also includes an obligation to take an exam on Dutch language and knowledge of Dutch society and customs for migrants already residing in the Netherlands. Controversial is the proposal to obligate certain Dutch nationals (only if they have acquired Dutch nationality by naturalization) to take the said exam.

Article 4 paragraph 2 of the proposal contains an exemption for: nationals of European Union member states, the European Economic Area (EEA) and Switzerland. The Dutch national who falls under community law relating to free movement is, as was suggested by the Council of State, also exempted. The same applies to family members under Council Directive 2004/38/EC, the EEA Agreement and the Treaty EC-Switzerland. Finally, the third country national who has acquired the status of long-term resident pursuant to Directive 2003/109/EC after fulfillment of the optional integration requirement in another EU country is exempted. The community law aspects of this proposal will the coming year be debated in the Second Chamber.

Literature

H. Oosterom-Staples, Vrij verkeer van personen – Geen vreemdelingenbewaring van burgers van de Unie als de nationaliteit niet vaststaat, *Nederlands tijdschrift voor Europees recht*, vol. 11 (2005), afl. 5, pag. 91-95.

A. Pahladsingh, I.M. Uitermark, Vrij verkeer van personen - De ontwikkelingen rond artikel 18 EG: nieuwe uitgangspunten opgesteld door het Hof?, *Nederlands tijdschrift voor Europees recht*, vol. 11 (2005), afl. 3-4, pag. 56-61.

T.P. Spijkerboer, L. Slingenberg, Kroniek van het migratierecht, *Nederlands Juristenblad*, 2005, afl. 31, p.1670-1679.

Departure

Texts in force

Aliens detention (*vreemdelingenbewaring*) is in case of a (family member of a) citizen of the Union allowed for after four weeks after it is determined that no residence rights are acquired (art. 8.13 Aliens Decree). An exception is made in 'urgent cases'. The Judicial Division of the State Council (200505057/1, published in JV 2005/348) repeated on 15 July 2005 that 'urgent' has to be understood in terms of the *Bouchereau* judgment and that the principle of proportionality as found in *Baumbast* also applies. The policy regarding aliens detention of (family member of a) citizens of the Union is on 21 October 2005 elucidated in conformity with the aforementioned judgment (WBV 2005/49, *Staatscourant* 2005, no. 205, 21 October 2005).

Judicial practice

In its jurdgment of 17 February 2005, C-215/03 (*Oulane*), *Jurisprudentie Vreemdelingenrecht* 2005/148, with annotation by P. Boeles, the Court of Justice decided inter alia that the recognition by a Member State of the right of residence of a recipient of services who is a national of another Member State may not be made subject to his production of a valid identity card or passport, where his identity and nationality can be proven unequivocally by other means, and that it is contrary to Article 49 EC for nationals of a Member State to be required in another Member State to present a valid identity card or passport in order to prove their nationality, when the latter State does not impose a general obligation on its own nationals to provide evidence of identity, and permits them to prove their identity by any means allowed by national law.

On 26 April 2005 the *Oulane* judgment was implemented in the Aliens Circular 2000 (*Staatscourant* 2005, no. 89, p. 17). According to a new paragraph B10/2.4 Aliens Circular nationals of a EU, EEA Member State or Switzerland are still required to present a valid identity card or passport or to prove their identity and nationality unequivocally by other means. If a valid identity card or passport or other prove of identity and nationality are lacking a reasonable time of two weeks is granted to submit the required documents. With its emphasis still on the presentation of a valid identity card or passport the Aliens Circular implements the *Oulane* ruling in a very restrictive way, not to say neglects the judgment of the Court.

In subsequent cases before the national courts the issue raised by what other means identity and nationality can be proven unequivocally. In a judgment of 23 June 2005 (200504350/1, published in JV 2005/316) the Judicial Division of the State Council distinguished between proving one's identity and one's nationality when interpreting the *Oulane* judgment. A French driving license, French birth certificate and French "family book" were sufficient to proof one's identity, however could in itself not be used to proof one's nationality.

In another judgment the same Judicial Division (200508826/1, published in JV 2006/22) considered the fact that doubt about nationality, even if it is a matter of Polish or German nationality, is sufficient reason to hold one in aliens detention until the nationality is proved.

A valid passport is sufficient proof of one's nationality and cannot be easily doubted. In this case the holder of a French passport did not speak French and a French liaison officer declared that the

passport was acquired by way of a forged birth certificate. The Judicial Division of the State Council ruled that the Minister had nevertheless to assume French nationality (200507924/1, published in JV 2006/4). Only if the French authorities would declare that the passport was issued unjustly the assumption of French nationality could be rejected (Judicial Division of the State Council, 200507391/1). The production of a French driving licence, a French birth certificate and a French marriage certificate proves the identity but not unequivocally the French nationality (Judicial Division of the Council of State 23 June 2005, *Jurisprudentie Vreemdelingenrecht* 2005/316). Speaking Polish is insufficient prove of the Polish nationality (Judicial Division of the Council of State 25 November 2005, *Jurisprudentie Vreemdelingenrecht* 2006/22).

The eventual supply of a Hungarian laissez-passer does not prove unequivocally the Hungarian nationality, nor the applicant's identity while he uses many aliases (District Court Utrecht 18 April 2005, AWB 05/13971; LJN: AT5737).

In District Court The Hague 8 April 2005 (AWB 03/64285; LJN: AT4480) the court extended in principle the Oulane-ruling of the Court of Justice to the family members of EU nationals working in another Member State, although for the issuing of a residence card the Member States still may require from members of the worker's family the document with which they entered the territory (Article 4, paragraph 3, Directive 68/360/EEC).

In the public order and security clauses under Dutch migration law the duration of residence has to be balanced with the severity of the criminal offence. An Italian who had lived legally for more than fifteen years in the Netherlands was denied continued residence because he was judged to be a threat to public order pursuant to Directive 64/221 and the subsequent case law. However, if he were a third country national he could not be denied residence under Dutch migration law because of his duration of residence. The Utrecht Aliens Chamber of The Hague District Court (published in *JV* 2005/391) deemed this unequal treatment a breach of the principles of community law.

A deportation order concerning a British national who had murdered his partner was based on the shock he had brought about in the legal order, the seriousness of the offence and the penalty received. The Amsterdam Court (AWB 05/22721, LJN AU9576) however found no present threat to the requirements of public policy. Concerning recidivism the Court found in the "criminological literature and research" that this sort of criminal offence is known to have a "very low chance" of recidivism.

The general approach to the community law requirements concerning public order is set out in the decision of the Judicial Division of the State Council on 15 July 2005 (200504770/1, published in JV 2005/347). The standard consideration is: "Because of the seriousness, the nature and the frequency of the criminal convictions there is a basis to conclude that the appellant with his actions, for which he is criminally convicted, has shown personal conduct that is an actual threat for the public order" as meant in the Boucherau judgment of the EC-court. The Minister is therefore left with discretionary powers when assessing the actual threat-requirement, powers which will only be marginally tested by the courts.

Remedies

Judicial practice

Oulane was on 5 December 2005 awarded compensation (855 euro) by the Amsterdam court, after receiving the EC Court judgment, for unlawful aliens detention (AWB 01/65074 etc., published in *JV* 2006/64). On the national case law following the *Oulane* judgment see Chapter VI.

A notice of objection (*bezwaarschrift*) of a Turkish national was deemed inadmissible owing to late submission. The Middelburg Court (04/55977, LJN AU4008) found the time limits reasonable and not in breach of the principle of effectiveness as found in community law (the *Rewe* and *Comet* cases are mentioned).

Proof of nationality and therefore citizenship of the Union will not be considered by the Judicial Division of the Council of State if it is done for the first time during appeal (200507684/1).

Chapter II
Access to employment

Texts in force

A statutory right to equal access to employment is provided by General Equal Treatment Act (*Algemene wet gelijke behandeling*, *Staatsblad* 1994, no. 230). According to article 1 distinctions based on religion, political opinion, race, sex, nationality, sexual orientation and civil status are forbidden. Article 5 stipulates that the act applies to job offers, recruitment, beginning and ending of a labor contract, the appointment in the civil service, labor conditions, vocational or job training, and promotion. The act explicitly allows for only two situations were distinctions on the ground of nationality (in the meaning of citizenship) are allowed: (1) where it is provided explicitly in a statutory provision or in a written or unwritten rule of international law, and (2) in cases where a distinction on the ground of nationality is required by the context, such as the composition of a national sports team (article 5(5) and (6) of the Act and Royal Decree of 21 June 1997, *Staatsblad* 1997, no. 317, *Besluit gelijke behandeling, Staatsblad 1997, 317.* The Act established the Equal Treatment Commission. A worker or an applicant may file a complaint with this commission, if (s)he deems that an employer has violated the provisions of this Act. The relevant case-law of this commission will be mentioned below. The examples of statutory provisions requiring Dutch nationality for certain jobs are mentioned in Chapter IV. Most if not all of these provisions relate to functions in the public service.

There are four other mechanisms that in practice may work as a barrier for employment of an EU migrant getting access to employment in the Netherlands: (1) the recruitment procedures, (2) the security checks for jobs with private employers designated as security functions, (3) language requirements, and (4) the recognition of foreign diplomas. We will deal with each of those four potential barriers.

The system of *recruitment* by comparative exams, like the *concours* in France, is not practiced by private employers in the Netherlands. The main barriers for foreign workers would be the practice to give preference to already employed workers, their family members or friends by making a vacancy known only within the company or organization. The practice of psychological tests or assessments may also recreate a certain disadvantage, since such tests, because of the way they have been developed, tend to have a cultural bias. However, apart from the abovementioned general rule in the General Equal Treatment Act, there are no statutory rules on recruitment in the private sector.

According to the Act on *security checks* (*Wet veiligheidsonderzoeken, Staatsblad 1996*, no. 284) security clearance is required for jobs in “vital sectors” with the aim of protecting primary needs and the security of the country, such as companies producing weapons and other military equipment, electricity and gas companies, airports, aircraft and shipbuilding companies (TK 29515, no. 80, p. 4/5). The security clearance required for such jobs may prove a special barrier for the employment of migrant workers, since the security clearance procedure of persons, who have lived abroad part of their life, may take considerably more time in case agencies in other countries have to be consulted. This effect was confirmed in the debate on the recent report evaluating the activities of the National Security Agency (*Algemene Inlichtingen- en Veiligheidsdienst, AIVD*) (TK 29843, no. 1, p. 12 and 232/24).

The increased attention on the combating of terrorism and the prevention of other serious crimes has resulted in an increase of the number of jobs designated are “security jobs” both in the public and the private sector. The total number of security checks requested from the National Security Agency (AIVD) was 13,000 in 2004 and is estimated at 15,500 in 2005 (TK 29800 VII, no. 3, p. 73 and no. 8, p. 22). The majority of these checks are performed by third parties under the auspices of the AIVD, (TK 29876, no. 3, p. 12). The security clearance of local staff of Dutch embassies (TK 30149, no. 3, p. 3), of the personnel of companies providing goods for the Ministry of Defence and of candidates for political office has been subject of debate in Parliament. After a critical report of the General Court of Auditors (*Algemene Rekenkamer*), the Military Security Agency (MIVD) made extra security checks on 20,000 persons in 2004 and the procedures for security clearance of personnel of the Ministry of Defence and companies with defence contracts were extended and embedded in the personnel registration and other routine procedures (TK 30339, no. 1 p. 18-20).

Explicit requirements as to sufficient knowledge of the *Dutch language* are included in the statutory rules on employees of railways and metro companies, having security related functions, e.g. in Article 13(1) of the Royal Decree of 3 December 2004 on the requirements for railways personnel and in Article 68(2) of the Metro Regulation of 20 October 1980, and also in Article 2(1) of the Royal Decree of 18 August 1988 on the requirements for candidate maritime pilots in Article 3(1)(a) of the Rules of the Minister of Justice on Muslim, Hindu and Buddhist religious leaders working in prisons and other detention institutions. An explicit requirement of sufficient knowledge of the Dutch language is included in the rules on the recognition of diplomas and experience obtained in another Member State by advocates, notaries, candidate-bailiffs and fire brigade officers. In all cases the language requirement appears to be closely related to the nature of the job. In the Royal Decree of 4 July 1986 on the exams for the maritime fishing diploma, it is provided that the candidate has to prove sufficient knowledge of the Dutch language (Part I(1) of the Annex to *Staatsblad* 1986, no. 455).

In the Netherlands the recognition of diplomas obtained in other EU Member States is regulated in two acts: the General Act on the recognition of EC higher education diplomas of 15 december 1993 (*Algemene wet erkenning EG-hoger-onderwijsdiplomas*) implementing Directive 89/48/EEC, and the General Act on the recognition of EC professional education of 29 June 1994 (*Algemene wet erkenning EG-beroepsopleidingen*), implementing Directive 92/51/EEC, complemented by a series of decrees and regulations giving special rules for specific professions. The relevant regulation regarding the EC declaration on the qualifications of captains and maritime officers obtained in other Member States was adopted by the Minister of Traffic on 1 June 2001, *Staatscourant* 12 June 2001, no. 110, p. 10.

Judicial practice

According to the constant case-law of the Equal Treatment Commission the *requirement of speaking Dutch* without an accent in advertisements of job vacancies or recruitment procedures is in almost all cases an indirect discrimination on the basis of race. In 2005 this case-law was reconfirmed in several opinions concerning job applicants or an applicant for a place as a trainee or *stagiair* (e.g. opinions nos. 2005-153 and 2005-233). Those cases in 2005 all concerned third country nationals. In 2005 the Commission dealt with the complaint of an Italian citizen who was refused a job as ground-stewardess at Schiphol Airport because of her Italian accent. In the advertisement of the vacancy excellent command of the Dutch and English language was required and knowledge of other languages (f.i. Italian) was mentioned as an advantage. After heaving heard an expert opinion, the Commission held that refusal on the basis of the accent constituted indirect distinction on the basis of ethnic origin but was justified on the basis of consideration of safety and other job related circumstances, but the Commission advised the company to be more specific about the job requirements in future advertisements (opinions nos. 2004-88 and 137). A a-typical case concerning a EU citizen was the complaint of Spanish woman who for her exam as hairdresser had asked her mother to act as a model. The mother was refused as a suitable model by the examiner because she did not speak sufficiently Dutch and the candidate was unable to make the exam. The Commission held that the requirement that the model is able to communicate in Dutch language was an indirect discrimination on the basis of origin but it was reasonable and justified in the circumstances (opinion 2001-141).

