REPORT
on the Free Movement of Workers in the Netherlands in 2006

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GENERAL REMARKS

1. The major event concerning the free movement in the Netherlands in 2006 has been the transposition of Directive 2004/38/EC by a wide range of amendments of the Aliens Decree 2000. The details of the transposition are described in Chapters I and V. The basic elements of EC law on free movement all have for the first time been transposed in binding law, and no longer partially in the Aliens Circular. Probably this is a side-effect of the infringement procedure started by the Commission against the Netherlands before the Court in 2006 on the way of transposition of the former rules on free movement.

2. The Netherlands in 2006 continued to apply the transitional rules on free movement of workers from the EU-8. However, in practice there has been a far-reaching liberalisation of the issue of labour permits after the abolition of the labour market test for jobs in most sectors. In 2006 almost 60,000 labour permits were issued for EU-8 workers, see for the details Chapters VII and VIII.

3. The issue of Dutch nationals moving to work and live in Belgium in order to be entitled to family reunification with their third country national family members under the EC free movement rules, in reaction to the introduction of a range of new restrictions to family reunification in Dutch migration law, has repeatedly been discussed in the press and in Parliament as the "Belgium route". The government provisionally exempted the third country national family members from the requirements of new integration laws until the judgment in the *Jia* case would be available. In the government's view, the *Akrich* judgment permitted the introduction of such requirements for family members who had not first been admitted in another EU Member State.

4. In interesting example of how after 40 years of free movement old barriers to movement of Union citizens in the Netherlands still remain and new barriers are introduced, is provided by a letter to the editor of the *NRC-Handelsblad* by a Dutchman writing about what happened after he married a German national, who fluently speaks Dutch, English French and German and has Belgian, British and US higher education degrees. After his German spouse moved to the Netherlands to live together, the municipal authorities enquired with the employer of the Dutch spouse whether he was still employed by them. It took the German spouse five months to get her social-fiscal number from the Dutch tax authorities, obliging her to continue to use her Belgium SPRL. The private Dutch health insurance company she contracted without even informing their new client asked the municipal authorities about her residence permit and when she had registered in the Netherlands. On the basis of that information the insurance company sent her a bill for three months of insurance premium retroactively and refused to take into account the fact that the German national was already covered by another health insurance during those months (*NRC-Handelsblad* 9 August 2006). New forms of bureaucratic control on the entry to the welfare state and an ever closer cooperation between public and private bureaucracies that followed the privatisation of several branches of the welfare state, on purpose or inadvertently, create new barriers to free movement replacing the old ones.

Internet sites

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
- The site giving access to official publications: www.overheid.nl/op/index.html
- The site giving access to all Dutch legislation in force: http://wetten.overheid.nl

CHAPTER I. ENTRY, RESIDENCE, DEPARTURE

Entry

Texts in force

- Transposition Directive 2004/38
By 30 April 2006 Member States should have brought into force the laws, regulations and administrative provisions necessary to comply with Directive 2004/38. In the Netherlands a revised Aliens Decree was published on 24 April 2006 with reference to the Directive (*Staatsblad* 2006, 215). Although the Directive is mainly transposed by provisions of the Aliens Decree, the Aliens Act 2000, the Social Assistance Act (see Chapter X) and the study grant legislation (see Chapter XI) are amended as well.

Personal scope

The personal scope of the Directive is determined in Article 3 with reference to Article 2(1) and (2). These provisions are transposed by Article 8.7 Aliens Decree. The Directive applies to all Union citizens who move to or reside in a Member State other than of which they are a national, see Article 3(1). According to Article 8.7(1) of the Aliens Decree the relevant provisions apply to aliens who have the nationality of a State which is a party to the EC-Treaty or the EEA Treaty or of Switzerland, and who move to or reside in the Netherlands. Through the words "move to or reside in a Member State other than of which they are a national" purely internal situations are excluded, nevertheless "if Dutch citizens who for example are employed by the European institutions in Belgium and have founded a family there, their family members are still welcome in the Netherlands on return (TK 2005-2006, 29, 700, no. 31). Article 8.7(1) of the Aliens Decree should be interpreted as including this category as well.

The Directive applies not only to the Union citizens themselves but also to their family members, as enumerated in Article 2(2), sub a-d. "Family member" means first of all the spouse which term includes the same sex spouse as well in a host Member State which recognises same sex marriages (Council Document, 8901/03, p. 3-4), as is the case in the Netherlands, Belgium and Spain.

Next to the spouse registered partners are included "if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State", see Article 2(2), sub b of the Directive. This rather unclear provision is transposed in Article 8.7(2), sub b of the Aliens Decree with the wording: "an alien with whom a registered partnership is contracted according to Dutch private international law". This wording refers to the Conflict of Laws Act Registered Partnership (*Wet conflictenrecht geregistreerd partnerschap*) which entered into force 1 January 2005. According to Article 2 a registered partnership is recognized if it was lawfully entered into according to the local law and if it forms a legally regulated form of cohabitation between two persons who maintain a close personal relationship, and this cohabitation is registered by a competent authority and excludes the existence of a marriage or cohabitation with a third person regulated by law. While the wording of the Conflict of Laws Act Registered Partnership is not limited to registered partnerships contracted in another Member State, the implementation in the Netherlands is in principle more favourable. Nevertheless, at present only registered partnerships in Denmark, Sweden, Norway, Germany, Belgium, France and the Spanish regions Catalan and Aragon are in accordance with the Dutch legislation (TK 2002-2003, 28924, no.3, p. 3).

According to Article 2(2), sub c, the Directive applies to the direct descendents who are under the age of 21 or are dependents and those of the spouse and registered partner and according to Article 2(2), sub d to dependent direct relatives in the ascending line and those of the spouse or registered partners. These provisions are transposed in more or less the same wording in Article 8.7(2), sub c and d of the Aliens Decree.

According to Article 3(2) the Member State shall facilitate the entry and residence of other family members. First of all (sub a) family members, irrespective of their nationality, who

- in the country from which they have come, are dependents, or
- members of the household, or
- where serious health grounds strictly require the personal care of the family member.

Furthermore (sub b): the partners with whom the Union citizen has a durable relationship, duly attested. The provisions are implemented in Article 8.7(3) of the Aliens Decree. Although a provisions in the Directive concerning the children of the partner is missing, the Aliens Decree extends the rights of the Directive to the children of the partner who are under the age of 18, see Article 8.7(4) of the Aliens Decree.

Right of exit and entry

Article 4 of the Directive concerning the right of exit is not transposed in the Aliens Decree while it is already embedded in Article 2(2) of the Fourth Protocol to the ECHR. Article 5 of the Directive concerning the right of entry is transposed in Article 8.8 of the Aliens Decree. The codification of the *Oulane*-judgments of the EC-Court of Justice (C-215/03) took place in Article 5(4) of the Directive which in more or less the same wording is transposed in Article 8.8(4) of the Aliens Decree. At the same time Article 8.8(1) and (2) of the Aliens Decree transposes the restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health of Chapter VI of the Directive.