Recognition of foreign diplomas for medical profession has been an issue of repeated public debate in the press, in parliament and between the medical professions and the ministry. Often the debate focuses on the recognition of diplomas obtained outside the EEA, see Parliamentary Questions 2005, no. 2192. All three published court judgments on recognition of foreign diploma relate to diplomas obtained outside the EEA. Complaints on the (non-)recognition of foreign diploma may also be filed with the Equal Treatment Commission. An example is the opinion of that Commission of 21 August 2001 concerning the complaint of a British national that her diploma as a clinical psychologist did not exempt her fully from the obligation to follow an additional training in the Netherlands. The Commission held the complaint to be unfounded and the fact that the complainant had to bear the burden of getting her diploma recognized did not amount to a discrimination on the basis of nationality as long as it was not disproportional difficult to obtain recognition (no. 2001-84).

A case illustrating the practical problems with regard to a diploma obtained in another EU Member State was published in 2005. A Danish nurse with a Danish nursing diploma in May 2001 received

a permanent labour contract from a Dutch medical clinic, but it was agreed that she could only start to work after she had received the official registration of her diploma by the Ministry of Health. The nurse immediately applied with the Ministry for a declaration on her professional qualifications and after it became clear that she did not need such a declaration but only the registration of her Danish diploma, she applied for that registration in June 2001. In October 2001 the Ministry granted the request, but in the meantime the clinic had told her in August it did not want to wait any longer. Finally, the nurse was finally employed by the clinic as of 1 December 2001. Her claim for damages resulting of the late registration of her diploma was rejected by the Ministry and her appeal was rejected both by the District Court and by the Judicial Division of the State Council because the nurse did not prove the causal relation between the late registration by the Ministry and her loss of income, Judicial Division of the State Council 21 July 2004, *Administratiefrechtelijke Beslissingen*, 2005, no. 14 with extensive comments by HBr.

Miscellaneous

In the Netherlands the evaluation of *foreign diplomas* is one of the primary tasks of two organisations: NUFFIC and COLO. NUFFIC is the Netherlands University Foundation for International Cooperation. Since 2003 COLO is the National Reference Point (NRP) appointed for the evaluation of foreign diplomas (see www.colo.nl/?204). COLO evaluates approximately 5,000 foreign diplomas per year (TK 27223, no. 74, p. 4).

For persons who are allowed to work in the Netherlands and are looking for a job, the Centre for Work and Income (CWI) acts as an intermediary with these two institutions and will bear the costs of the evaluation of the foreign diploma (www.cwinet.nl/nl/minderheden see under “internationale diplomawaardering”).

Chapter III
Equality of Treatment on the Basis of Nationality

Texts in force

On 8 april 2005 an amended Royal Decree to prevent double taxation 2001 (*Besluit van 8 april 2005 tot wijziging van het Besluit voorkoming dubbele belasting 2001*, *Staatsblad* 2005, 197) came into force, mainly to implement Court of Justice 12 December 2002, *De Groot* (case C-385/00). Mr De Groot was in 1994 employed in the Netherlands and in Germany, France and the United Kingdom. When his marriage was dissolved, Mr De Groot was obliged to make maintenance payments. On the income he received in 1994 on account of his employment with the foreign companies Mr De Groot paid foreign income tax. Those taxes were calculated in the various Member States without the maintenance payments made by Mr De Groot in 1994 being taken into account. While he had already paid foreign income tax, the tax office in the Netherlands was of the opinion that due to the proportional method in the Decree Mr De Groot was not entitled to a full reduction of his maintenance payments in 1994. According to Mr De Groot the use of the proportionality factor method placed him at a tax disadvantage and, in his case, led to a restriction of the freedom of movement for workers prohibited by Article 39 of the Treaty, or of the freedom of establishment, since the result of that method was that he forfeited part of the tax relief to which he should have been entitled on account of his personal circumstances. The Court agreed. Article 39 EC precludes rules such as those at issue in the main proceedings – irrespective of whether or not they are laid down in a convention for the avoidance of double taxation – whereby a taxpayer forfeits, in the calculation of the income tax payable by him in his State of residence, part of the tax-free amount of that income and of his personal tax advantages because, during the year in question, he also received income in another Member State which was taxed in that State without his personal and family circumstances being taken into account.

According to the amended Decree personal tax advantages are fully taken into account when a taxpayer who also pays taxes in another State in that State was taxed without his personal and family circumstances being taken into account. The scope of the amended Decree 2001 is not limited to EU/EEA Member States and associated countries only, but applies to all countries. Otherwise two systems should work next to each others which is complicated and expensive. Furthermore, the extra costs involved with the general applicability of the Decree are rather limited, while in most instances the issue of the prevention of double taxation for natural persons only plays within the European Union.

Article 17, par. 2 of the *Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen* provides for shipping companies an income tax pay off reduction of 40% for those seafarers who are subjected to the Dutch income tax and living in the Netherlands. According to Parliament this provision infringes the free movement of workers while it makes seafarers living in the Netherlands more attractive for shipping companies than their colleagues from other EU countries. Parliament suggests to replace the word “the Netherlands” in Article 17, par. 2, by “European Union” (TK 30 306, no. 5, p 12). The Minister of Finance is studying the issue.

According to a revised Article 14 of the Act on stimulation of private ownership of housing (*Wet bevordering eigenwoningbezit, Staatsblad* 2005, 705), EU and EEA nationals and Turkish nationals whose right of residence directly flows from the Association Agreement are entitled to a financial contribution to acquire their own house on an equal footing as nationals and holders of a permanent residence card.

A revised Chapter B11 of the Aliens Circular 2000 on international agreements came into force on 22 August 2005 (*Staatscourant* 2005, no. 168, pp. 11 ff). In particular par. 3 of this Chapter on the Association Agreement EEC/Turkey was rewritten and updated to the relevant case law of the Court of Justice (ending with ECJ 11 November 2004, *Cetinkaya*, C-467/02).

Draft legislation

In July 2004 a Bill was introduced at the initiative of a MP to guarantee that the basic pay services come within reach of and are admissible to everyone (*Wet toegankelijkheid en bereikbaarheid basisbetaaldiensten*, TK 19 688 no. 1-3 ff.). It introduces a duty of careful behaviour for all financial insti-

tutions. When in a certain geographical area the general admissibility of pay services (money machines, etc.) is inadequate, the Minister of Finance may assign that area, invite tenders for one or more service points in that area and give these service points out by contract to a provider which offers its services for the lowest net costs. In its advice the Council of State formulated searching questions concerning state aid, competition, freedom of establishment and the transparency of the tender procedures. On 29 September 2005 the MP who introduced the Bill waived all the objections (TK 19 699, no. 4).

The Bill introduced in January 2003 (TK 28 770) to amend the Equal Treatment Act and some other legislation in order to implement Directives 2000/43/EC (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) and 2000/78/EC (establishing a general framework for equal treatment in employment and occupation) is still pending.

Finally, in December 2005 a Bill is introduced (Kamerstuk 2005-2006, 30412, nr. 1, Tweede Kamer, Kamerstuk 2005-2006, 30412, nr. 2, Tweede Kamer, Kamerstuk 2005-2006, 30412, nr. 3, Tweede Kamer), to amend Article 311 Commercial Code (*Wetboek van Koophandel*). The Bill implements the ECJ judgment of 14 October 2004 (case C-299/02), in which the Court held the nationality and residence requirements for the owners or board members of companies owing Dutch seagoing vessels to be a violation of the Articles 43 and 48 EC Treaty. The Bill introduces the fiction that a seagoing vessel is Dutch when the owners as natural persons have the nationality of, or the companies are established within a Member State of the EU, EEA or Switzerland.

Judicial practice

Even if assumed that Decision 3/80 of the EEC-Turkey Association Treaty may apply to Turkish (ex-) workers who do not have a residence permit or a right of residence directly based on Decision 1/80, the exclusion from a child benefit allowance in the present case during the application procedure for a residence permit which ended in a definitive negative decision does not contravene the equal treatment clause of Article 3 Decision 3/80 (Central Appeals Tribunal 25 August 2005, 03/5846 AKW, LJN: AU1936).

In Opinion 2005-207 of 28 October 2005 the Equal Treatment Commission decided the case of a Belgium national who claimed that a school board had made unlawful discrimination based on nationality while she was paid less for equal work than her Dutch colleagues. The school board had applied the collective labour agreement according to which her salary on taking up her teaching duties was based on her last enjoyed salary (in Belgium). The salaries for teachers in Belgium are lower than in the Netherlands. The Equal Treatment Commission applied Article 12 EC Treaty, Article 7 Regulation 1612/68 and Court of Justice 12 March 1998, Commission/Greece (case C-187/96), according to which "the equal treatment rule (…) prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result (…). Unless it is objectively justified and proportionate to its aim, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage…". Although the rule in the collective labour agreement concerning last enjoyed salary reflects a yardstick to deal objectively with past experience it affects a teacher who had her experience in Belgium and migrates to the Netherlands more than teachers who had their experience in the Netherlands. While teachers with experience in Belgium normally have the Belgium nationality and teacher with experience in the Netherlands the Dutch nationality, the rule in the collective labour agreement places teachers with the Belgium nationality who start working in the Netherlands in a disadvantage. The Equal Treatment Commission concluded to indirect discrimination by reason of nationality for which an objective justification is lacking. The aim of the last enjoyed salary rule in the collective labour agreement is legitimate, but not adequate to reflect past experience in Belgium.

Miscellaneous

Dutch Telecom (KPN) applies a web discount of € 50 (1 year contract) or € 100 (2 years contract) for a mobile phone subscription by internet. Only Dutch nationals may benefit from the discount, while a

Dutch passport, driving license or identity card is required. According to prof. Marco Loos (University of Amsterdam) the discount constitutes a violation of the Equal Treatment Act. KPN denies. It is not a distinction based on nationality but on costs. For risk reasons non-nationals are not allowed to subscribe by internet and therefore the costs for concluding a contract are higher (*Volkskrant*, 16 March 2005).

In newspapers criticism was expressed by foreign practitioners, who were not allowed to work or to establish in the Netherlands (*Algemeen Dagblad*, 22 March 2005, *NRC-Handelsblad* 20 April 2005). For registration in the individual Health Care Professions Act (BIG Act) a qualification is needed which is listed in the 'Regulation on the Registration of Foreign Health Care Qualifications'. If this qualification is acquired in a Member State of the European Economic Area there is an extra condition for registration. In that case the applicant must hold the nationality of one of these countries. If the qualification is not included in the regulation, or the applicant does not hold the nationality of an EEA Member State in which the qualification was acquired, (s)he will only be registered in the BIG register if (s)he is in possession of a declaration of professional competence for which the Minister of Health will seek the advice of the Committee of Foreign Degree Holders in Public Health. It is in particular this committee which meets the criticism. Due to a waiting list it takes 62 month to get a decision concerning the declaration. In 2004 63% (187/295) of the requests for a declaration was denied.

In December 2005 the government reacted on an advisory opinion of the Equal Treatment Commission concerning equal pay. It decided to install an Equal Pay Working Group, in which all the relevant organizations are represented. The main task of the working group will be to inform employers and labour organization, individual employers and employees, human resources staff etc. about the relevant legislation concerning equal pay and to promote its observance (TK 27 009, no. 13 and *Staatscourant* 2005, no. 250).

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Chapter IV
Employment in the Public Sector

Texts in force

The requirement of Dutch nationality applies for appointment in posts in the judiciary, the police, the armed forces, the diplomatic service and for appointment in civil service jobs defined as security functions (*vertrouwensfuncties*). This last category is provided for in Article 125e of the Civil Service Act (*Ambtenarenwet*). The requirement of Dutch nationality for appointment in the judiciary is to be found in Article 1c of the Act on the status of judicial officials (*Wet rechtspositie rechterlijke ambtenaren*), for the armed forces in Article 129 of the Act on military personnel (*Militaire ambtenarenwet*), for the diplomatic service in Article 17(4) and several other provisions of the Rules on the Foreign Service (*Reglement Buitenlandse Dienst*). Moreover, all jobs at the Ministry of Defense are qualified as security functions and thus Dutch nationality is required even for civil servants in Article 91 of the Rules on Civil Servants of that ministry (*Burgerlijk ambtenarenreglement Defensie*). The nationality requirement is mentioned on the websites for the recruitment for the armed forces. The requirement is not mentioned on the websites of the police forces. However, there is a nationality requirement in Article 7 of the Decree on legal status of the police (*Besluit algemene rechtspositie politie*). The police have the practice of accepting foreign nationals resident in the Netherlands for their training programmes, on the condition that the candidates will apply for naturalisation and thus will have Dutch nationality at the time of appointment as police officer.

Moreover, the nationality requirement still is in force for a few high state offices such as the National Ombudsman, members of the State Council, the heads of the provincial administration (*Commissaris van de Koningin*, see Article 63 Provincial Act), for the *burgemeester*, the head of the municipal authority (Article 63 Municipal Act) and for the appointment as notary (Article 6(1) *Notariswet*) and as bailiff (Article 5(1) *Gerechtsdeurwaarderswet*).

The statutory rules on the nationality of captains on Dutch ships have been liberalized in 2003. After the amendment of Article 30 of the *Zeevaartbemanningswet* by the Act of 22 May 2003, *Staatsblad* 2003, 259, citizens of the EEA Member States are exempted from the rule that requires captains of Dutch ships to have Dutch nationality. This exemption does not apply to captains of fishing vessels (see also Chapter III).

Dutch legislation does not provide for a system of recruitment of civil servants or employees in public service, comparable to the system of the *concours* applied in France, which was the subject of the judgment of the Court of in the *Burbaud* case. Neither is a comparable system applied in practice.

Miscellaneous

Recruitment for most jobs in the civil service occurs on the basis of two mechanisms: (a) the vacancy is made known to other persons working in the same ministry, department or agency, or (b) the vacancy is made public through advertisements in newspapers, periodicals, posting on the own website of the agency or the general website for jobs with public bodies (*Werken bij de overheid*; http://www.werkenbijdeoverheid.nl). Often the first internal recruitment method will be used for a few weeks and only after this has not produced sufficient good candidates, the second more public method of recruitment will be used. The first method intends to give preference or priority to internal candidates and, hence, creates a disadvantages for candidates from groups that are underrepresented among the persons working in the public sector. The first method offers persons working in the ministry or department the possibility to make their family members and friends aware of the vacancy before others will be informed about this job possibility. From the candidates that have applied for the job a selection of those who will be invited for an interview will be made by the persons in charge of the selection, usually the direct superiors and a representative of the Human Capital department.

For certain types of jobs, such as the diplomatic service, the military or the judiciary, there are special recruitment schemes, starting with advertisements announcing the possibility to apply for enrolment in the selection procedure. But most of the types of jobs concerned where the applicants are required to have Dutch nationality.

Chapter V
Family members

Texts in force

In the parliamentary debate on the new integration test abroad required from third country national spouses applying for a long term residence visa for reunification with their spouse in the Netherlands, the issue of the so-called “Belgium-route”, also known as “U-turn”, received considerable attention (TK 2005-2006, 29700, nos. 30, 31 and 32, TK 30304, no. 8 and Handelingen TK 2004/05, no. 62, p. 4002–4041)). The term is used for the alleged practice of (naturalised) Dutch nationals: migration to Belgium, family reunification with a third country national under the privileged rules of EU-law in Belgium, and return to the Netherlands after the third country national spouse has acquired a residence status in Belgium on the basis of EU-law. By using the Belgium route, the (long stay) visa obligation, the preliminary integration test abroad, the 21 year minimum age limit, and the 120% income requirement are bypassed and other prospective barriers to family formation would be bypassed.

Although the Minister of Immigration and Integration admitted that this behaviour is legal, it would amount, in her words, to “illegitimate use of community law”. Because the Dutch national by temporarily working or studying in Belgium (or Germany), due to his acquired status under community law, would be able to circumvent the more restrictive Dutch laws on family formation and reunification. In the view of the Minister the extent of this use is “certainly” not to be thought of in terms of “thousands”. The Minister announced to put the issue on the European agenda in order to avoid that new Dutch integration obligations would become illusionary (TK 29 700, no. 31). She referred to an exchange of information between Belgium and the Netherlands on the actual place of residence of the migrant in order to prevent fraud like fictitious (only on paper) migration to Belgium. The Minister mentioned the practice of the Belgium authorities checking the place of residence of new arrived migrants. The Minister is of the opinion that a solution has to be found on European Union level and article 35 of Directive 2004/38 EC is mentioned as a basis for future measures. In March 2006, the Minister presented data from the Belgian authorities indicating that in recent years a few hundred Dutch nationals with third country national spouses had established themselves in municipalities near the Belgian-Dutch frontier. The Minister indicated that those figures did not imply that all those cases were fraudulent use of free movement (TK 29700, no. 36).

A report commissioned by the Ministry of Justice indicated that the exemption of nationals of other EU Member States, from the legislation aimed at combating sham marriages, enacted some years ago, still was not known and practiced in many smaller municipalities, TK 26276 and 26862, no. 4, p. 3.

Draft legislation

Both in the Bill on the new integration test abroad (TK 29700) and in the Bill on the new integration tests for immigrants after entry and with long residence in the Netherlands (TK 30308) the third country national family members of EU migrants are provisionally exempted from the obligation to pass those tests. The government interprets the judgment of the ECJ in Akrich as allowing for the introduction of these new integration conditions, if the third country national spouse of an EU migrant has not been admitted under the national immigration rules of another Member State. The government decided to postpone the extension of the new obligations to third-country spouses of EU nationals until the judgment of the ECJ in the Jia case (C-1/05), e.g. See for more details chapters I and VII.

Judicial practice

The Judicial Division of the State Council referred preliminary questions to the Court of ustice in the case of a Dutch national who was reunited with his minor daughter of Surinamese nationality while he was working for over a year in the UK. The Dutch court among others asked whether the daughter had a right under Regulation 1612/68 to join her father upon his return to the Netherlands, even if she had not been admitted under UK national law and the father was unemployed after his return to the Netherlands, judgment of 13 July 2005, *Administratiefrechtelijke Beslissingen* 2005, 363.

In several cases Aliens Chambers of the District Court The Hague have allowed the appeals or given an interim injunction prohibiting expulsion of third-country national spouses of Dutch nationals returning after employment or study in another Member State. In those cases the Minister for Aliens Affairs and Integration argued that the Akrich judgment allowed the Dutch authorities to apply Dutch national rules rather than EC law, e.g. Aliens Chamber Leeuwarden 24 January 2004, Migratieweb ve05000312 and Aliens Chamber Amsterdam 12 September 2005, LJN: AU4250. The appeal was considered to be unfounded in a case, where the third-country national spouse failed to prove that his Dutch spouse had actually worked in Belgium within the ten months allowed by the immigration authorities for producing relevant documents, District Court The Hague 7 June 2005, LJN: AT7145.

A third-country national spouse of a Greek national living in the Netherlands was detained with a few to expulsion, because the spouse did not report with the authorities, did not have a stable domicile in the Netherlands and the immigration authorities disputed the authenticity of his marriage certificate. The Court ended the detention and awarded damages to the spouse, because failure to report to the authorities is not a sufficient ground for expulsion and the doubt about the marriage certificate had not been substantiated in time, District Court The Hague 20 January 2005, LJN: AS7862.

In a case concerning a Surinam migrant, father of a minor Dutch child, the Utrecht Aliens Chamber of the The Hague District Court discussed on the merits of the *Chen* judgment. However, because in this instance the child had never left the Netherlands, analogical application of the *Chen* considerations with regard to the *effet utile* of residence rights of minors under article 18 EC and directive 90/364/EEC was denied, judgment of 6 October 2005 AWB 05/42684, LJN AU3992.

Miscellaneous

In 2005 the Minister for Aliens Affairs and Integration informed the Parliament that of the 630 applications of EU nationals for family formation (i.e. reunification with a spouse married after entry in the Netherlands), 480 cases had been decided and 6% of these applications had been refused, TK 30300 VI, no. 11, p. 29.

After a recent change of the legislation on higher education universities are free to set higher enrolment fees for third-country nationals than the regular fee for Dutch nationals and other EU nationals. It appears that certain universities levy those higher also from third-country nationals family members of EU migrants, disregarding Article 7 of Regulation 1612/68.

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Chapter VI
Follow-up of recent Court of Justice judgments

De Groot (C-385/00)

On 8 April 2005 an amended Royal Decree to prevent double taxation 2001 (*Besluit van 8 april 2005 tot wijziging van het Besluit voorkoming dubbele belasting 2001*, Staatsblad 2005, 197) came into force, mainly to implement Court of Justice 12 December 2002, De Groot (case C-385/00). According to the amended Decree personal tax advantages are fully taken into account when a taxpayer who also pays taxes in another State in that State was taxed without his personal and family circumstances being taken into account. The scope of the amended Decree 2001 is not limited to EU/EEA Member States and associated countries only, but applies to all countries (see Chapter III).

Abatay (C-317/01)

In its judgement of 21 October 2003 (Abatay versus Bundesanstalt für Arbeit) the Court of Justice decided that the standstill clause of Article 41(1) of the Additional Protocol is applicable to international road haulage of goods originating in Turkey, where those services are carried out in the territory of a Member State, secondly that the protection of Article 41(1) can be relied on not only by an undertaking established in Turkey which performs services in a Member State but also by the employees of such an undertaking, and finally that Article 41(1) precludes the introduction into the national legislation of a Member State of a requirement of a work permit in order for an undertaking established in Turkey to provide services in the territory of that State, if such a permit was not already required at the time of the entry into force of the Additional Protocol (1972).

This judgment invoked parliamentary questions concerning work permit and drivers attestation requirements for Turkish drivers (TK 2004-2005, Aanhangsel Handelingen no. 1666). According to the Ministry of Social Affairs companies established abroad (such as Turkish companies) which are engaged mainly in international haulage, are excluded from the work permit requirement when the drivers involved are living outside the Netherlands and the lorries are not registered in the Netherlands. When the driver resides in the Netherlands or when the lorry is registered in the Netherlands a work permit is required. When the lorry is registered in the Netherlands, drivers who are nationals of non-member countries should also hold a drivers attestation based on Regulation 881/92/EEC and its national implementation in the *Regeling Bestuurdersattest*. According to the Ministry the Court of Justice has to decide on the compatibility of Regulation 881/92 and the Additional Protocol.

Answering subsequent parliamentary questions (TK 2004-2005, *Aanhangsel Handelingen* no. 2320) the Ministry of Social Affairs admitted that the lorry registration requirement was introduced in 1995 (after the entry into force of the Additional Protocol). Nevertheless, it does not consider the requirement as an infringement of the standstill clause, while in the general interest (to avoid abuse). The requirement also applies to service providers who are established in other EU Member-States. Therefore, Turkish service providers are not disadvantaged. According to the Ministry the requirement is not disproportionate while Turkish service providers are expected to provide their services with lorries registered in Turkey (*sic*).

Akrich (C-109/02)

In several court decisions concerning the position of third country nationals under free movement law reference was made to the judgment of the Court in case C-109/02 (*Akrich*).

The District Court Leeuwarden (AWB 03/30662) issued a provisional injunction (voorlopige voorziening) because the Minister had failed to take notice of the third country national's right of residence in the country of departure, being the country in which they had resided after the husband had used his rights of freedom of movement

The District Court Amsterdam (AWB 05/32902, LJN AU4250) quashed on 12 September 2005 by way of granting a provisional injunction (voorlopige voorziening) a decision by the Minister which required the third country national to have held a residence permit, and not some sort of "legal resi-

dence" as mentioned in the *Akrich* judgment, in the EU country of departure. Reference was also made to the *Surinder Singh* judgment.

The *Akrich* ruling played an important role as well in the discussions on the compatibility of the proposed legislation on integration with community law (see Chapters I and VII). The government disputes the interpretation of the Commission of the *Akrich* judgment that the imposition of integration requirements on non-EU family members who are not yet residing in the territory of the EU is contrary to Community legislation.

Commission v. the Netherlands (C-299/02)

In December 2005 a Bill is introduced (TK 30 412, no. 1-3) to amend Article 311 Commercial Code (*Wetboek van Koophandel*). The Bill implements the jurdgment of the Court of Justice of 14 October 2004 (case C-299/02), in which the Court held the nationality and residence requirements for the owners or board members of companies owing Dutch seagoing vessels to be a violation of the Articles 43 and 48 EC Treaty. The Bill introduces the fiction that a seagoing vessel is Dutch when the owners as natural persons have the nationality of , or the companies are established within a Member State of the EU, EEA or Switzerland.

Panayotova (C-327/02)

Bulgarian citizens who want to exercise their right of establishment under the EEC-Bulgaria Association Agreement are confronted with a long stay visa requirement (the so-called temporary residence permit). This system of prior control was judged by the Judicial Division of the State Council (200205298/1, published in *Jurisprudentie Vreemdelingenrecht* 2005/134) to be in conformity with aforementioned Association Agreement. Reference was made to the *Panayotova* judgment of the EC Court (see Chapters I and XI).

District Court Utrecht 27 January 2005 (AWB 04/48199, LJN: AS7923) rejected with reference to the *Panayotova* judgment the argument of the applicant that the applicable legislation and practice in the Netherlands concerning temporary residence permits is not in conformity with the requirement of the Court that the scheme applicable to such temporary residence permits must be based on a procedural system which is easily accessible and capable of ensuring that the persons concerned will have their applications dealt with objectively and within a reasonable time.

Cetinkaya (C-467/02)

In August 2005 the ministerial instructions to the immigration service on the implementation of the provisions under the Association EEC-Turkey were amended and extended, taking into account the case-law of the Court of Justice. However, with regard to the grounds for loss or withdrawal of the residence rights under Decision no. 1/80 the new instructions are clearly deficient, since they do not take into account the full consequences of the judgment in *Cetinkaya*, both with respect to special protection of admitted family member and those born in the Netherlands and the limited grounds for loss of that status, especially protecting the second and third generation. Moreover, the new instructions could not take into account the more recent judgments in *Aydinli* and *Torun*.

Commission v. the Netherlands (C-189/03)

In its above mentioned judgment the Court of Justice declared that, by adopting, in the framework of the Law on private security firms and detective agencies, provisions which require that:

- undertakings that wish to provide services in the Netherlands and their managers must have a permit, without taking into account the obligations to which foreign service providers are already subject in the Member State where they are established, and by charging fees for this permit, and
- members of the staff of these firms seconded from the Member State where they are established to work in the Netherlands have a proof of identity card issued by the Netherlands authorities, in so far as the checks to which cross-frontier providers of services are already subject in their Member State of origin are not taken into account for the requirement in question,

the Netherlands has failed to fulfil its obligations under Article 49 EC.

According to the Minister of Justice the judgement of the Court does not compel to withdraw the disputed provisions. Nevertheless, in the application of the legislation concerned the obligations to which foreign service providers are already subject in the Member State where they are established will be taken into account. The same applies to their employees. "When the requirements in their own country offer an equal level of protection as in the Netherlands for instance concerning competences and reliability non compliance with the Dutch requirements will not raise any objections" (TK 2004-2005, *Aanhangsel Handelingen* no. 1264). As far as Polish service providers concerned the Minister repeated the necessity of a work permit for their employees and reiterated the proposed policy change by which the obligation of service providers to have a work permit for their employees will be replaced by an obligation to notify the Dutch authorities of the use of their work force before the start of the service provision (see further Chapter XI).

Bidar (C-209/03)

To implement this jurdgment the Study Grants Office (*Informatie Beheer Groep*) issued a new policy concerning the application of study grants by students from EU, EEA or Switzerland (*Beleidsregels aanpassing studiefinanciering voor studenten uit EU, EER of Zwitserland, Staatscourant* 2005, 94, p. 15). With reference to the judgment of the Court and Article 24 Directive 2004/38/EC (maintenance aid after five years continuous residence) the Study Grants Office decided to extend the entitlement to the full study grants according to the study grants legislation to those students from other EU, EEA Member States and Switzerland who have resided in the Netherlands during a continuous period of five years. This new policy has retroactive effect as of 15 March 2005. Students from EU, EEA or Switzerland who have resided in the Netherlands for less than five years are still entitled to the so called Raulin compensation, a reimbursement of the enrolment fees only.

Although the Court in Bidar mentioned Article 24 Directive 2004/38/EC, it only requires that the student should have demonstrated "a certain degree of integration" which can be established by a finding that the student in question has resided in the host Member State for a certain length of time. In the Bidar case a previous residence of three years in the UK was considered as sufficient integration. Against this background the requirement of five years continuous residence in the new guidelines seems rather disproportionate.

Oulane (C-215/03)

The judgment of the Court in case C-215/03 (*Oulane*) resulted in a change of policy. No longer proof of identity and nationality is required by means of a valid identity card or valid passport only. Other means which unequivocally prove identity and nationality are also allowed for. However, the new policy still emphasizes the presentation of a valid identity card or passport and states on several instances that 'unequivocal' is to be understood as "without any doubt" (WBV 2005/22, *Staatscourant* 2005, 89, p. 17). This is not in line with the aforementioned *Oulane* judgment (see Chapters I and III).

The District Court The Hague (AWB 03/64285, 03/357, LJN AT4480) faced the question whether the merits of the *Oulane* judgment would also apply to third country nationals, being in this case a Sierra Leone national without passport who traveled with his Austrian wife to the Netherlands. The District Court generally agreed in conformity with *Oulane*; for third country nationals a passport requirement as only way of establishing one's identity and nationality is also contrary to community law. However, the District Court judged the passport requirement as found in Dutch law and the way this requirement is used by the Minister, without stating grounds, to be in line with EC Court case-law.