The wording "in possession of a valid document for border crossing" in Article 8.8(1) Aliens Decree implies that family members who are not nationals of a Member State are required to posses a valid passport and entry visa in accordance with Regulation 539/2001. According to Article 5(2) of the Directive the possession of a valid residence card exempts such family members from the visa requirement. This provision is implemented by Article 8.9 of the Aliens Decree. The same Article contains the prohibition of Article 5(3) of the Directive to place an entry or exit stamp in the passports of such family members. According to the Explanatory Memorandum of the Aliens Decree third country family members are exempted from the long stay visa requirements as well, irrespective of their legal residence in another Member State, at least for the time being as long as the Court of Justice has not decided the *Jia*-case (C-1/05), see *Staatsblad* 2006, 215, p. 17-18.

Right of residence

Union citizens and their family members who hold a valid identity card or passport have the right of residence for a period of up to three months in another Member State without any formalities (Article 6 of the Directive). This rights is contained in Article 8.9(1) of the Aliens Decree for (a) holders of a valid identity card or valid passport or for (b) a person who can prove his identity and nationally unequivocally with other means (*Oulane*). It is still unclear how such prove can be furnished. The optional clause of Article 5(5) concerning the obligation to report to the authorities within a reasonable time is not materialised in the Aliens Decree for residence for a period for up to three months.

Article 7 of the Directive concerns the right of residence for more than three months. Article 7(1) distinguishes workers and self-employed, non-actives, students and the family members of these groups. The right of residence for more than three months is transposed by Article 8.12 of the Aliens Decree in a rather complicated way while the family members are differentiated according to the aforementioned categories. Article 8.13 concerns the right of residence for more than three months of third-country family members.

Jobseekers

Article 7 of the Directive does not contain a definition of a worker or a self-employed. The same applies for the Aliens Decree, although Article 8.12(1), sub a explicitly includes persons who are looking for employment and can prove that they are looking for employment and have a real chance to find it.

Non-actives and students

Article 7(1), sub b and c of the Directive concerning non-actives and students are more or less comparable although there are some differences. Both require a comprehensive sickness insurance cover in the host Member State, but the requirement concerning sufficient resources is worded slightly differently. Non-actives have the right of residence "if the have sufficient resources, students have "to assure the relevant national authority … that they have sufficient resources". What sufficient resources are, is regulated in Article 8(4) of the Directive. Member States must take into account the personal situation of the persons concerned. For students Member States may not refer to any specific amount of resources, see Article 8(3). These nuances are lacking in the Aliens Decree. For both categories Article 8.12(3) stipulates that a migrant with an income in conformity with the norm-income for his/her category according to the Social Assistance Act has anyhow sufficient resources. The word "anyhow" may indicate that the personal situation of the applicant will be taken into account, although a more explicit wording would have been preferred.

Students need to be enrolled at a private or public establishment, accredited or financed by the host Members State on the basis of its legislation (Article 7(1), sub c of the Directive). This requirement is transposed in Article 8.12(1), sub c of the Aliens Decree. Their right to family reunification is limited to spouse, registered partner and dependent children (Article 7(4) of the Directive), which is transposed in Article 8.12(1), sub e Aliens Decree.

Registration

According to Article 8(1) and (2) of the Directive Member States may require Unions citizens to register with the relevant authorities for periods of residence longer than three months. Failure to comply with the registration requirement may render to proportionate and non-discriminatory sanctions. The obligation to report is embedded in Article 8.12(4) of the Aliens Decree. After the period of residence for up to three months of Article 8.11 the migrant has to register himself with aliens administration (the Immigration and Naturalisation Service). The obligation is sanctioned in Article 108(5) of the Aliens Act 2000, with a maximum of imprisonment for a period of one month or a fine of the second category.

Administrative formalities

The Directive distinguishes between administrative formalities for Union citizen (Article 8) and for family members who are not nationals of a Member State (Articles 9 and 10). The Aliens Decree contains only an article concerning the administrative formalities of third country family members: Article 8.13(3). In particular the provisions of Article 8.13(3), sub d-f concerning the required documents are unclear. Article 8.13(3), sub f introduces a "relationship declaration" for a partner with whom an Union citizen has a durable relation. Third country family member are obliged to submit a residence card application, see Article 8.13(2). Their residence card has a validity of in principle 5 years, see Article 8.13(6).

Permanent residence

Union citizens who have resided legally for a continuous periods of five years in the host Member State shall have unconditionally the right of permanent residence there (Article 16 Directive). Situations which do not affect the continuity of residence are enumerated in Article 16(3). Article 8.17(2) of the Aliens Decree contains the same enumeration.

When certain conditions as to the length of residence and employment are fulfilled Article 17 of the Directive grants by way of derogation from Article 16 before completion of a continuous period of five years the right of permanent residence to workers or self-employed persons who are entitled to an old age pension (including early retirement), who stop working as a result of permanent incapacity, or who are cross-border workers. The provisions of Article 17 are more or less literally transposed by Article 8.17(3)-(5) of the Aliens Decree. The specific rules for family members of Article 17(3) and (4) of the Directive are included in Article 8.17(6) and (7) of the Aliens Decree.

Upon application Member States shall issue Union citizens entitled to permanent residence after having verified duration of residence as soon as possible with a document certifying permanent residence (Article 19 Directive). The Minister for Immigration and Integration decided to introduce a new document "permanent residence for EU citizens" form 1 May 2006 on (Article 8.19 Aliens Decree). It will be issued automatically to Union citizen who have already resided for more than five years in the Netherland when the validity of the old document expires and costs € 30 (http://ind.nl/nl/Images/brochure_EU_0703_tcm5-115507.pdf). Member States shall issue to third country family members entitled to permanent residence a permanent residence card, automatically renewable every 10 years (Article 20 Directive), which is implemented in Article 8.20 Aliens Decree.

Retention of residence

Retention of the right of residence for workers and self-employed persons is regulated in Article 7(3) of the Directive; for family members in Articles 12 and 13. Article 7(3) considers four circumstances which are literally included in Art. 8.12(2) Aliens Decree. The "relevant employment office" in the Netherlands is the Central Organisation for Work and Income (CWI). Articles 12 and 13 of the Directive determine under which conditions a family member retain the right of residence in case of the Union citizen's death or departure from the host Member State or in the event of divorce, annulment of marriage or termination of registered partnership. The comparable provisions in national law are Articles 8.14 and 8.15 of the Aliens Decree. Although Article 13(2), sub d of the Directive explicitly mentions domestic violence as a particularly difficult circumstance which shall not affect the right of residence, the comparable provisions in Article 8.15(4), sub d of the Aliens Decree only refers to "pressing humanitarian reasons" but the Explanatory Memorandum mentions domestic violence as an example in this respect (*Staatsblad* 2006, no 215, p. 40).