In a judgment of 23 June 2005 (200504350/1, published in *Jurisprudentie Vreemdelingenrecht* 2005/316) the Judicial Division of the State Council distinguished between proving one's identity and one's nationality when interpreting the *Oulane* judgment. A French driving license, French birth certificate and French "family book" were sufficient to proof one's identity, however could in itself not be used to proof one's nationality.

On 5 December 2005 Mr Oulane was awarded compensation (855 euro) by the District Court Amsterdam, after receiving the EC Court judgment, for unlawful aliens detention (AWB 01/65074, published in *Jurisprudentie Vreemdelingenrecht* 2006/64).

Van Pommeren-Bourgondiën (C-227/03)

The following measures are taken as a result of the judgment of the ECJ in *Van Pommeren-Bourgondiën* (C-227/03) and the expected introduction of Regulation 883/2004 (replacing Regulation 1408/71), which states that the eligibility for social security benefits is the responsibility of the country of residence. People living abroad who receive Dutch social security benefits will no longer be liable to pay mandatory premiums for social benefits such as Disability Insurance, Unemployment benefits or Sickness allowance as of January 1st 2006 (*Staatsblad* 2005, 718). Because of these mandatory insurances, they cannot apply for social security benefits in their country of residence, whereas they only have limited social protection from the Netherlands. For example, disability benefit recipients abroad pay unemployment insurance premiums but they are excluded from applying for unemployment benefits while living elsewhere. The government wants to put an end to this situation as of January 1st 2006. By dropping the mandatory premiums for social security benefits, the net allowance will rise. People with a disability benefit who return to the Netherlands after their allowance has been reduced or stopped, are not eligible for unemployment benefits. This is expected to only be a very small group because most of the people in this situation will no longer be eligible for a resident's permit or a work permit in the Netherlands.

In addition to this Act and as a result of the *Van Pommeren-Bourgondiën* case by Royal Decree a retrospective possibility for insurance for old age pension (AOW) and survivors pension (ANW) on a voluntary basis is created over the period 2001-2006 for EU/EER/Swiss-citizens with a Dutch social security benefit abroad (*Staatsblad* 2005, 720).

Association Agreement EEC-Turkey

The Aliens Circular 2000 has been amended to introduce a revised section (B11/3) on the consequences of the Association Agreement EEC-Turkey for the application of the Dutch immigration legislation, explicitly taking into account twenty judgments of the ECJ, see further in Chapter XII.

Chapter VII
Policies of a general nature with possible repercussions on the free movement of Union citizens

Texts in force

By ministerial regulation of 14 March 2005 (*Staatscourant* 2005, no. 53, p. 22) knowledge migrants (see last years report chapter VI) are not only exempted from the work permit legislation but retroactively (from the coming into force of the knowledge migrant legislation on 1 October 2004) from the existing integration obligations (*Wet inburgering nieuwkomers*) too. By amendment of 17 March 2003 of the Implementing Decree of the Aliens Employment Act (*Staatsblad* 2005, 187) the family members of the knowledge migrant are also exempted from the work permit requirement. From 1 January 2006 the gross income criteria of knowledge migrants are € 45.495 if (s)he is 30 years or older and € 33.363 if (s)he is younger than 30 years (*Staatscourant* 2005, no. 246, p. 39). During 2005 the knowledge migrant legislation will be evaluated with involvement of the Alien Advisory Committee (TK 19 637, no. 973). There are already indications that the Immigration and Naturalisation Service in many instances exceeded the two weeks period for a decision on a long-term residence visa (TK, 2004-2005, *Aanhangsel* 694 and TK 2005-2006, *Aanhangsel*, 128).

May 2004 the Minister of Immigration and Integration proposed a new, highly differentiated fee system (TK 29 200 VI, no. 165). The fees for long-term residence visa increased, the fees for issuing or renewing residence permits decreased, but the overall level of the costs raised considerable. Nevertheless, the fees for a document confirming residence of EU/EEA nationals or for a EU/EEA residence card are still the equivalent of the fee for issuing national identity cards: € 30. For a permanent residence permit under Dutch law EU/EEA nationals have to pay the 'normal' price of € 201. Parliamentary suggestions to introduce for EU/EEA documents and residence cards too fees which cover the actual cost were rejected while high fees could be considered as a obstacle for the free movement of persons (TK 29 800 VI, no. 96).

In a parliamentary debate on 30 March 2005 (TK 29 800 VI, no. 142) the issue of the compatibility of the new system with Article 8 ECHR and with the Association Treaty EEC-Turkey was raised. The fees for a long-term residence visa for family reunification cost € 890 for one family member and € 188 for other accompanying family members each! The minister refused to introduce a hardship clause for family reunification cases, although she promised to exclude migrants who request for family reunification, from income and fee requirements if the family member in the Netherlands with whom family reunification is envisaged proves that a lack of sufficient income is not his/her fault (TK 29 800 VI, 122; TK, Handelingen 12 April 2005, 71-4377 ff. and 19 April 2005, 74-4531). The new fee regulations came into force 1 July 2005 by amending the Aliens Regulation (*Staatscourant* 2005, no. 124, p. 19 ff.), and the Aliens Circular (*Staatscourant* 2005, no. 124, p 21 ff.), while the fees for long-term residence visa are embedded in the Regulation on Consular Tariffs (*Staatscourant* 2005, no. 124, p. 16 ff.). The fees are indexed on a yearly basis. The actual fees can be found on the website of the Immigration and Naturalisation Service (www.ind.nl). Article 3b of the Regulation on Consular Tariffs and Article 3.34f of the Aliens Regulation contain the above mentioned exemption clause for family reunification in case of insolvency.

Answering parliamentary questions the Minister of Immigration and Integration admitted that on 24 January 2005 the European Commission has started an infringement procedure concerning the incompatibility of the fees requirements for issuing or extending residence permits and the Association Agreement EEC/Turkey. According to the Commission the fees for residence permits under the application of the Association Agreement should be the equivalent of the fees for EU/EEA nationals: € 30 (TK 2004/2005, *Aanhangsel*, 1417) Due to the supposed confidentiality of the infringement procedure the Minister of Immigration and Integration refused Parliament the disclosure of further information and relevant correspondence (TK 2004-2005, *Aanhangsel*, 2043).

In its action programme 2004 "*Rotterdam zet door*" (Rotterdam pushes through) the city of Rotterdam developed an ambitious plan to fight against the social and economic backlog in some of its quarters with a high percentage unemployed persons, poverty and social exclusion. To realise some of its plans Rotterdam depended on national legislation. Not only for Rotterdam but for other metropoli-

tan areas as well the government proposed a Bill Specific Measures Metropolitan Problematic (*Wet bijzondere maatregelen grootstedelijke problematiek,* TK 30 091, no. 1-3), popularly still called the Rotterdam Act. The Bill became Act 22 December 2005 (Staatsblad 2005, 726) and entered into force the following day. The Act provides for fiscal incentives to be applied by in the Act enumerated municipalities and extended the competences for Mayor and Alderman of all municipalities to close (in particular drugs related) premises which constitute a threat for the living conditions, public safety and health. The most debated chapter of the Act concerns the limited access to the housing market. On the analogy of the income requirements for family reunification Rotterdam initially proposed to close the housing market in designated areas of the town for newcomers who earn less than 120% of the minimum wages.

The Act is not going that far. According to the Act the Minister of Housing may on request of *any* city council assign municipal areas in which future dwellers have to fulfil certain (income) requirements. The assignment is valid for a maximum of four years and may be extended once for another period of maximum four years. The assignment should be necessary and adequate to fight the specific problems in that area and should be in accordance with the principles of subsidiarity and proportionality. In an assigned area a prospective dweller who has lived less than six years in the region of that municipality may only acquire a housing license if (s)he has an income as worker or self employed person or is entitled to a retirement benefit or study grant.

The Act constitutes eventually a restriction to the right of free movement as embedded in Article 2 of the Fourth Protocol to the ECHR and Article 12 ICCPR. Concerning the Fourth Protocol the restriction is justified according to the Council of State "for the maintenance of 'ordre public'" and by "the public interest in a democratic society" (Article 2, sections 3 and 4). But the Council of State doubts about the compatibility with Article 12 ICCPR. According to Article 12 only restrictions are acceptable which are necessary to "protect" the public order. Why should the exclusion from certain municipal areas of persons with a low socio-economic status be necessary to protect the public order? The government considers the infringement as only minimal and – without further reasoning – justified for the protection of the public order. Concerning Articles 18 and 43 EC Treaty the government is of the opinion that the restrictions are acceptable while applied without direct discrimination on grounds of nationality, justified in the public interest and in accordance with the principles of subsidiarity and proportionality (TK 30 091, no. 3 p. 16 ff.)

Draft legislation

The new integration policy of the present government (TK 29 543, no. 1 ff.) with its emphasis on the learning of the Dutch language resulted in two legislative proposals: a Bill on Integration Abroad (*Wet inburgering in het buitenland*) of 2 August 2004 (TK 29 700, no. 1-3) and a Bill on Integration (*Wet inburgering*) of 29 September 2005 (TK 30 308, no. 1-3). The Act on Integration Abroad of 22 December 2005 (*Staatsblad* 2006, 28) entered into force on 15 March 2006 (*Staatsblad* 2006, 75). On 7 March 2006 an amendment of the Aliens Decree was published to implement this legislation (*Staatsblad* 2006, 94). The Bill on Integration is still pending. After a report of an expert of the University of Tilburg and pressed by Parliament (see last year's report, Chapter VI) the Minister of Immigration and Integration consulted the European Commission in order to have a first assessment of the proposals for the new integration legislation, notably with regard to existing Community rules in this field. The Commission expressed its opinion on 14 June 2005.

The integration test abroad (*Wet inburgering in het buitenland*) and the compulsory integration programme after arrival in the Netherlands (*Wet inburgering*) will not be required from EU citizens, EEA or Swiss nationals or from EU citizens' family members who are non-EU nationals. In the above mentioned Aliens Decree (*Staatsblad* 2006, 94) which implements the Act on Preliminary Integration Abroad an additional exemption is added. In accordance with Article 15, par. 3, Directive 2003/109/EC (which Directive itself was not yet implemented at the time) the condition of preliminary integration abroad shall not apply to third country nationals who have been required to comply with integration conditions in order to be granted long-term resident status.

The exemption of EU citizens' family members who are non-EU nationals is debated. The government agrees to exclude this category, as long as they are already residing in the territory of another Member State. On the other hand, it intends to apply both requirements for integration (the integration

test abroad and the compulsory integration programme after arrival) to non-EU family members who are not yet residing in the territory of the EU. In its above mentioned preliminary opinion the Commission firstly concludes that the imposition of the integration requirements on non-EU family members who are not yet residing in the territory of the EU is contrary to Community legislation regulating the right of entry of an EU citizen's family member. In its reasoning the judgment of the Court of 23 September 2003 in case C-109/01 (*Akrich*), *Jurisprudentie Vreemdelingenrecht* 2004/1 (with annotation C.A. Groenendijk) and Directive 2004/38 play an important role. Although the Minister of Immigration and Integration does not agree with the Commission's assessment of the *Akrich* case, she decided for the time being to exclude this category from the integration tests as long as a preliminary procedure on this subject (case C-1/05, *Y. Jia v. Migrationsverket*) is still pending at the Court of Justice (see EK, 29 700, D, p. 1).

Secondly, the Commission doubts about the compatibility of the proposed legislation with the standstill provisions in Association Agreements, notably in the Association Agreement with Turkey. Although Turkish nationals (and their family members) whose right of residence directly flows from the Association Agreement are not required to pass either the integration test abroad or the compulsory integration programme after arrival in the Netherlands, they still have to pay fees for issuing or extending residence cards. Furthermore, Turkish religious ministers are not excluded from the integration requirements. According to the Minister the fees and the special treatment of Turkish religious ministers do no constitute an infringements of the relevant standstill provisions. In the end, the Court of Justice has to rule on the compatibility of the Dutch integration legislation with Community law in this respect (EK, 29 700, D, p. 2).

While the Bill on integration makes a distinction between born (exempted from integration obligations) and naturalised Dutch nationals (not excluded) the Equal Treatment Commission is of the opinion that the Bill contravenes Article 5 of the European Convention on Nationality according to which State Parties shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently. Although the International Convention on the Elimination of All Forms of Racial Discrimination not applies to distinctions, exclusions, restrictions or preferences between citizens and non-citizens (Article 1, section 2) it prohibits a distinction between born and naturalised nationals as well. Furthermore, the integration obligations most probably infringe the prohibition of any discrimination based on race or ethnic origin as embedded in Article 5 CERD, Article 26 ICCPR, Article 14 ECHR and Article 1 Dutch Constitution. The given justification does not suffice. The Equal Treatment Commission considers the aim of the Bill – the promotion of social participation – legitimate, but is of the opinion that the proposed integration requirements are disproportionate while severely sanctioned when results are lacking. The same is true for Article 7a of the Equal Treatment Act and the Race Directive 2000/43/EC. Although the Directive does not cover conditions relating to the entry into and residence of third country nationals, the Equal Treatment Commission concludes that the integration condition for old comers is not such a condition falling outside the scope of the Directive (see its commentary of 23 January 2006, www.cgb.nl).

A new policy document on the admission of religious ministers will be expected May 2006 (*Staatscourant* 2006, no. 20, p. 17)

Judicial practice

District Court Amsterdam 23 December 2005 (AWB 04/33670; LJN: AU9561) concerned a case in which requests of 29 October 2003 for renewing residence permits for family reunification were declared inadmissible while the total fees of € 2290 (under the old regulation) were not paid. The Minister refused to apply the proposed exception clause for family reunification in case of insolvency with the argument that the new rules came into force on 1 July 2005 and only apply to new cases. The court dismissed the argument and annulled the inadmissibility decision. The application of directly binding international obligations such Article 8 ECHR is not dependent of the coming into force of national regulations.

According to District Court The Hague 16 February 2005 (*Jurisprudentie Vreemdelingenrecht* 2005/144) the (previous) fees regulation introduced in 2002 constituted a new restriction which infringed the standstill provisions of Article 13 Decision 1/80 of the Association Council EEC/Turkey

and Article 41 of the Additional Protocol of the Association Agreement EEC/Turkey. The argument of the Government that Decision 1/80 only concerns the access to the labour market of legally residing Turkish workers and that the standstill provision therefore only applies to new labour market restrictions and not to the introduction and rise of fees for residence permits, was dismissed. District Court Rotterdam 30 May 2005 (AWB 04/45792; LJN: AT8641) decided along the same lines. The decision of the District Court The Hague of 16 February 2005 was appealed at the Appeal Court The Hague (appeal is still pending).