The right of residence of Union citizens and their family members of Articles 7, 12 and 13 continues as long as they meet the conditions (Article 14(2) of the Directive). Recourse to social assistance does not have automatically as a consequence an expulsion measure. Unions citizens and their family members retain their right of residence as long as they do not become an unreasonable burden on the social assistance system of the host Member State, see Article 14(1) and (3). Also according to Article 8.16(1) of the Aliens Decree recourse to social assistance is not automatically a reason for withdrawal of the right of residence.

Loss of residence

The right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years (Article 16(4) of the Directive). This provision is transposed in Article 8.18 of the Aliens Decree which adds serious reasons of public order and public security as another ground for withdrawal (see Article 28(2) of the Directive).

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by the Directive in case of abuse or fraud such as marriages of convenience (Article 35). Article 8.25 Aliens Decree uses a more general wording: "the Minister may withdraw the right of residence if the alien has submitted wrongful information or has withheld information which should have had as a consequence the refusal of entry or residence".

Public policy, public security, public health

Chapter VI of the Directive contains the restrictions on the right of entry and residence on grounds of public policy, public security or public health. In the Aliens Decree public health is mentioned in Articles 8.8(1), sub b (entry) and 8.23. For public policy and public security the relevant Articles are: 8.8 (1), sub a and b (entry), 8.22 and 8.24. Public health may only be applied as a restriction on the right of entry during a three-months period from the date of arrival. This is also the case in the Aliens Decree. The relevant diseases are diseases defined by relevant instruments of the Wold Health Organisation (WHO) and other diseases if they are the subject of protection provisions applying to nationals of the host Member State. Article 8.23 of the Aliens Decree refers to the lists of the WHO and other infectious diseases or contagious parasitic diseases which are subject of protection provisions applying to

Dutch citizens. The Explanatory Memorandum mentions in this respect plague, cholera and yellow fever and recent diseases as SARS (*Staatsblad* 2006. no. 215, p 32, 33 and 46).

Article 27 of the Directive codifies the case law of the Court concerning public policy and public security. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Article 8.22(1) of the Aliens Decree contains the same definition. The provision of Article 28(1) of the Directive according to which Member Sate shall take into account of number of personal considerations is – against the advice of the Council of State – not transposed in Article 8.22 of the Aliens Decree while the general (but less specified) clause concerning the weighing of interests of Article 3:4 of the General Administrative law Act applies. According to Article 28(2) of the Directive as transposed by Article 8.1, sub b of the Aliens Decree, the host Member State may not take an expulsion decision against Union citizens or their family members, who have the right of permanent residence, except on serious grounds of public policy or public security. After 10 years legal residence or in case of minority only imperative grounds of public security may justify an expulsion order, see Article 28(3) of the Directive as transposed by Article 8.22(3) of the Aliens Decree.

The notification provision of Article 30 of the Directive is not transposed as such in the Aliens Decree. More in general stipulates Article 8.8(2) of the Aliens Decree that a refusal of entry shall be notified in writing. The procedural safeguards of Article 31(2) and (4) of the Directive are embedded in Article 8.24(1) and (2) of the Aliens Decree. The maximum period of three years for the submission of an application for lifting of the public policy or public security exclusion order of Article 32 of the Directive is translated in the Aliens Decree in the possibility of automatic review of the expulsion after two years, see Article 8.22(6).

Conclusion

In conclusion: on the whole the Directive is transposed rather carefully. While including job seekers and children of the partner the Aliens Decree is actually more favourable to Union citizens and their family members than the Directive itself.

A revised Chapter B10 of the Aliens Circular 2000 on EU law was published on 30 August 2006 (*Staatscourant* 2006, no. 201) and came into force 1 January 2007. The new Chapter B10 contains the policy guidelines for the implementation of Directive 2004/38 as embedded in the amended Aliens Decree. On 28 March 2006 the Immigration and Naturalisation Service has published provisional guidelines on its website concerning the implementation of Directive 2204/38 from 1 May 2006 on.

Judicial practice

Directive 2004/38 played already a major role in the judicial practice.

On 13 November 2006 the Judicial Division of the Council of State (*Jurisprudentie Vreemdelingenrecht* 2007/15, with annotation P. Boeles) decided that although the applicant (a Colombian national) could be considered as a family member of an Union Citizen in Spain this does not implicate his right of entry and residence in the Netherlands, while his Dutch spouse remained in Spain. Therefore Article 5(4) of the Directive and the equivalent Article 8.8(4) of the Aliens Decree concerning a reasonable time to prove the right of free movement and residence do not apply. The Council of State confirmed the earlier decision in this case of 13 October 2006 of the District Court Maastricht (AWB 06/47640, see: www.rechtspraak.nl).

Article 5(4) of the Directive and the equivalent Article 8.8(4) of the Aliens Decree played also a role in District Court 's-Hertogenbosch 30 May 2006 (AWB 06/23017 [LJN: AX6829], see: www.rechtspraak.nl). The applicant who claimed Italian nationality, did not posses a valid identity card or passport and could not prove her identity and nationality with others means. Before detained she was offered the opportunity from 19 April to 3 May to prove her identity and nationally unequivocally with other means, but she did not make use of this opportunity. While the court considered the elapsed period of time as reasonable, the detention was considered as lawful.

In its judgment 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 an 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 proof 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 its judgment of 26 January 2006 the Judicial Division of the Council of State decided the *Oulane* case (*Jurisprudentie Vreemdelingenrecht* 2006/111, with annotation by B.K. Olivier). A receipt of the Postbank with the number of a French identity card does not prove unequivocally Oulane's French nationality. While Oulane has to make his alleged French nationality credible, the minister is not under the obligation to investigate Oulane's identity and nationality on the presentation of a number of an identity card only.

In its decision of 24 November 2006 the District Court Groningen (AWB 06/48481, 06/48480 [LJN: AZ1001], see: www.rechtspraak.nl) was of the opinion that although the asylum request of a Polish citizens was rejected, this does not mean that he was not entitled any longer to a right of residence as an Union citizen while he was supported by a church and therefore not a burden on the social assistance system.

The National ombudsman concluded in his report 2006/239 of 13 July 2006 (see: www.nationaleombudsman.nl) that the Immigration and Naturalization Service has failed in its obligation to inform correctly the Italian spouse and daughter of a Dutch citizens about the more favourable EU-rules on family reunification compared with the national rules. While the requested a "ordinary" residence permit for family reunification they had to pay the high fees. The National ombudsman recommended the Immigration and Naturalisation Service to reconsider its denial to compensate the applicants for these high fees.

A comparable case was decided by District Court Roermond (AWB 05/34500, see: www.rechtspraak.nl) on 22 July 2006. A Czech citizen requested on 30 September 2006 the extension of his residence permit for work and at the same time the extension of the residence permits for his spouse and two children. After having paid four times € 285 he withdraw his requests and applied for EU-documents and restitution. The EU-documents were granted but the restitution denied. The court ruled that a legal basis for the fees was lacking while the Czech Republic became a Member State on 1 May 2004 and the applicant had to be considered as Union citizens on the date of their extension requests.

In review the Minister of Immigration and Integration decided on 5 May 2006 that a Hungarian national could rely on Article 18(1) TEC, although sentenced with seven year imprisonment as a party to a murder in December 2001. She has a comprehensive sickness insurance and is not a burden on the social assistance system. In her specific situation she does not represent a genuine and present threat to the public policy, taking into account the circumstances of the murder, the psychiatric and psychological reports and the successful medical and psychiatric treatment she undergoes.

A UK national of 57 years was considered an actual threat for the public order, based on three shooting incidents, once in 1973 and twice in 1999. District Court Zwolle 8 February 2006 (AWB 05/31335, see: www.rechtspraak.nl) annulled the decision with reference to the *Bouchereau*, *Santillo* and *Calfa* judgments of the Court of Justice, while a positive report of the Penitentiary Institution about his personal conduct during the detention and the expected conduct after release was not taken into consideration.

On 27 January 2006 the Commission brought an action before the Court Justice the Netherlands (C-50/06), while the Aliens Act 2000 not explicitly refers to Directive 64/221 and the leading principles of this directive are not incorporated in the act.

Literature

H. Oosterom-Staples, Toelating en verblijf van EU burgers en hun familieleden volgens de verblijfsrichtlijn, *Migrantenrecht* 2007, no. 3 /4.
H. Oosterom-Staples, Botsende openbare orde begrippen in het Europese Migratierecht, *Nederlands Tijdschrift voor Europees Recht*, 12(8/9), 169-181.
C.A. Groenendijk, EG migratierecht en de grenzen bij bestrijding van terrorisme, *Migrantenrecht* 2006, no. 6/7.

CHAPTER II. EQUALITY OF TREATMENT

1. Equal treatment in access to employment outside the public sector

Article 1(1)(b) of the General Equal Treatment Act (*Algemene wet gelijke behandeling)* explicitly forbids discrimination on the basis of nationality. The prohibition applies to all employment relations outside the public sector. Article 5(1) explicitly provides that the prohibition applies to job offers, recruitment procedures, private employment agencies, concluding and ending an employment contract, employment conditions, access to vocational and other training during or before the job, promotion and workplace conditions. The Act explicitly allows for only two situations where 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 (Articles 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.

Generally, 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.

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 organisation. The practice of psychological tests or assessments may also create 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.

The Bill that was presented in September 2005 to amend the General Equal Treatment Act and the Civil Code in order to implement Directive 2002/73/EC amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions became an Act on 5 October 2006 (*Staatsblad* 2006, 469).

The Act of 29 November 2001 (*Staatsblad* 2001, 624) established the Centre for Work and Income (CWI) that as of 2002 continued the activities of the former public Employment Agencies. According to Article 21 of that Act the CWI is among others entrusted with the registration of unemployed workers, providing information about vacancies and providing access to vocational training. Article 25 of the Act explicitly stipulates that the right to be registered as unemployed by the CWI is extended to Dutch nationals, non-nationals covered by Article 1 or Article 10 of EEC Regulation 1612/68 and other non-nationals having a residence permit without limitations as to their access to employment.

Rules on the activities of private persons acting as intermediaries between employees and employers are contained in the Act of 14 May 1998 (*Wet allocatie arbeidskrachten door intermediairs, Staatsblad* 1998, 306). This Act applies irrespective of the nationality of the worker.

2. Language requirements

There are no explicit statutory requirements as to the knowledge of the Dutch language for private employment. In practice, for most white collar jobs applicants will be required to have a good knowledge of the Dutch language. There is a long line of cases where the Equal Treatment Commission has held that requiring an applicant to speak Dutch if this was not relevant for the job to be performed or requiring an applicant to speak Dutch without an accent is forbidden by the General Equal Treatment Act, because it amounts to indirect discrimination on the basis of race. Several opinions also relate to

job applicants or an applicant for a place as a trainee or *stagiair* (e.g. Opinions nos. 2005-153 and 2005-233). Most of those cases concern third country nationals. But the Commission also 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). An a-typical case concerning an 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 sufficient Dutch and the candidate was unable to make the exam. The Commission held that the requirement that the model is able to communicate in the Dutch language was indirect discrimination on the basis of origin but it was reasonable and justified in the circumstances (Opinion 2001-141).

3. Recognition of diplomas

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-onderwijsdiploma's*) 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 latter Act also amended a range of other Acts on more than twenty separate professions, among others the Act on the health profession (*Wet beroepen individuele gezonsheidszorg*). Directive 92/51/EEC has been transposed by the Act of 29 June 1994 giving rules on the general system of recognition of professional qualifications.

According to the letter of the Minister of Foreign Affairs of 2 February 2007 to the Second Chamber on the status of the implementation of EC Directives in the Netherlands, the draft Bill with necessary amendments of the Act on the title of architect in order to implement Directive 2005/36 on the recognition of professional qualifications will be sent to the State Council for its advice in February 2007 (TK 21109, no. 167, p. 25).

Recognition of foreign diplomas for medical professions 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 in 2005 on recognition of foreign diplomas relate to diplomas obtained outside the EEA. Complaints on the (non-)recognition of foreign diplomas may also be filed with the Equal Treatment Commission. An example is the opinion of that Commission 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 discrimination on the basis of nationality as long as it was not disproportionally difficult to obtain recognition (no. 2001-84).

Another case may illustrate the practical problems with regard to a diploma obtained in another EU Member State. 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 working 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 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 be-

tween 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.

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 between these two institutions and will bear the costs of the evaluation of the foreign diploma (www.cwinet.nl/nl/minderheden see under "*internationale diplomawaardering*").

4. Nationality condition for captains of ships

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. 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.

Literature

A. Pahladsingh and I.M. Uitermark, De ontwikkelingen rond artikel 18 EG: nieuwe uitgangspunten opgesteld door het Hof?, *Nederlands Tijdschrift voor Europees Recht* 2005, p. 56-61.

CHAPTER III. EQUALITY OF TREATMENT ON THE BASIS OF NATIONALITY

1. Working conditions, social and tax advantages

As mentioned in the Report 2005, Article 17, par. 2 (old) of the *Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen* provided 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 infringed 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 suggested replacing the word "the Netherlands" in Article 17, par. 2, by "European Union" (TK 30 306, no. 5, p 12). In his Tax Plan 2007, which was presented on 29 September 2006, the Minister of Finance announced to apply the pay-off reduction to all seafarers who are living in the Netherlands or in any other EU/EEA Member State and who are subjected to the Dutch income tax. For budgetary reasons the minister proposed to reduce the pay-off reduction from 40% to 36% (TK 30 804, no. 3, p. 9). In the final Act the reduction continued to be 40% (Act of 14 December 2006, *Staatsblad* 2006, 682, p. 12).