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Chapter VIII
EU enlargement

Text in force

In May 2005 the Dutch government decided to continue to use the possibility to require a work permit for the employment of workers from the EU-8 Member States during the transitional period at least until May 2006.

During 2005 five changes occurred in the relevant rules on economic activities performed by citizens of the EU-8 Member States in the Netherlands:

1) the statutory rules requiring a work permit for workers temporarily posted in the Netherlands was replaced by a system of notification;
2) the legislation on collective labour agreements was modified in order to extend the effect of Directive 96/71/EC to all sectors, requiring foreign employers to paid their workers temporarily posted in the Netherlands the same wages and other labour conditions applicable to other workers under collective labour agreements declared generally applicable;
3) the request by an association of labour agencies primarily active in the placement of Polish workers in the Netherlands to recognize their own collective labour agreement and the request to be exempted from the generally applicable collective labour agreement for workers posted by private employment agencies were both refused by the Minister of Social Affairs;
4) the shortlist of jobs for which no labour market test for work permits is required for workers of the EU-8, because there is a clearly unmet demand for immigrant workers, was modified four times;
5) the administrative fines of employers employing foreign workers without the required work permit were raised considerably and the controls on illegal employment have been intensified.

Before these four changes are explained in more detail, we first present an overview of the legislation in force.

Reading the legislation, one has to keep in mind that the practice of granting work permits for citizens of the EU-8 has been rather liberal. As will be specified in Chapter IX, in 2005, almost 30,000 work permits for workers from the EU-8, mainly for workers from Poland (26,400) and primarily for seasonal jobs in the agriculture and horticulture. Of the 23,000 work permit requested by employers wanting to employ Polish workers in these seasonal jobs 96% were granted and only 4% (864) were refused.

Most of the national rules on the residence status and the access to employment for nationals of the eight new Member States during the first part of the transitional period are to be found in two documents: (1) a Decision of the Minister for Aliens Affairs and Integration of 25 March 2004 (WBV 2004/25, *Staatscourant* 1 april 2004, 64, p. 11) amending the Aliens Circular (*Vreemdelingencirculaire*), and (2) a decision of the State Secretary for Social Affairs of 14 April 2004, *Staatscourant* 19 april 2004, 74, p. 39, inserting a new paragraph 19a in the Rules on the implementation of the Aliens Employment Act (*Wet arbeid vreemdelingen*).

In accordance with the prevailing routine of the Ministry of Justice on the implementation of the rules on free movement of Union citizens and the rules based on Association Treaties concluded by the Community, most of the rules on the free movement of the citizens of the eight new Member States were implemented not in statutory instruments but by amending the Aliens Circular (*Vreemdelingencirculaire 2000).* In the introduction of the chapter on EU citizens, chapter B10 of the Aliens Circular, the accession of the ten new Member States was mentioned together with a reference to the rules on the transitional period that are stipulated in a new paragraph 8 of chapter B10. Further, it was mentioned that those rules on the transitional period do not apply to Polish and Czech citizens, having German nationality by descent.

At the beginning of the new paragraph 8 containing the rules on the transitional period "for nationals of Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia, Slovakia and the Czech Republic and the members of their families, irrespective of their nationality" it is mentioned that all rules on free movement of Union citizens apply to the nationals of Cyprus and Malta and that the Articles 1-6 of Regulation 1612/68/EEC do not apply to the nationals of the other eight new Member States and

their family members, as long as the rules on the transitional period contained in paragraph B10/8 of the Aliens Circular will be applied to them, provisionally until 1 May 2006.

In para. B10/8.1 it is mentioned that nationals of the eight Member States have the right to look for employment for a period of six months, according to Article 3.3(1)(d) of the Aliens Decree, but that employers need a work permit before they are allowed to employ them. Hence, those persons upon request will be granted a sticker in their travel document mentioning that the person is a Union citizen but with two statements "work permitted; work permit required" and "a (more than complementary) recourse to public funds may have consequences for the right to residence".

In para. B10/8.2 of the Aliens Circular the Minister uses the discretion allowed to the old Member States under the relevant Annex to the Accession Treaties. Nationals of the eight new Member States, who on 1 May 2004 had worked already lawfully for 12 months or had been allowed access to employment for 12 months, are to be given the same treatment as citizens of the old Member States. They have free access to the Dutch labour market, but not to the labour market of other Member States that apply exceptions during the transitional period. Nationals of the eight new Member States who after 1 May 2004 have been allowed access to employment for 12 months, are to be granted an EEC-residence card with the statement "work allowed; work permit only required during the first 12 months".

Both categories of workers, according to the Circular, lose their rights if they voluntarily leave the labour market, unless they continue to work as a self-employed person or a service provider. However, if they take up employment after that period again, their employer will need a work permit again for the first 12 months before the worker is allowed free access to all employment (par. B10/8.2(c) and B10/8.4 of the Aliens Circular).

Nationals of the eight new Member States who after 1 May 2004 have been allowed access to employment for less than 12 months, are to be granted a normal residence permit valid for the expected duration of the employment and containing the statement "work permitted; work permit required".

The position of family members is dealt with in par. B10/8.3. It is acknowledged that the spouse, the registered partner and the children under 21 years or in his charge of a national of the eight new Member States who on 1 May 2004 had lawfully worked for 12 months, are entitled to residence and have free access to the labour market. Upon request they are issued with an EEC residence card with the statement "work allowed; no work permit required". For family members admitted after accession, this free access is only granted after 18 months of residence in the Netherlands or as of 1 May 2006. However, for those family members the more favourable national rule will be applied: family members admitted under Dutch law are granted the same access to the labour market as the family who was first admitted, see par. B10/8.3(c).

Students from the new Member States are allowed to work without a labour permit if they are enrolled in a recognized educational institution and work for less than ten hours a week. The latter restriction does not apply during the months June-August. Those students are considered not to lose their status as a student once they look for work or are actually employed. Self-employed persons and service providers, according to the Circular, do lose that status if they are employed in a job that is real and effective, see B10/8.4.

In September 2004 the Minister issued a "clarification and correction" of two elements of the original version of paragraph B10/8.4 of the Aliens Circular concerning the access of the nationals wanting to work as an employee after they have been working as a self-employed person or a service provider and concerning the work permit exemption of students with a residence right under Directive 93/96/EEC, see Decision of the Minister for Aliens Affairs and Integration of 1 September 2004, WBV 2004/55, *Staatscourant* 14 September 2004, no. 176, p. 10. To the extent that this amendment of the Aliens Circular amounts to the introduction of new restrictions in comparison with the texts that entered into force on 1 May 2004, it can be questioned whether those amendments are a violation of the standstill rule in the provision on free movement in the Annexes to the Accession Treaties.

Nationals from the new Member States, who have privileged treatment under the transitional rule only have to pay the same reduced fee for their residence document, which is levied from nationals from the old Member States. Other nationals from the new Member States and their family members may apply for a regular residence permit. In those cases the general Dutch rules on admission of third country nationals apply and the persons will have to pay the high fees for their residence permits as

provided for in Article 3.34 and 3.34a of the Aliens Regulations (430 euro for persons of 12 years of age or older and 285 euro for those under 12 years), see par. B10/8.5 and 8.6. No residence permits are granted to nationals of the new Member States whose employment, wholly or partially, aims at conducting sexual activities with third persons (par. B10/8.7).

Finally, the scope of paragraph B11/6 of the Aliens Circular on the Europe Agreements is limited to the agreements with Bulgaria and Romania.

According to Article 8(1) of the Aliens Employment Act (*Wet arbeid vreemdelingen*) a work permit has to be refused to an employer who wants to employ an alien, for whom a work permit is required, if there are other workers in the Netherlands or in the EU available for the job (labour market test) or if the vacancy has not been notified to the regional employment authorities five weeks in advance. The Minister of Social Affairs may exempt certain categories of aliens from those two requirements in the interest of the development of international trade activities, see Article 8(3) of the Act. The Minister of Social Affairs has stipulated detailed rules on the implementation of the Act in a Regulation (*Uitvoeringsregels Wet arbeid vreemdelingen*). In the abovementioned amendment of these rules by the decision of the State Secretary for Social Affairs of 14 April 2005 a new paragraph 19a was inserted in these Rules. In this new paragraph the Minister using his powers under Article 8(3) of the Act, empowered the Central organisation for Work and Income (CWI) to determine for a period of no longer than three months that an employer desiring to employ a worker who is a national of one of the eight new Member States, will be exempted from the statutory obligation to possess a work permit for this worker, provided the job falls within a sector or profession to be determined by the CWI. This exemption may be prolonged each time for a maximum of three months by the CWI. The decision of the CWI has to be based on the proven lack of sufficient privileged persons looking for jobs in the Netherlands and the EU (on the basis of consultation of Eures), the expectation that workers willing to perform these jobs are available in the new Member States and a prognosis on the number of privileged workers that will be available within six months.

On the basis of this new competence the CWI amended its policy rules (*Beleidsregels uitvoering Wet arbeid vreemdelingen*) stipulating that as of 1 May 2004 employers who wanted to employ a national of the eight new Member States in eight categories of jobs were exempted from the individual labour market test and the obligation to notify the vacancy five weeks in advance. The eight categories were: drivers in international road transport, sailor and officer in inland shipping, operation room assistant, x-ray assistant and x-ray diagnostic assistant in hospitals, boning worker and slaughter men in the meat industry. The same exemption was granted for employment in seasonal jobs in agriculture and horticulture for jobs up to two months in July and August 2004. The number of categories of exempted jobs was gradually reduced during the last months of 2004. This development continued in 2005. After 1 May 2005, the exemption was reduced to two categories: drivers in international road transport, sailor and officer in inland shipping. As of 1 August 2005, after several parliamentary questions and a lot of public debate on Polish driver taking away jobs from Dutch drivers in international road transport, the exemption for this category was deleted too, whilst in November 2005 the job of slaughter men in a limited sector of the meat industry was added, Decision of the CWI Board of 7 February 2005, *Staatscourant* 7 February 2005, no. 26, p. 18, Decision of 28 April 2005, *Staatscourant* 9 May 2005, no. 87, p. 18, Decision of 29 July 2005, *Staatscourant* 5 August 2005, no. 150, p. 9. Decision of 18 October 2005, *Staatscourant* 26 October 2005, no. 208, p. 34 and Decision 1 February 2006, *Staatscourant* 9 February 2006, no. 29, p.22. The question arises whether this form of gradual de-liberalization is permitted under the standstill-clause in the relevant Annex to the Accession Treaties.

After 1 May 2004, the Dutch authorities continued to require companies established in the new Member States providing services in the Netherlands to apply for work permits for their employees, both nationals of the new Member States and third country nationals, involved in the provision of those services. This policy apparently was not in line with the jurisprudence of the Court in *Rush Portuguesa* and *VanderElst*. In the press and in public debate those (often Polish workers) were disqualified as illegal workers. They were often mentioned in relation to the pending legislation on stricter sanctions against illegal workers. The press mentioned complaints filed by four Polish companies with the European Commission concerning this practice in the Autumn of 2004. After the judgment of the Court in the case C-445/03 *Commission/Luxembourg*, the government in November 2004 announced that its policy would be changed: the Aliens Employment Act would be amended as to

replace the obligation of these service providers to have a work permit for their employees by an obligation to notify the Dutch authorities of the use of their employment before the start of the service provision. Parliamentary questions on this issue were replied to in April 2005 (Aanh. Hand. TK 2004-2005, no. 1500). Only after the European Commission had issued a reasoned opinion on this issue in July 2005 did the Dutch government in September 2005 actually decide to replace the work permit obligation for workers employed by service providers by a system of notification.

Finally, the notification system was introduced on 1 December 2005 with the Royal Decree of 10 November 2005, *Staatsblad* 2005, 577, amending the Implementing Decree of the Employment of Foreigners Act and the Aliens Decree 2000. The service provider has be really established in another Member State and the worker should be entitled to work for his employer in this state He has to declare that his services are not limited to simply providing employees. The service provider has to provide the Official Employment Agency (CWI) the documentation specified in the decree, among which a fully completed E 101 form stating the place of work in the Netherlands. The information has to be provided before the worker is employed in the Netherlands. Employment without prior notification is considered as illegal employment and may be fined with an administrative fine of 8,000 euros. In case the service provider completes the required notification within two weeks after the illegal employment is discovered by the authorities, a reduced administrative fine of 1,500 will apply, Decision Under-Minister of Social Affairs of 21 November 2005, *Staatscourant* 29 November 2005, no. 232, p. 19 (*Besluit wijziging beleidsregels boeteoplegging Wet Arbeid Vreemdelingen*). In his letter to the Parliament the Under-Minister explained he could not guarantee that the European Commission would accept the proposed notification system. The Dutch government had used the French notification system as a model, since that system apparently did not provoke complaints by the Commission (letter of 28 September 2005, Kamerstuk 2005-2006, 29407, nr. 24, Tweede Kamer).

On paper the new obligation applies to all service providers established in other EU/EEA states, but since the citizens of 17 Member States are fully exempted from the work permit obligations, the new rules in practice only apply to employees of service providers from the EU-8. During the debate in the Second Chamber several MP's asked to extend the new notification system to service providers from all EU Member States (TK 29407, no. 29). The Under-Minister of Social Affairs opposed this move (Hand. TK 22 November 2005, p. 24-1594). But a motion on this issue was still pending before the Second Chamber in December 2005 (Hand. TK 22 November 2005, p. 26-2940).

On 1 January 2005 new rules on the administrative fines based on Article 19d of the Employment of Aliens Act for employers employing non-Dutch workers without the required work permit entered into force. The maximum fine is set at 8,000 for each undocumented worker. If the employer is an individual person (not a company or a business) the maximum fine, generally, will be 4,000 euros, *Staatscourant* 24 December 2004, no. 249, p. 39 (*Beleidsregels boeteoplegging Wet Arbeid Vreemdelingen*). This penalty can be levied directly by the administrative authorities, thus avoiding the cumbersome criminal procedure. Moreover, the number of labour inspectors has been increased in order to guarantee a more effective implementation of the work permit legislation (TK 28442, no. 10). In the debate on this Bill the need to fight illegal workers (in 2004 often a code word for Polish workers) taking away jobs of Dutch workers played a central role (TK 29407, nos. 3 and 7). The Bill was adopted by Parliament at the end of 2004 (Act of 2 December 2004, *Staatsblad* 2004, 705, *Wet bestuurlijke boete arbeid vreemdelingen*) and the amendments entered into force on 1 January 2005 (Royal Decree of 13 December 2004, *Staatsblad* 2004, 706).