2. Other obstacles to free movement of workers

In December 2005 a Bill was introduced (TK 30 412, no. 1-3) to amend Article 311 Commercial Code (*Wetboek van Koophandel*) which became Act 19 July 2006 (*Staatsblad* 2006, 325). The Act 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 Act 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.

In July 2004 a Bill was introduced at the initiative of an MP to guarantee that the basic pay services come within reach of and are admissible to everyone (*Wet toegankelijkheid en bereikbaarheid basisbetaaldiensten*, TK 29688, no. 1-3 ff). It introduces a duty of careful behaviour for all financial institutions. 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. The Lower House expressed its doubts as well (TK 29688, no. 7). The MP who introduced the Bill waived all the objections (TK 29688, no. 4 and 8). On 8 September 2006 Parliament requested the government to make an inventory of all gaps and bottlenecks concerning the admissibility of pay services (TK 29688, no. 12). The Minister of Finance presented its report to Parliament on 21 December 2006 (TK 29688, no. 13). According to the report bottlenecks concerning the admissibility of pay services do exist but the relevant organisations are able to fill the gaps in a concerted action of which Parliament will be informed spring 2007.

Judicial practice

In proceedings before the Judicial Division of the Council of State, the appellants, Eman and Sevinger, challenge the refusal, on the ground that they are resident in Aruba, to enrol them on the register of electors for the election of members of the European Parliament. In its judgment of 12 September 2006, C-300/04, *Jurisprudentie Vreemdelingenrecht* 2006/440, with annotation by C.A. Groenendijk, the Court of Justice decided that persons who possess the nationality of a Member State and who reside or live in a territory which is one of the overseas countries and territories referred to in Article 299(3) EC, may rely on the rights conferred on citizens of the Union in Part Two of the EC Treaty. But in the current state of Community law, there is nothing which precludes the Member States from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which

the elections are held. The principle of equal treatment prevents, however, the criteria chosen from resulting in the different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified. In this case, the relevant comparison is between a Netherlands national resident in the Netherlands Antilles or Aruba and one residing in a non-member country. They have in common that they are Netherlands nationals who do not reside in the Netherlands. Yet there is a difference in treatment between the two, the latter having the right to vote and to stand as a candidate in elections for the European Parliament held in the Netherlands whereas the former has no such right. Such a difference in treatment must be objectively justified. It is for the national law of each Member State to determine the rules allowing legal redress (*rechtsherstel*) for a person who, because of a national provision that is contrary to Community law, has not been entered on the electoral register for the election of the members of the European Parliament of 10 June 2004 and has therefore been excluded from participation in those elections. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State may be held responsible, must comply with the principles of equivalence and effectiveness.

On 21 November 2006 the Judicial Division of the Council of State (LJN: AZ3202) decided in the *Eman and Sevinger* case that the refusal, on the ground that they are resident in Aruba, to enrol them on the register of electors for the election of members of the European Parliament was contrary to Community law. The municipality of The Hague has to take a new decision concerning legal redress (*rechtsherstel*).

In Opinion 2006-258 of 21 December 2006 the Equal Treatment Commission decided a case concerning an aquatics sports association that excluded non-nationals (read: German nationals) of board membership and denied non-nationals voting rights. The Commission changed its "jurisprudence". In a previous comparable case (Opinion 2002-155, 5 September 2002) the Commission considered itself not competent while the exclusion rule concerned the internal organisation of the association. That Opinion was highly criticised, see: C.A. Groenendijk, *Rechtspraak Vreemdelingenrecht*, 2002, 99, and P. Rodrigues, 'Oordelen Commissie Gelijke Behandeling 2002', *Tijdschrift voor Consumentenrecht*, 2003, no. 3, p. 180-188, in particular p. 185-186. While the exclusion of non-nationals is not connected with the aim of the association, the freedom of association is not at stake. With reference to inter alia Article 7, par. 2 of Regulation 1612/68 the Equal Treatment Commission concluded in the present case to indirect discrimination by reason of nationality for which an objective justification is lacking.

Miscellaneous

Concerning the issue whether EU-applicants for rent subsidy are required to present a document as mentioned in the aliens legislation to prove their lawful residence two contradictory judgments are delivered in 2006. District Court Haarlem (AWB 06/5827, LJN: AZ4863) decided on 21 November 2006 that such a document should be presented to the Minister of Housing in order to be entitled to rent subsidy. With reference to the *Sala* judgment of the Court of Justice (C-85/96), District Court Amsterdam 28 December 2006 (AWB 06/5362 and 5363) in an injunction procedure held the opinion that the Minister of Housing may not require such a document as constitutive condition for entitlement to rent subsidy. The Minister of Housing has to consider the legal status of the EU citizen independently.

The year 2007 is called the European Year of equal treatment. The government announced activities in all major cities and in the provinces with regard to equal treatment; in particular concerning better knowledge of equal treatment legislation and infrastructure (TK 30802, no. 1, p. 64).

In 2006 the issue of free access to museums was under discussion. EU citizens were explicitly included in the (still pending) proposals for free access (TK 30300 VIII, no. 200, p. 14).

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CHAPTER IV. EMPLOYMENT IN THE PUBLIC SECTOR

1. Nationality conditions for access to positions in the public sector and captains of ships

The constitutional guarantee of equal access to appointment in public service in Article 3 of the Dutch Constitution is limited to Dutch nationals only. However, this clause does not exclude nationals of other states from appointment in the public service. They are protected in this respect by the equal treatment clause of Article 1 of the Constitution and by Article 5 of the General Equal Treatment Act (*Algemene wet gelijke behandeling*). Nationals of other EU Member States are only excluded from appointment in functions or jobs for which Dutch nationality is explicitly required on the basis of a statutory provision.

The requirement of Dutch nationality applies for appointment in posts in the judiciary, the police, the armed forces, the diplomatic service and 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 Defence 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 (Article 9 of *Wet Nationale Ombudsman*), members of the State Council (Article 5 *Wet op de Raad van State*), 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*).

Article 5 of the Decree on Public Servants (*Rijksambtenarenreglement*) provides that non-Dutch nationals can only be appointed in the public service if they have lawful residence in the Netherlands. Nationals of other EU Member States automatically fulfil this condition as soon and as long as they have a residence right in the Netherlands under the EC Treaty. This is confirmed by Article 8(e) of the Dutch Aliens Act 2000.

2. Language requirement

There are no explicit statutory requirements as to the knowledge of the Dutch language for appointment in posts in the public service. Generally, for most public service jobs it will be required in practice that applicants have a good knowledge of Dutch language.

The issue to what extent municipal authorities in Friesland, the province where the Frisian language may be used in official documents in contact with public authorities, may require applications with the nationality of another Member State to master the Frisian language is discussed in an article by Luijendijk (see below). The author concludes that according to the rule of reason exception, this is only allowed if the same language requirements are applied to Dutch nationals, the requirements are necessary for the job to be performed and are proportional in their effects.

3. Recruitment procedures

Recruitment procedures for jobs in the public service are open to EU-nationals, except for the above-mentioned exceptions. Vacancies are mostly published on internet. There may be explicit or implicit conditions requiring sufficient knowledge of the Dutch language. Often a certain level of education will be required. In the Dutch public service, there is neither a uniform official career system nor automatic promotion. Candidates may be invited or have to apply for a higher function. There are no legal rules on the recognition of seniority or of professional experience. 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.

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 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 who 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 for most of the types of jobs concerned in those cases the applicants by law are required to have Dutch nationality.

4. Recognition of diplomas and professional qualifications

There are no special statutory rules on the recognition of diplomas or acquired professional qualifications in relation to posts in the public sector.

Literature

H. Luijendijk, Gemeente en de regels van het vrije personenverkeer, *Gemeentestem,* no. 7246, 2006, p. 101-110

CHAPTER V. MEMBERS OF THE FAMILY

1. Entry and residence rights of third country national family members

In this chapter we will focus on the transposition of Directive 2004/38/EC with regard to third country national family members.

Article 8.7(2)-(4) Aliens Decree gives an exhaustive definition of all family members of EU nationals covered by the special privileged rules on beneficiaries of the free movement in the Articles 8.7-8.25 of the Aliens Decree. This definition includes spouses, registered partners, children under 21 years and ascendants of one of the spouses or partners, dependent children of 21 years and older and unmarried partners, either entering the Netherlands together with the EU national or joining him later. Since Article 8.7 only refers to the family members of nationals of EU/EEA countries and Switzerland, without any mention of the nationality of the family members, the definition also covers third country national family members. No mention is made in the Aliens Decree of the third country national family members of Dutch nationals that return to the Netherlands after having used their freedom of movement. The community law rights of those family members are only referred to in the Explanatory Memorandum (p. 31 of *Staatsblad* 2006, 215) and in B10/1.5 of the Aliens Circular.

The lawful residence of the third country national family members during the first three months after entry is explicitly provided for in Article 8.11(2) Aliens Decree, transposing Article 6(2) of the Directive. The lawful residence of the third country national family members after the first three months is explicitly provided for in Article 8.11(2) Aliens Decree, transposing Article 7(2) of the Directive. Article 8.15 gives detailed rules on the consequences of absence or of the departure or death of the EU national for the residence rights of his third country national family members. Basically, this Article gives a long catalogue of all circumstances that do not give rise to the loss of the residence rights of those family members and transposes the relevant provisions of Articles 12 and 13 of the Directive. The permanent residence right of third country national family members is provided for in Article 8.17(1)(b) Aliens Decree, being a correct transposition of Article 16(2) of the Directive.

Third country national family members of an EU/EEA national who uses his or her free movement rights is explicitly exempted from the obligation to have the special national visa for a stay of more than three months (*machtiging tot voorlopig verblijf*) in Article 17(1)(b) Aliens Act. However, family members who are nationals of the countries mentioned in Annex I to the EU Visa Regulation 539/2001 are in principle required to have a Schengen visa on entry, since Article 8.8(1) requires that the person has a valid document for border crossing, which implies a valid passport with a visa, if a visa is required. However, such family member, not having the required visa, can only be refused entry on that ground after a written and reasoned decision, taken on the explicit instruction of the Secretary of State for Justice (Article 8.8.(2) Aliens Decree). Moreover, if a third country national enters the Netherlands by crossing an internal Schengen border without the required visa, that family member will not be expelled until he or she has had a reasonable opportunity to acquire the required documents or to prove in another way that (s)he has the right of free movement or residence, as required by Article 5(4) of the Directive.

Third country national family members having a valid residence card issued by another Member State are explicitly exempted from the obligation to have a visa on entry (Annex 3 to Article 2.3 Aliens Regulation) and their entry may not be refused for not having that visa. In their passports no entries about entry or departure may be made (Article 8.9 Aliens Decree), a transposition of the first and second sentence of Article 5(2) and of Article 5(3). The obligation to facilitate the issue of the required visa, as required by the last two sentences of Article 5(2), has not been transposed in the Aliens Decree.

In the Explanatory Memorandum to the Royal Decree, amending the Aliens Decree with the view to transposing Directive 2004/38/EC, there is an extensive discussion of the possibility to introduce the obligation of third country national family members accompanying or joining an EU/EEA migrant, without having been admitted to another Member State, to obtain a Dutch national visa for a stay of more than three months before entry in the Netherlands. The Dutch government contends that the *Akrich* judgment can be read as allowing for the introduction of such a visa requirement. But the decision to introduce such requirement is postponed until after the judgment in the *Jia* case (*Staatsblad* 2006, 215, p. 16-18). The *Akrich* judgment was also discussed during the debate on the introduction of

the language and integration exam abroad and at the occasion of the transposition of Directive 2003/109/EC.

2. Access to employment

The Act 21 December 1994 on the Employment of Aliens (*Wet arbeid vreemdelingen*) provides that the labour permit requirement does not apply in cases where on the basis of treaties or binding decisions of international organisations such requirement is not permitted. The Minister of Social Affairs has to publish a list specifying these cases (Article 3 Aliens Employment Act 1994). The Minister of Social Affairs in the Annex to his Regulation on the Aliens Employment Act of 17 August 1995 has specified that EU and EEA nationals and their family members are exempted from the labour permit requirement. Swiss nationals and their family members are (not yet) mentioned in this annex.

3. Access to education

An *a contrario* reading of Article 3a of the Study Grant Decree, inserted in 2006 and discussed in detail in Chapter XI, implies that family members of EU/EEA/Swiss workers or self-employed persons and their family members, irrespective of their nationality, are entitled to the same treatment as Dutch nationals with respect to study grants under Article 2.2 of the Study Grant Act.

After a change of the legislation on higher education in 2005 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 fees also from third country nationals family members of EU migrants, disregarding Article 7 of Regulation 1612/68. In 2006 the Board of the University of Nijmegen acknowledged that a student with the nationality of Mongolia could not be required to pay higher fees than a Dutch student, since she was married to a German national working in the Netherlands.

Both in the Act on the new integration test abroad (Act of 22 December 2005, *Staatsblad* 2006, 28) and in the new Integration Act on the new integration tests for immigrants after entry and with long residence in the Netherlands (*Wet inburgering* of 30 November 2006, *Staatsblad* 2006, 625) the third country national family members of EU migrants have been exempted from the obligation to pass those tests. In the former act the exemption is implicit, since the obligation to pass the test abroad is linked to the obligation to possess a national visa for a residence of more than three months and third country national family members are exempted from that obligation. In the new Integration Act EU/EEA/Swiss nationals and their third country family members, having a right to enter and reside in the Netherlands under Directive 2004/38/EC, are explicitly exempted from the obligation to pass an integration test in Article 5(2) of the Act. 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), see TK 30308 no. 7, p. 12 and 124-127; no. 12, p. 5; no. 16, p. 61 and no. 63, p. 14. The issue of the need for immigrants from other EU Member States to participate in integration courses and their access to the course being offered by municipal authorities was discussed repeatedly. It is unclear yet whether EU/EEA/Swiss nationals and their family members will be entitled to the same integration facilities that according to the former Minister for Aliens Affairs and Integration will be offered free of charge to Dutch nationals of immigrant origin.