In 2005, the government introduced a Bill with the aim to extend the coverage of the 1999 legislation on the labour conditions of cross-border posted workers (*Wet arbeidsvoorwaarden grensoverschrijdende arbeid*). This legislation had been introduced in 1999 in order to implement Directive 96/71/EC. It only applied to posted workers in the building industry. The Bill proposed to delete the clause in Act on collective labour agreements that limited the scope of the 1999 Act to the building sector. That act will now apply to employment in all sectors (TK 29983 nos. 1-3). This extension, apparently, is related to migration from the new Member States to the Netherlands after 1 May 2004. All employers, irrespective of their domicile or the labour law applicable to the contract, will be required to pay their workers temporarily posted in the Netherlands the same wages and provide labour conditions applicable to other workers under collective labour agreements declared generally applicable. Service providers temporarily posting Polish workers in the Netherlands will no longer be allowed to pay Polish wages. Moreover, the Dutch provisions relating to holidays, holiday payments,

safety and protection and equal treatment will apply to those posted workers. Thus unfair competition should be prevented. The bill was adopted by Parliament and entered into force in December 2005 (Act of 13 December 2005, *Staatsblad* 2005, no. 626).

Early in 2005, the Association of International Labour Agencies, an association of labour agencies primarily active in the placement of Polish workers in the Netherlands asked the Minister of Social Affairs to recognize their own special collective labour agreement for workers posted temporarily in the Netherlands and living abroad. After the Minister refused this request, the association started and lost a court case against this ministerial decision (*Volkskrant* 15 May 2005). In September 2005 the Minister turned down a request by the same association for its members to be exempted from the generally applicable collective labour agreement for workers posted by private employment agencies, see parliamentary questions, Aanh. Hand. TK 2004-2005, no. 2248 and *NRC-Handelsblad* 14 September 2005. The request by the association for an interim injunction against the second decision by the Minister of Social Affairs was rejected by the District Court of Breda on 4 November 2005 (TK 30300 XV, no. 9 and below under Judicial practice).

Draft legislation

In a letter of the Under-Minister for Social Affairs of 31 March 2006 to the Parliament, the Dutch government proposed to gradually abolish the restrictions on the free movement of workers from the EU-8 during the second half of 2006. The proposal was justified with reference to an independent study on the effects of abolishment of the restriction by Ecorys (see below), by the report of the European Commission on the functioning of the Transitional Period in 2004-2006 and the undesirable side-effects of continuation of the restrictions. The concrete proposal was to continue the obligation to apply for a work permit after 1 May 2006 until the end of 2006, abolish the labour market test, limit the test by the Official Employment Agency (CWI) to labour conditions and the availability of suitable housing, speed up the handling of the applications by the CWI and abolish the work permit obligation for workers from the EU-8 Member States all together from 1 January 2007 (TK 29407, no. 32). This proposal, just like the governmental proposal in 2004 not to make use of the transitional period, met with opposition in Parliament during the debate on 12 April 2006. The governmental proposal was only supported by two of the three coalition parties (VVD and D66). A majority in the Second Chambers asked for more restrictions to remain in force. The third coalition party (CDA) proposed to abolish the work permit obligation only in sectors where trade unions and the employers associations together request the abolishment. The Under-Minister promised to send a letter with a revised proposal (*NRC-Handelsblad* 13 April 2006).

For a detailed analysis of the side-effects of maintaining the work permit obligation for workers from the EU-8 Member States see Ter Beek a.o (2004), Houwerzijl a.o. (2005) and Versantvoort a.o. (2006) mentioned below under Literature.

Judicial practice

- A Polish company had contracted with a Dutch farmer to do seasonal labour and stipulated that it was providing services to the farmer by means of four of its Polish employees. The work permits for these four workers were refused. In the appeal from this refusal, the Polish company asked the court to rule that no work permits were needed, because of the freedom to provide services under the EC Treaty. The court distinguished the case from the *VanderElst* and *Rush Portuguesa* cases, based on the lack of substantial activities of the company in Poland, the aims of the company as recorded in the official registration with the Chamber of Commerce and the fact that the labour contracts with the Polish workers were only concluded after the application for the work permits; work permits were required since the company was not providing services under the EC Treaty but rather acted like an employment agency, District Court The Hague 21 June 2005, *Jurisprudentie Vreemdelingenrecht* 2005, 336.
- The employer of four Polish workers had to deduct and to pay the 60% income tax to the tax authorities, rather than the lower normal income tax deduction, since the employer did not have copies of the identity papers of the Polish workers in his administration as required under the

general Dutch tax legislation. The court held that the employer should have verified the residence status of the workers, Centrale Raad van Beroep 1 September 2005, LJN: AU2400.

- The collective labour agreement concluded by the Association of International Employment Intermediaries (VIA) exclusively relates to foreign workers temporarily posted in the Netherlands, living in accommodation provided by their employers. This agreement makes an unlawful distinction on the basis of nationality of the workers. Thus the Minister of Social Affairs rightfully has refused the application of the Association to exclude their members from the scope of the generally applicable collective labour agreement for workers posted by employment agencies, District Court Breda 4 November 2005, LJN: AU5630.
- Ten Polish workers were dismissed by a farmer without notice on the ground that they had threatened colleagues after a spontaneous strike against the extremely long working hours and other labour conditions. The farmer employed 180 Polish citizens as seasonal workers. The court held that the employer did prove the threats or the intimidation by the workers. The dismissal was unreasonable since alternative reactions to the labour dispute had been available to the employer. The employer was ordered to pay the full salary to the workers until their labour contracts had been ended in a lawful manner, Kantongerecht 5 August 2005, *Nederlandse Jurisprudentie* 2005, 439.
- A Rumanian citizen was arrested an taken into detention with the aim of expulsion for violation of a local rule of the city of Utrecht that does not allow to play music in a public place for more than 15 minutes at the same location without a permit of the local authorities. The court held that the person had lawful residence during the three months visa-free period. This period ends once the alien violates the public order. Since this was his first violation and the person did not present an actual thread to the public order, his behaviour was not sufficiently serious to automatically end his lawful residence, Aliens Chamber Utrecht of the District Court The Hague 25 April 2005, LJN: AO0022.

Miscellaneous

On 1 January 2005 almost 40,000 persons of Polish origin (born in Poland or with one parent born in Poland) were living in the Netherlands. The large majority (70%) of the persons born in Poland, i.e. first generation immigrants, are women. On 1 January 2005, a total of 11,000 registered residents of the Netherlands had Polish nationality and another 16,000 had both Polish and Dutch nationality.

A detailed description and analysis of the various legal constructions used for the employment of Polish workers or Polish self-employed persons and the relative costs and advantages of employment of these workers, see H.M. ter Beek a.o. 2004 and TK 29407, no. 17.

The number of Polish citizens who registered with the Chambers of Commerce as self-employed increased from 154 in 2003 and 1,025 in 2004 to 2,600 in 2005 (Versantvoort a.o. 2006). The number of residence permit granted to Polish citizens for the purpose of self-employment increased from 55 in 2003 to 252 in 2005.

It is generally understood that a considerable number of workers from Poland hold Polish and German nationality. For the application of the immigration and work permit legislation these “German Poles” are treated as German nationals and, thus, their employment is work permit free, see Aliens Circular B10/1.3. Thus, these workers are not included in the work permit statistics. It is estimated that, each year an average of between 10,000 and 20,000 of these Polish-German workers are employed in the Netherlands.

In 2005 the level of the maximum fine on illegal labour has increased from 900 to 8,000 euros. The number and the intensity of the controls on illegal labour increased as well. Persons who commission a person who considers himself a self-employed craftsman from an EU-8 Member States to do certain construction or renovation work in their home, may find themselves to be fine with an 4,000 euros fine, if the labour inspectors consider the person craftsman to be employed without the required work permit. In the first six months of 2005 a total of 88 individual persons were checked and received an administrative fine (*De Gelderlander* 25 August 2005).

The sub-standard working conditions and housing of Polish citizens employed as seasonal workers in harvesting jobs has received quite some attention in the press and in political debate. A trade union supported the case of a group of workers who were dismissed after a spontaneous strike against

the labour conditions and were evicted from the housing provided by the employer (see above under judicial practice). The Ministry of Housing commissioned a study on the housing conditions of seasonal workers (TK 30300 XI, no. 30, p. 7 and 29407, no. 32, p. 2). Some local authorities granted permission to build an "agro-hotel" for accommodating seasonal workers to private employment agencies.

The "unfair competition" of Polish workers working for substandard labour conditions in agricultural of construction jobs has been the subject of series of parliamentary questions (Aanh. Hand. TK 2004-2005, nos. 228, 650, 773, 1090, 1253, 1573, 2326 and 2409). Special attention both in the media and in parliamentary question was focussed on the Polish drivers replacing Dutch workers in the international road transport, see the parliamentary questions Aanh. Hand. TK 2004-2005, nos. 1573, 2339, 2349 and 2380.

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Chapter IX
Statistics

Immigration from and emigration to other Member States

The total registered immigration to the Netherlands of persons born in one of the 24 other Member States in 2005 amounted to 25,900 persons. The registered emigration of persons born in other Member States in 2005 was 18,800. Among those numbers are also some Dutch nationals, born in one of the other Member States. However these data give a fair picture of the movement to and from the Netherlands within the EU. The main countries of origin and destination are Poland, Germany, the UK, Belgium, France, Spain, Portugal and Italy. The number of immigrants born in Poland in 2004 and 2005 was higher than from any other Member State. Partly, this is due to the liberalisation of the rules after the Enlargement, but it may also reflect the regularisation of Polish immigrants already living in the Netherlands before May 1, 2004. The regularisation is also reflected in the relatively low number of emigrants born in Poland.

Table 1. Migration to and from the other 24 Member States in 2005

	Immigration	Emigration	Surplus
Poland	6,891	1,632	5,259
Germany	5,369	4,378	991
United Kingdom	3,032	3,361	-599
Belgium	1,749	1,652	97
France	1,747	1,450	297
Total 24 MS	25,915	18,782	7,133

Source: CBS, Statistical Bulletin 2006, no. 12.

From table 2 it appears that in 2005 immigration from the EU-14 Member remained almost equal and emigration was lower than in 2004. The effect of the Enlargement in 2004 is clearly visible: one third (8,100 persons) of the total immigration in 2005 originated from the EU-10, primarily from Poland. The immigration from Poland increased considerably in 2004 and rose even further in 2005.

Table 2. Immigration and emigration of persons born in other Member States (1995-2005)

Immigration EU-14	Emigration EU-14	Immigration EU-24	Emigration EU-24	Immigration Poland	Emigration Poland
16116	14792			1249	439
18868	17227			1498	608
19779	14626			1478	654
20429	15312			1682	725
20857	14720			1168	662
21801	14465			1871	728
21566	14151			2189	762
19808	16495			2337	836
18231	16324			2234	1020
17610	17621			5162	1232
17747	16234	25915	18782	6891	1632

Source: CBS, Stateline 2006.

Resident EU citizens

On January 1, 2005, the total number of EU citizens from the other 24 Member States registered as residents in the Netherlands was little over 228,000. The fact that the number of male residents (116,000) is almost equal to the number of female resident Union citizens (112,000) indicates that it is a stable immigrant population. The size of the group has been slowly but steadily increasing since

1997. The sudden increase with 8% (17,000 persons) in 2004 is apparently due to the accession of 10 new Member States.

Table 3. Total number of resident nationals of 14 Member States (1996-2005)

Year	Number
1996	191,100
1997	188,300
1998	190,200
1999	192,200
2000	195,900
2001	201,600
2002	207,900
2003	210,600
2004	211,009
2005	228,141

Source: CBS, Stateline 2006.

A steady increase occurred during the last three decades. The number of nationals of the 14 Member States increased from 137,000 in 1971, to 160,000 in 1981 and to 178,000 in 1991 (Statistics Netherlands, *The virtual Dutch Census of 2001*, Voorburg 2003, p. 130).

The number of EU-citizens registered as residents on 1 January in the years 2002-2005 is specified in Table 4.

Table 4. Registered resident nationals of the 24 other Member States on January 1 (2002-2005)

	2002	2003	2004	2005
UK	43,500	44,000	43,700	42,500
Germany	55,000	56,000	56,500	57,190
Belgium	26,000	26,500	26,200	26,105
Italy	18,000	19,000	18,500	18,400
Spain	17,500	17,500	17,400	17,200
France	14,100	14,500	14,500	14,500
Portugal	10,500	11,300	11,800	12,000
Poland	6,300	6,900	7,400	11,000
Greece	6,015	6,200	6,300	6,400
Ireland	4,100	4,200	4,200	4,100
Austria	3,500	3,500	3,600	3,600
Sweden	3,100	3,100	3,100	3,100
Denmark	2,700	2,600	2,700	2,700
Finland	2,100	2,100	2,100	2,100
Hungary	1,700	1,800	1,900	4,100
Czech	1,300	1,300	1,500	1,700
Slovakia	900	900	1,000	1,200
Lithuania	400	500	600	1,000
Latvia	200	200	300	400
Luxembourg	300	300	300	300
Slovenia	200	200	250	250
Estonia	150	150	200	300
Malta	100	100	100	100
Cyprus	50	50	50	50

Source: CBS, Stateline 2006.

From these figures it appears firstly that the number of nationals of the other EU-14 Member States has been surprisingly constant over the last four years. Only the number of UK nationals diminished after 2003. Apart from Poland and Hungary, the number of nationals of the new Member States officially registered in the Netherlands on 1 January 2005 was relatively small. But the number of registered nationals of all EU-10 Member States, except Cyprus and Malta, have increased in 2004, for Poland and Estonia with 50% and for residents from Hungary with a surprising 200%.

According to the website of the Immigration and Nationality Service of the Ministry of Justice a total of 22,500 EC/EEA residence cards have been issued in 2005. This is a considerable increase in comparison with the 15,200 residence cards issued to EU/EEA nationals in 2004.

Naturalisation and dual nationality

Persons who have both Dutch nationality and the nationality of another Member State, are not included in tables 2-4. In the official statistics these dual nationals are counted as Dutch nationals. On 1 January 2005 the total number of residents in the Netherlands having both Dutch nationality and one or more other nationalities was 977,000 (in 1995: 394,000; in 2003: 880,000). The number of Dutch residents also having the nationality of another Member State is published for some Member States.

Table 5. Dutch nationals having the nationality of another Member State in 1986, 2003 and 2005

	1986	2003	2005
Germany	37,700	44,200	45,500
Great-Britain	38,300	41,900	42,500
Belgium	26,300	28,900	29,400
Italy	14,059	17,500	18,200
Poland	10,700	15,000	15,700
France	11,800	14,300	14,900

Source: CBS, Stateline 2004.

The number of persons with multiple nationality has increased considerably over the last years. From the figures in table 5 it appears that the total number of residents of the Netherlands originating from other Member States is far greater than the number of EU citizens mentioned earlier in this paragraph. If one compares the figures of the tables 3 and 4, it appears that the total number of nationals from Belgium, Germany, Great-Britain and Italy resident in the Netherlands, is two times the number mentioned in table 3. Half of the nationals of those four Member States, residing in the Netherlands, also have Dutch nationality and, thus, are counted only as Dutch nationals in the official Dutch statistics. This may imply that the size of the migration between the Member States is considerably larger than is usually concluded on the basis of the official population statistics of the Member States. It also implies that a considerable number of EU citizens living in the country of their nationality are actually migrants, who used their freedom of movement within the EU or are descendants of those migrants, and thus have certain rights under Community law on free movement, e.g. the right to family reunification. Finally, it implies that the policy of reverse discrimination, practised by certain Member States including the Netherlands, deserves critical consideration by the Commission, since this policy may well result in discrimination against EU migrants who also have the nationality of their Member State of residence.

Generally, the propensity of resident EEA citizens to apply for Dutch nationality is relatively low. The total number of persons that acquired Dutch nationality by naturalisation or option diminished considerably after the introduction of a strict naturalisation test in 2003: from 41,200 in 2002 to 20,600 in 2004. In 2003 almost 3.5% of all non-Dutch residents, but only 1% of the resident EEA nationals were naturalized (see table 6).

Table 6. Number of naturalisations of EU nationals in 200, 2003 and 2004

nationality	2001 number of naturalisations	2003 number of naturalisations	(2003) %	2004 number of naturalisations
Danish	9	11	0.4	5
Finnish	8	11	0.5	12
Spanish	98	84	0.5	104
Irish	16	25	0.6	9
Portuguese	129	71	0.6	69
British	356	294	0.7	190
French	123	100	0.7	87
Austria	38	25	0.7	18
German	573	445	0.8	297
Belgian	189	250	0.9	122
Swedish	8	34	1.0	15
Greek	26	64	1.0	45
Italian	211	206	1.1	148
Polish		318	5.0	212
Slovak				35
Hungarian				33
Lithuanian				26
Czech				21
Latvian				11
Estonian				5
Slovenian				4
Cyprus				1
Malta				0

Source: CBS, Stateline and author's computation.

Most of the EEA nationals, who apply for naturalisation, do so after much longer residence in the Netherlands (ten years or more) than the residents of third countries. Generally, it appears that nationals of some Southern Member States have a bit higher inclination to apply for naturalization than nationals from the Northern Member States. The naturalisation rate of nationals from the EU-10 Member States, especially for nationals of Poland and the Baltic states, in 2004 was considerably higher than that of nationals of the other Member States.

From table 6 it also appears that the introduction of the strict naturalisation test in 2003 reduced the number of nationals of the EU-14 Member States who acquired Dutch nationality in 2004 with 31% in comparison with the previous year. The reduction of the number of naturalized nationals of third countries was by far not so great. Apparently the new test makes it far less attractive for nationals of other Member States to acquire Dutch nationality.

Labour migration from EU-8 Member States

Considering the number of labour permits granted to citizens of the four large EU-8 Member States (then candidate Member States) in the years 1996-2003, the lawful employment by citizens of those states in the Netherlands has increased considerably over the years before their accession to the EU. From table 7 it appears that the number of permits granted to Polish workers increased clearly already after 2001. In 2004 the number jumped to 20,200 and increased even further to 26,400 in 2005. This increase reflects a clear liberalisation of the policy on issuing labour permits to nationals of the EU-8 Member States after accession. Apparently, primarily Polish workers made use of this liberalisation. The number of permits granted to workers from the other three Member States decreased in 2005, for Hungary to the level of 1999.

Probably the rise in employment of workers from the new Member States has reduced the employment of workers from countries outside the EEA. In 2005 a total of 46,400 work permits were issued, that is 8,000 more than in 2003. The number of permits issued to nationals of Poland in 2004 in 2005 increased approximately 15,000 in comparison with 2003. In 2005, according to data from the

CWI, 378 labour permits were granted to nationals of Lithuania, 61 to nationals of Latvia and 56 to nationals of Slovenia.

Table 7. Number of labour permits granted to citizens of four CEEC states (1996-2005)

	Poland	Hungary	Czech Rep	Slovakia	Total EU-8
1996	735	275	127	47	
1997	928	349	181	75	
1998	1,184	502	157	125	
1999	1,501	662	405	201	
2000	2,497	718	625	433	4,468
2001	2,831	1,063	992	681	5,880
2002	6,572	1,000	880	609	9,399
2003	9,510	953	971	681	10,430
2004	20,190	1,080	1,455	1,234	
2005	26,442	646	1,163	1,030	29,442

Source: Sopemi 2002 and CWI.

The overwhelming majority (87%) of labour permits for Polish workers in 2005 were granted for jobs requiring low qualifications, 11% of the jobs were classified as requiring medium range qualifications and only 2% required high qualifications (data of the CWI). For the other EU-8 the share of the jobs requiring high qualifications is considerably higher, e.g. 16% of the work permits granted to Hungarian workers. More than 90% of the work permits for Polish workers were valid for less than 24 weeks and only 2% of the permits were valid for more than one years. These data reflect that Polish workers in 2005, as in previous years, were mainly granted work permits for seasonal labour in agriculture and horticulture.

Cross-border employment

The following data indicate the size of the cross-border employment between Belgium and the Netherlands.

Table 8. Employment across the Belgian-Dutch border (1999-2005)

	From Belgium to NL	From NL to Belgium
1999	16,145	6,155
2000	16,740	6,200
2001	17,505	6,170
2002	18,870	6,110
2003	19,780	5,755
2004	20,365	5,865
2005	20,395	6,050

Source: Centraal Bureau voor de Statistiek, Stateline 2006

From these data it is clear that the cross-border employment from Belgium to the Netherlands continues to outnumber the cross-border employment in the opposite direction. The number of persons performing cross-border employment in Belgium slightly increased in 2005, while the number of persons living in Belgium and working across the border in the Netherlands gradually increased over the last seven years. A similar development occurs across the German-Dutch border: the number of workers living in Germany and working in the Netherlands increased with 400% after 1999 to 15,130 in 2005. On the other hand, the number of cross-border workers from the Netherlands in Germany is clearly decreased: from 14,065 in 1999 to 8,845 in 2005. These statistics are irrespective of the nationality of the cross-border workers. The increasing cross-border employment from Germany to the Netherlands may be partly due to an increasing number of Dutch citizens who decided to live in Germany but remain employed in the Netherlands.

Chapter X
Social security

Text in force

Since 5 May 2005 the export of the Dutch Supplementary Benefits Act (*Toeslagenwet*) has also been restricted for EU/EEA and Swiss-citizens, by inscribing this Supplementary Benefits Act on Appendix IIbis of Regulation 1408/71 (effected by Regulation 647/2005). According to a proposed transitional arrangement, the Government intent to gradually scale down this supplement benefit for existing cases. Recipients will receive the whole supplement during the first year and it will be reduced by a third annually during the subsequent three years. The Dutch Second Chamber has not yet approved this transitional arrangement because it is in favour of a more generous transitional arrangement. This problem is still pending in the Second Chamber at the moment (TK 30063, Kamerstuk 2004-2005, 30036, nr. 1). The Dutch government has officially denounced ILO Convention 118, concerning equality of treatment in social security (*Staatsblad* 2004, 715). This denouncement has entered into force on 20 December 2005 (i.e. a year after inscribing the denouncement at the International Labour Office of the ILO).

Draft legislation

Regarding the implementation of Directive 2004/38 in May 2006, the government has announced legislation excluding all EU citizens explicitly from social assistance benefits during the first three months of their stay. Under the current system these EU citizens are formally entitled to social assistance, but an appeal on social assistance will lead immediately to a termination of the residence status and consequently to a loss of social assistance entitlement.

In reaction to a letter from the Commission of 15 July 2005 the Dutch government will change the Child Day Care Act (*Wet kinderopvang*) to bring it in conformity with Article 39 EC and Articles 4(1)(h) and 76 Regulation 1408/71. The condition that in case one of the parents lives abroad for full entitlement to a day care supplementary allowance, this parent has to work in The Netherlands or receive a Dutch social security benefit will be changed. Working in the EU/EER/Swiss or receiving a social security benefit from one of these countries will give the same entitlement. The Child Day Care allowance is also regarded as a family allowance under Regulation 1408/71. Therefore in cross border situations the Dutch government has to pay an additional allowance if the height of the Child Benefit and the Day Care allowance together is higher than the family allowance, which the beneficiary is entitled to in his country of residence. These changes have retroactive effect until 1 January 2005 (TK 2005-2006, 28447, no. 123).

As of January 2006, a new insurance system for curative healthcare comes into force. Under this new Health Insurance Act (*Zorgverzekeringswet*), all residents in the Netherlands are obliged to take out a health insurance. The system is operated by private health insurance companies, which are obliged to accept every resident. This new Act replaces the old system, which combined a compulsory insurance under the Social Health Insurance Act and a private health insurance for people with a higher income. The 2006 report will deal with the problems of insurance for cross border workers and for persons living abroad. An English brochure of 78 pages can be downloaded from the website of the Ministry of Health, Welfare and Sport (www.minvws.nl). The new Health Insurance Act falls within the material scope of Regulation 1408/71.

The Board of Health Care Insurances (*College voor zorgverzekeringen*) has informed by several circular the health care insurances companies of the consequences of the introduction of the Health Insurance Act on the implementation of Regulation 1408/71 and 574/72 (Circulars 05/37, 05/33, 05/34 and 05/43). Persons living in an EU Member State and working in the Netherlands are obligatory insured for the Dutch Health Insurance Act. They are entitled to the health care provided in the country they live in. Special arrangements are made for family members and pensioners living in another country. Cross border workers, working in the Netherlands, but living abroad, are obligatory insured under the new Dutch Health Insurance Act.

People living abroad who receive Dutch social security benefits will no longer be liable to pay mandatory premiums for social benefits such as Disability Insurance, Unemployment benefits or

Sickness allowance as of January 1st 2006. Because of these mandatory insurances, they cannot apply for social security benefits in their country of residence, whereas they only have limited social protection from the Netherlands. For example, disability benefit recipients abroad pay unemployment insurance premiums but they are excluded from applying for unemployment benefits while living elsewhere. The government wants to put an end to this situation as of January 1st 2006. By dropping the mandatory premiums for social security benefits, the net allowance will rise. People with a disability benefit who return to the Netherlands after their allowance has been reduced or stopped, are not eligible for unemployment benefits. This is expected to only be a very small group because most of the people in this situation will no longer be eligible for a resident's permit or a work permit in the Netherlands. These new measures are taken as a result of the judgment of the ECJ in *Van Pommeren-Bourgondiën* (C-227/03) and the expected introduction of Regulation 883/2004 (replacing Regulation 1408/71), which states that the eligibility for social security benefits is the responsibility of the country of residence (*Staatsblad* 2005, 718).

In addition to this Act and as a result of the *Van Pommeren-Bourgondiën* case, by Royal Decree a retrospective possibility for insurance for old age pension (AOW) and survivors pension (ANW) on a voluntary basis is created over the period 2001-2006 for EU/EER/Swiss-citizens with a Dutch social security benefit abroad (*Staatsblad* 2005, 720).

In (draft)legislation there has been no reference in 2005 to the judgments of the ECJ in the Collins and the Ioannidis cases.

Judicial practice

- An Italian citizen was refused a social assistance benefit because the status he was registered under in the Municipal Basic Administration (*Gemeentelijke basis administratie GBA*) was changed by the Immigration and Naturalisation Service (IND) was changed into 'unlawful residence'. According to the District Court Utrecht, the municipality can rely in first instance on the data provided by the GBA. However, in case of doubt, based on other evidence (in this case a copy of a residence permit) the municipality has the responsibility to investigate whether an EU-citizen is lawfully staying in the Netherlands by itself (District Court of Utrecht 27 June 2005, SBR 05/1334 and SBR 05/1333).
- Italian stewardesses, who were working for a Dutch charter flight company on flights from Milan and Bologna to destinations in Greece and Spain, are according to Regulation 1408/71 insured for national insurances (*volksverzekeringen*) under Dutch legislation. Therefore they have to pay contributions to the Dutch Social Insurance Bank (Central Appeals Tribunal 18 November 2005, 03/580 ALGEM, AU6431).
- The District Court of Amsterdam and the Central Appeals Tribunal have challenged the position of the Dutch Disability Benefit for Young Handicapped Persons Act (*WAJONG*) on Appendix IIbis of Regulation 1408/71, which means there is no export obligation for this benefit. In the view of the Court and the Tribunal this benefit is not a benefit in the sense of article 10bis Regulation 1408/71. Therefore they have asked separate preliminary rulings of the ECJ, which are pending now under the case numbers C-154/05 and C-287/05

Miscellaneous

In March 2005 the Dutch government has published a memorandum with possible options to restrict immigrants' access to social assistance benefits in the future (Kamerstuk 2004-2005, 29861, nr. 2, Tweede Kamer). One of the proposals the government wants to work out in more detail is ensuring that financial guarantors for migrants such as employers and partners fulfil their obligations better. The possibility of a bank guarantee will be explored, as well as the option of refusing to financially back people who have proven to be unreliable in the past. The government is furthermore considering extending the period in which a migrant's residence status is dependent on their Dutch partner from three to five years. The government is studying possible exceptions to the proposal, such as migrants who are particularly active in their efforts to become assimilated. The government also wants to adjust welfare regulations so that councils no longer have to pay welfare to foreigners who have lodged an appeal against the rejection of a renewal of their residence permit. This is not possible for citizens from countries which are members of the Council of Europe (the European Union, Turkey, Russia and

countries in the Caucasus) because of the European Convention on Social and Medical Assistance. The Netherlands is therefore preparing a caveat to this treaty. The government wants to implement the existing rules for migrants more efficiently. For example, councils will no longer be obliged to provide welfare to people allowed to reside temporarily in the Netherlands for a specific task e.g. au-pairs. The government wants to clarify that rule and make better arrangements for the implementation with the Immigration & Naturalisation Service and local authorities. A welfare application could result in the termination of some people's residence permits. This can apply e.g. for migrants who work in the Netherlands and who have been granted a residence permit for the duration of their work. The government wants to improve cooperation between the Immigration & Naturalisation Service and local authorities to ensure the implementation of the regulation.

Finally, the government wants to investigate whether it is possible to make it mandatory for migrants coming to the Netherlands to take out supplementary insurance for old-age pension. In that case, migrants will be obliged to pay an amount before being admitted to the Netherlands. Migrants who fail to take out supplementary insurance, which makes them ineligible for a full pension, will not have their pension topped up from welfare. The consequences of these proposals for people coming to the Netherlands to work, including specialised foreign workers, will be included in the investigation. The government also wants to look into the option of insisting that migrants reside in the country for a period before becoming eligible for welfare.