Jurisprudence

A Columbian national of a Dutch citizen living in Spain was detained with a view to expulsion, because he had neither the required visa nor a Spanish residence card. The fact that the spouse had filed an application for a residence card in Spain does not entitle the Columbian spouse to lawful residence in the Netherlands. The Columbian spouse complained that the Minister had not granted him the reasonable time to acquire the required documents, provided for in Article 5(4) of Directive 2004/38 and Article 8.8(4) Aliens Decree. It was held that to the extent the Columbian national was entitled to

lawful residence with his Dutch spouse in Spain, this did not entitle him to lawful residence in the Netherlands. Since the Dutch spouse resided in Spain, Article 8.7(2) Aliens Decree and Article 8.8(1) Aliens Decree did not apply, because he was not the spouse of a national of another EU Member State living in the Netherlands (Judicial Division of the State Council 13 November 2006, *Jurisprudentie Vreemdelingenrecht* 2007/15 with commentary by P. Boeles).

The Italian spouse and daughter of an Italian worker who had received a normal Dutch residence permit in 2001 and in 2005 had applied for an extension of that permit and were required to pay a fee of 285 euro each, filed a complaint with the National Ombudsman that the IND had not informed them that they were entitled to an EC residence card which would cost only 28 euro and that the IND had refused to pay back the difference. The National Ombudsman upheld the claim, stating that since migration law is a complicated field, EU nationals could not be expected to know exactly which privileged rights they have under EC law. The IND should have informed the Italian family members of their entitlement to the cheaper EC residence card and should have paid back the difference between 28 and 285 euro per person. The Ombudsman recommended that the Minister should provide for a flyer specifying the rights of EU nationals that could be issued to EU nationals applying for a residence permit (report no. 2006/239).

In several cases it was held that a third country national spouse of a Dutch national could not rely on Directive 2003/86/EC on the right to family reunification, because that directive does not apply to the family members of EU nationals. This was also held in cases where the sponsor had both Dutch nationality and the Moroccan nationality or the nationality of another third country (Judicial Division of the State Council 12 July 2006, *Jurisprudentie Vreemdelingenrecht* 2006/328 and Judicial Division of the State Council 20 September 2006, *Jurisprudentie Vreemdelingenrecht* 2006/426, both with commentary by C.A. Groenendijk).

Miscellaneous

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 29700, 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 Belgian authorities checking the place of residence of newly 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).

The State Council in its advice on the Bill on the implementation of Directive 2004/38/EC in the Aliens Decree stated that it is not reasonable to give Dutch nationals and their family members a treatment that is less favourable than the treatment that has to be granted to nationals of other Member

States. Moreover, the Council stated that such inferior treatment provokes behaviour such as the so-called Belgium route. The State Council recommended that the Minister should revise the relevant rules on the treatment of Dutch nationals. The Minister replied that the implementation of the Directive was not a good occasion to deal with this issue and that the strict rules on the family reunification of Dutch nationals were one of the pillars of her admission policy (Advice of 17 March 2006, *Migratieweb* ve06000650).

It was reported in the press that the Antwerp City Council in July 2006 were considering the possibility of closing down the website of the Dutch NGO *Stichting buitenlandse partners* (Foundation for foreign partners) that provides advice to Dutch nationals wanting to reunite with their foreign partner or spouse in the Netherlands, but are prevented from doing so by the strict income and integration requirements in the Dutch rules on family reunification. The NGO provides a Handbook for the Belgian route with details on the relevant Belgian laws and regulations regarding registration, marriage and conditions for family reunification and social security. According to a councillor of Antwerp the number of Dutch nationals registering domicile in Antwerp increased considerably in recent years (*Migration News Sheet*, August 2006, p. 1-2).

The issue of reverse discrimination of Dutch nationals was also addressed in a parliamentary question on the access to employment of nationals of the EU-8 who are married to a Dutch national. The Minister of Social Affairs in his answer explained that those EU-8 spouses of Dutch nationals have free access to the labour market, once they have been admitted for family reunification, but that they first have to comply with the 120% income requirement in order to get a residence permit for family reunification. This income requirement does not apply when the spouse is not Dutch but a national of another Member State, *Aanhangsel Handelingen* 2005-2006, no. 1269.

Literature

P. Boeles, Commentary on ECJ 9 January 2007 in the *Jia* case, *Jurisprudentie Vreemdelingenrecht* 2007/31.

M.K. Bulterman, Gezinsherenigingsrichtlijn houdt stand voor Hof van Justitie: Hof bindt gezinnen én de lidstaten, *Nederlands Tijdschrift voor Europees Recht* 2006, p. 205-211.

H. Oosterom-Staples, Toelating en verblijf van EU burgers en hun familieleden volgens de verblijfsrichtlijn, deel I, *Migrantenrecht* 2007, p. 88-96.

H. Oosterom-Staples, Botsende openbare-ordebegrippen in het Europees Migratierecht, *Nederlands Tijdschrift voor Europees Recht* 2006, p. 169-181.

C.A. Groenendijk, Commentary on ECJ 30 March 2006 in the case *Mattern and Cikotic*, *Jurisprudentie Vreemdelingenrecht* 2006/212.

K.M. de Vries, Het nieuwe Nederlandse inburgeringsstelsel, *Migrantenrecht* 2006, p. 272-282.

CHAPTER VI. RELEVANCE/INFLUENCE/FOLLOW-UP OF RECENT COURT OF JUSTICE JUDGMENTS

Eman and Sevinger (C-300/04)

In proceedings before the Judicial Division of the Council of State, the appellants, Eman and Sevinger, challenge the refusal, on the ground that they are resident in Aruba, to enrol them on the register of electors for the election of members of the European Parliament. In its judgment of 12 September 2006, C-300/04, *Jurisprudentie Vreemdelingenrecht* 2006/440, with annotation by C.A. Groenendijk, the Court of Justice decided that persons who possess the nationality of a Member State and who reside or live in a territory which is one of the overseas countries and territories referred to in Article 299(3) EC may rely on the rights conferred on citizens of the Union in Part Two of the EC Treaty. But in the current state of Community law, there is nothing which precludes the Member States from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held, the principle of equal treatment prevents, however, the criteria chosen from resulting in the different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified. In this case, the relevant comparison is between a Netherlands national resident in the Netherlands Antilles or Aruba and one residing in a non-member country. They have in common that they are Netherlands nationals who do not reside in the Netherlands. Yet there is a difference in treatment between the two, the latter having the right to vote and to stand as a candidate in elections to the European Parliament held in the Netherlands whereas the former has no such right. Such a difference in treatment must be objectively justified. It is for the national law of each Member State to determine the rules allowing legal redress (*rechtsherstel*) for a person who, because of a national provision that is contrary to Community law, has not been entered on the electoral register for the election of the members of the European Parliament of 10 June 2004 and has therefore been excluded from participation in those elections. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State may be held responsible, must comply with the principles of equivalence and effectiveness.