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Chapter XI
Establishment, provision of services and students

Establishment

Texts in force

In order to implement Article 7 of Directive 97/43 Euratom the title and qualifications of a medical physics, his adequate theoretical and practical training are legally regulated in *Besluit opleidingseisen en deskundigheidsgebied klinisch fysicus*, *Staatsblad* 2005, 265.

Judicial practice

As in previous years the issue of the compatibility of a long stay visa requirement with the right of establishment as embedded in the Association Agreements with the CEEC States played an important role, although its relevance is now limited to Bulgaria and Romania only. As a consequence of the judgment of the Court of Justice of 16 November 2004, C-327/02 (*Panayotova*), *Jurisprudentie Vreemdelingenrecht* 2005/2, the Judicial Division of the Council of State withdrew its reference for a preliminary ruling of 4 February 2003 (*Jurisprudentie Vreemdelingenrecht* 2003/132, with annotation C.A.Groenendijk) and decided the case on 4 February 2005 (*Jurisprudentie Vreemdelingenrecht* 2005/134). The Council of State quoted par. 38 of the judgment of the Court: "Without prejudice to the ability of the Member States to lay down a system of prior control coupled with a possibility of examination of applications made directly in national territory, it is consistent with the logic of a system of prior control such as that applied by the Kingdom of the Netherlands and permissible under the Association Agreements for that Member State to provide in its legal order that, where the requirement to submit, in advance, in their country of origin or the country where they are permanently resident an application for a temporary residence permit with a view to establishment is not met, the competent authorities of that Member State are to refuse Bulgarian (…) nationals, relying (…) on Article 45(1) of the Communities-Bulgaria Agreement (…) the full residence permit which they seek, irrespective of whether the substantive requirements to which grant of such a temporary residence permit is subject are in fact met (see, by analogy, *Gloszczuk*, paragraph 70, and *Kondova*, paragraph 75)." With reference to this judgment the Council of State decided that the long stay visa requirement (the so-called temporary residence permit) serves a legitimate aim and does not make the exercise of the right of establishment conferred by the Association Agreement impossible or excessively difficult. Articles 45(1) and 59(1) of the Association Agreement do not oppose the long stay visa requirement. Furthermore, the Council of State rejected the argument of the applicant that it will be difficult for her to prove in Bulgaria that she fulfils the conditions for issuing a temporary residence permit.

District Court Utrecht 27 January 2005 (AWB 04/48199, LJN: AS7923) rejected already with reference to the *Panayotova* judgment the argument of the applicant that the applicable legislation and practice in the Netherlands concerning temporary residence permits is not in conformity with the requirement of the Court that the scheme applicable to such temporary residence permits must be based on a procedural system which is easily accessible and capable of ensuring that the persons concerned will have their applications dealt with objectively and within a reasonable time.

District Court Amsterdam 31 October 2005 (AWB 05/44381, LJN: AU9588) concerned a Bulgarian applicant, who resided already in the Netherlands on a residence permit, which however did not allow her to work. With reference to the Association Agreement Bulgaria/EEC she requested to change the restriction of her residence permit in order to allow her to take up an activity as a self-employed person. The application was rejected while the applicant did not possess a long stay visa. With regard to the new decision to be taken by the Immigration and Naturalization Service, the District Court did not refer to the *Panayotova* ruling but to the *Kondova* judgment only (Court of Justice 27 September 2001, C-235/99, *Jurisprudentie Vreemdelingenrecht* 2001, 305). Nevertheless, relevant for deciding this case seem in particular the findings of the Court in *Panayotova* that "it is immaterial (…) that the applicant is already legally resident in the host Member State on another basis on the date of his application where it appears that the latter is incompatible with the express conditions attached

to his entry into that Member State and in particular those relating to the authorised duration of the stay".

On 26 May 2005 the District Court Utrecht (AWB 03/13510, LJN: AT6721) ruled that the introduction of a obligatory long-term visa (the so-called temporary residence permit) in the Aliens Act 2000 constitutes a new restriction on the freedom of establishment and the freedom to provide services which infringes the standstill provision of Article 41, section 1 of the Additional Protocol of the Association Agreement EEC/Turkey. Under the previous legislation the requirement of a temporary residence permit was not absolute and not embedded in the Act itself.

Provision of services

Texts in force

In December 2004 the Government, also at the request of the Lower House of Parliament, asked the SER (*Social and Economic Council*) to issue advice regarding the European Commission's proposal for a Directive on services in the internal market. In its unanimous advice of 20 May 2005 (2005/07, also available in English: see www.ser.nl) the SER supports the further regulation of service transactions in the EU. Such regulation is required to realise an internal market for services. However, there is room for improvement in the European Commission's proposal. Better guarantees are needed in respect of the implementation of the country of origin principle and the free movement of services based thereupon. This relates specifically to the demarcation of the scope of the country of origin principle in relation to existing employment law, the balance between market opening and enforcement of the Posting of Workers Directive, a clearer definition of the term 'establishment', more binding regulation of the administrative cooperation between the Member States and limits on the grounds for derogation in the free movement of services when invoking compelling reasons of general interest.

The government reacted on 23 September 2005 (TK 21 501-30, no. 120). In its reaction it included an advisory opinion of the Council of State which was published on 18 July 2005. The Government agrees with the SER about the required demarcation of the scope of the country of origin principle in relation to existing employment law. For that reason the Government is of the opinion that the Convention on the law applicable to contractual obligations should be excluded from the country of origin principle. This principle should be applicable in business to business relation only, which means that consumer's contracts should be excluded as well. The Government advocates a general possibility to apply rule of reason exceptions, to be evaluated by the Commission after five years. Both SER and Council of State foresee the necessity of a more binding regulation of the administrative cooperation between the Member States. The Government agrees. It should be absolutely clear which Members State is responsible for the enforcement of which rules: the receiving state or the state or origin. With the Council of State the Government rejects a system whereby authorisation shall be deemed to have been granted when a response within the prescribed time period has failed. Only for certain specific activities such a fictitious authorization could be acceptable and useful.

In 2005 the legislation on the labour conditions of cross-border posted workers (*Wet arbeidsvoorwaarden grensoverschrijdende arbeid*) te extend the scope of the legislation to employment in all sectors. This extension was apparently related to migration from the new Member States to the Netherlands, but is generally worded and applies to posted workers of all Member States (see also TK 29 983, no. 1-3). Moreover, in 2005 the work permit legislation was amended as to replace the obligation of service providers to have a work permit for their employees by an obligation to notify the Dutch authorities of the use of their work force before the start of the service provision. under the new system the provider of services are exempted from the work permit obligation if he is established outside the Netherlands and not acts as a post box company or a temporary employment agency and has notified his activities before the actual start of the service provision to the Central organisation for work and income (CWI). This new legislation and other policies specifically applicable to access of service providers from the new Member States and their right to make use of their own employees in providing services in the Netherlands has been discussed in Chapter VIII on Enlargement in this report.

Students

Texts in force

On 20 January 2005 the Minister of Education was still of the opinion that Article 12 EC does not apply to study grants for maintenance costs (TK 2004-2005, *Aanhangsel*, 785). But a few months later, on 15 March 2005 the Court of Justice, C-209/03 (*Bidar*), *Migrantenrecht* 2005/ 19, *Rechtspraak Vreemdelingenrecht* 2005, 87 (with annotation P. Minderhoud) decided that "assistance, whether in the form of subsidised loans or of grants, provided to students lawfully resident in the host Member State to cover their maintenance costs falls within the scope of application of the EC Treaty for the purposes of the prohibition of discrimination laid down in the first paragraph of Article 12 EC". To implement this judgment the Study Grants Office (*Informatie Beheer Groep*) issued a new policy concerning the application of study grants by students from EU, EEA or Switzerland (*Beleidsregels aanpassing studiefinanciering voor studenten uit EU, EER of Zwitserland, Staatscourant* 2005, 94, p. 15). With reference to the judgment of the Court and Article 24 Directive 2004/38/EC (maintenance aid after five years continuous residence) the Study Grants Office decided to extend the entitlement to the full study grants according to the study grants legislation to those students from other EU, EEA Member States and Switzerland who have resided in the Netherlands during a continuous period of five years. This new policy has retroactive effect as of 15 March 2005. Students from EU, EEA or Switzerland who have resided in the Netherlands for less than five years are still entitled to the so called Raulin compensation, a reimbursement of the enrolment fees only. Although the ECJ considered that there is no need to limit the temporal effects of its judgment, the Study Grants Office justifies the temporal limitation of its new policy with reference to Article 3.21, second paragraph, Study Grants Act 2000 (*Wet Studiefinanciering 2000*). According to this provision applications for study grants are not honoured with retroactive effect (see also TK 2004-2005, *Aanhangsel*, 1405).

The consequences of this new policy seem rather limited. Students who have resided in the Netherlands during a continuous period of five years are normally the children of a worker or a self-employed person and these children are already entitled to the full study grants. They are considered as community citizens themselves in the meaning of Article 8(e) Aliens Act 2000 (see Aliens Circular 2000, Chapter B10/5) and therefore fulfil the nationality condition of Article 2.2 (1)(b) Study Grants Act 2000 (see also the Explanatory Memorandum Study Grants Bill, TK 26873, no. 3, p. 27 and concerning the coming into force of the Aliens Act 2000: TK 26975, no. 5, p. 59). Also students who qualify as worker themselves by working approximately 32 hours or more a month are entitled to the full study grants (see *Beleidsregel controlebeleid migrerend werknemerschap* 4 March 2005, *Gele Katern* 2005, no. 5).

Although the ECJ in *Bidar* mentioned Article 24 Directive 2004/38/EC it only requires that the student should have demonstrated "a certain degree of integration" which can be established by a finding that the student in question has resided in the host Member State for a certain length of time. In the Bidar case a previous residence of three years in the UK was considered as sufficient integration. Against this background the requirement of five years continuous residence seems rather disproportionate.

Draft legislation

To increase the international mobility of students the government recently announced the possibility for students to export their full study grant to all 44 "Bologna countries" with a bachelor-master system from September 2007 on. With reference to the *Bidar* ruling this possibility will be open for all students who are entitled to a full study grant and have lived for at least three of the last six years in the Netherlands (TK 22 452, no. 23). It seems rather contradictory that reference to the same ruling of the Court in two different policies leads to two different periods of time. Rather explicitly the government made it clear that it gives priority to the issue of exportation of study grants and therefore implements the Bidar ruling in a restrictive way (TK 30 300 VIII, no. 2, p. 108).

Miscellaneous

In 2000/2001 the student mobility was 2.3%. In neighbouring EU Member States it varied from 1.2 (UK) to 3.2% (Denmark). In some smaller Member States the percentage is much higher: Ireland (9.2), Iceland (23.8) and Luxembourg (66). In 2002 almost 6.000 Dutch students studied abroad in the framework of exchange programmes (TK 29 410 and 29 338, no. 24). In 2004 the number decreased to 5,801 (Erasmus 4,762; Leonardo 1,139). In 2003/004 the Netherlands received 6,733 Eramus students (TK 22 452, no. 22).

From the Budget 2005 on students with a non-EEA nationality no longer contribute to the financial contribution for the universities and the universities of applied sciences education (*Staatscourant* 2005, 136, p. 12).

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Chapter XII Miscellaneous

The legislation on compensation of victims of violent crimes has been amended in order to implement Directive 204/80/EC. According to the new Article 18a of the Act on the fund for damages for the victims of violent crimes, any person having domicile in the Netherlands who is victim of a violent crime anywhere in the EU is entitled to compensation under the conditions of the act (Act of 14 December 2005, *Staatsblad* 2005, 655). The amendment entered into force on 1 January 2006. Rules implementing the new Article 18a have been provided by the Royal Decree of 13 December 2005, *Staatsblad* 2005, 656.

The Aliens Circular 2000 has been amended to introduce a fully revised section (B11/3) on the consequences of the Association Agreement EEC-Turkey for the application of the Dutch immigration legislation, WBV 2005/43, *Staatscourant* 31 augustus 2005,n168, p. 11. The new section explicitly takes into account twenty judgments of the ECJ. The modification clearly is an improvement in comparison with the prevision instructions on this issue, but it is still incomplete and clearly incorrect on certain points, e.g. on the grounds for loss of the residence status under Association Council Decision 1/80.

The Rotterdam Aliens Chamber of the District Court The Hague held the increased administrative fees for dealing with applications on the basis of the EEC-Turkey Association to be in breach of standstill clause in Article 13 of Decision 1/80 of the Association Council, *Jurisprudentie Vreemdelingenrecht* 2005/144 and LJN AT8641.

In a reply to parliamentary questions the Minister for Social Affairs stated that the legislation on day care of children of pre-school age allows for the payment of the statutory benefits for a child of a Dutch frontier worker living in the Netherlands and working in Belgium for the costs of day care of his children in Belgian. The Minister referred to Article 48 of the Act on Day Care that empowers him to rule that day care in a Belgian institution should be treated equally as day care in a Dutch institution, if the quality of the day care is similar, Aanh. Hand. TK 2004-2005, no. 2040. In Article 13 of the Ministerial regulation on the compensation of the costs of day care, the minister did actually use his competence under Article 48, but only with regard to children in day care institutions in Belgium, Germany, Switzerland (canton Geneva and Zürich), Austria (city of Vienna) and the city of New York (USA).

A bill proposing to create the possibility of withdrawal of Dutch nationality on the ground that the person has caused serious damage to essential interests of the Netherlands has been introduced by the Government in 2005 (Kamerstuk 2004-2005, 30166, nr. 1, Tweede Kamer). This new form of loss of Dutch nationality will only apply to Dutch nationals also having the nationality of another state. Although the bill was presented in order to allow for the withdrawal of the nationality of persons of Moroccan origin or originating from other countries with a predominantly Muslim population who have committed terrorist acts, the bill will also apply to Dutch nationals having the nationality of another EU Member State as well.

The treatment at the German-Polish boarder of a group of children from a secondary school in Amsterdam making a school trip to Poland was subject of a lot of media attention and parliamentary questions, Aanh. Hand. TK 2004-2005, nos. 1919 and 2225. The duration and intensity of the controls at both sides of the boarder both ways, related to questions concerning the residence status of some of the children having Moroccan nationality, the alleged racist remarks by Polish boarder guards and the discriminatory checking of the passports of the non-white children, caused a lot of emotional reactions. The school trip was part of a special programme of the city of Amsterdam to make children of immigrant origin aware of the persecution of Jews in Germany during the Nazi-regime and the group had visited the former extermination camp in Auschwitz. The incident gave rise to questions from the Dutch government to the German and Polish ambassadors in the Netherlands, *NRC-Handelsblad* 1 June 2005.