On 21 November 2006 the Judicial Division of the Council of State (LJN: AZ3202) decided in the *Eman and Sevinger* case that the refusal, on the ground that they are resident in Aruba, to enrol them on the register of electors for the election of members of the European Parliament was contrary to community law. The municipality of the Hague has to take a new decision concerning legal redress (see Chapter III).

Oulane (C-215/03)

In its judgment 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 its judgment of 26 January 2006 the Judicial Division of the Council of State decided the *Oulane* case (*Jurisprudentie Vreemdelingenrecht* 2006/111, with annotation by B.K. Olivier). A receipt of the Postbank with the number of a French identity card does not prove unequivocally Oulane's French nationality. While Oulane has to make his alleged French nationality credible, the minister is not under the obligation to investigate Oulane's identity and nationality on the presentation of a number of an identity card only (see Chapter III).

Bidar (C-209/03)

At the occasion of the transposition of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and in order to implement the European Court of Justice's verdict of March 15th 2005 in case 209/03 (*Bidar*) a Bill was introduced on 23 March 2006 to amend inter alia the social assistance and study grants legislation (TK 2005-2006, 30493, nrs. 1-3). The Bill became Act on 7 July 2006 (*Staatsblad* 2006, 373) and entered into force 11 October 2006. According to the Act EU-citizens who reside less than three months in the Netherlands or who are seeking for employment or reside in the country as students are excluded form social assistance. According to the new Article 2.2 of the Study Grants Act 2000 students from EU, EEA Member State and Switzerland are in principle equally treated as Dutch citizens, irrespective whether they reside in the Netherlands or not, but by a Royal Decree, the Study Grants Decree 2000, groups of students may be designated who are only entitled to a reimbursement of the enrolment fees (the so-called Raulin-compensation). According to a new Article 3a of the Study Grants Decree 2000 (*Staatsblad* 2006, 374) an EU/EEA/Swiss-students, who is not (a family member of) an (ex-)worker or (ex-)self-employed and who has not (yet) acquired permanent residence as mentioned in Article 16 of the Directive (legal residence for a continuous period of five years), is entitled to the reimbursement of the enrolment fees only. On grounds of legislative technique it was decided to determine the personal scope of *Bidar* not in the Act itself but in a Royal Decree. If future developments (judgments of the Court of Justice) require an adaptation of the national rules, it is easier to amend a decree than an act.

The policy rule of the Study Grants Office of 9 May 2005 concerning the implementation of *Bidar*, mentioned in the Report 2005, is withdrawn on the date of the coming into force of the above mentioned legislation: 11 October 2006 (*Staatscourant* 2006, no. 223). See Chapter XI.

Trojani (C-456/02)

In a judgment of the District Court Maastricht 11 April 2006 (*Jurisprudentie Vreemdelingenrecht* 2006, no. 308, with an annotation by P. Minderhoud) it was also confirmed that the residence right of an EU citizen is directly derived from Community law. In this case the judge also decided, with a reference to the *Trojani* case of the ECJ that the appeal to social assistance does not make the stay of an EU citizen immediately unlawful.

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

In December 2005 a Bill was introduced (TK 30412, no. 1-3), to amend Article 311 Commercial Code (*Wetboek van Koophandel*) which became Act 19 July 2006 (*Staatsblad* 2006, 325) The Act 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 Act 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. See Chapter III.

Collins (C-138/02)

At the occasion of the transposition of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States the government has changed the Social Assistance Act and introduced legislation excluding all EU citizens explic-

itly from social assistance benefits during the first three months of their stay. With reference to *Collins* the government has taken the opportunity of this change of legislation to introduce in the Social Assistance Act the condition of residence for the entitlement of social assistance for all claimants, see TK 30 493 no. 6, p. 3.

Akrich (C-109/02) and Jia (C-1/05)

Both in the Act on the new integration test abroad (Act of 22 December 2005, *Staatsblad* 2006, 28) and in the new Integration Act on the new integration tests for immigrants after entry and with long residence in the Netherlands (*Wet inburgering* of 30 November 2006, *Staatsblad* 2006, 625) the third country national family members of EU migrants have been exempted from the obligation to pass those tests. In the former act the exemption is implicit, since the obligation to pass the test abroad is linked to the obligation to posses a national visa for a residence of more than three months and third-country national family members are exempted from that obligation. In the new Integration Act EU/EEA/ Swiss nationals and their third-country family members, having a right to enter and reside in the Netherlands under Directive 2004/38/EC, are explicitly exempted from the obligation to pass an integration test in Article 5(2) of the Act. 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), see TK 30308 no. 7, p. 12 and 124-127. no. 12, p. 5, no.16, p. 61 and no. 63, p. 14. See Chapter V.

Ninni-Orasche (C-413/01)

Students who qualify as worker by working approximately 32 hours or more a month are entitled to the full study grants as well. Should the 32 hours norm be applied strictly per months or considered on an average during a longer period of time? Since 2003 the norm is applied on an average of a year. But in case a student has worked on an average less than 32 hours a month, the Study Grants Office considers the student still as a worker during the months he/she has worked for more than 32 hours. According to District Court Assen 24 May 2006 (05/210; LJN: AX7224) and 23 June 2006 (05/171; LJN: AY2534, accessible under www.rechtspraak.nl) the Study Grants Office applies a too narrow interpretation of the term "worker" while a person is alternately considered a worker dependent on the number of hours he/she has worked during that month. With reference to the judgment of the Court of Justice of 6 November 2003, C 413/01 (*Ninni-Orasche*) the District Court is of the opinion a migrant worker is not necessarily voluntarily unemployed solely because his contract of employment, from the outset concluded for a fixed term, has expired. According to the District Court the Study Grants Office has still to determine whether the activity pursued by the applicant was genuine and effective and therefore the status of worker has continued during the months in which the applicant has worked less than 32 hours. See Chapter XI.

Barkoci and Malik (C-257/99)

In the framework of the Association Agreement Hungary/EC the District Court Amsterdam 30 November 2006 (AWB 06/5485) rejected the argument that the decision on an application for a residence permit should be taken as soon as possible when in the preceding procedure for a long stay visa already was decided that all conditions for a residence permit were fulfilled. The judgment of the Court of Justice of 27 September 2001, C-257/99 (*Barkoci and Malik*) does not provide an argument for the contrary. According to the district court the ordinary time limit of six months still applies (Chapter XI).

Jany (C-63/99)

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. In District Court The Hague

10 January 2006 (AWB 05/4732; LJN: AV8697, see www.rechtspraak.nl) the Minister was of the opinion that in the framework of the Association Agreement Bulgaria/EC a long stay visa for the establishment as a self employed person may be denied according to the national public order clause. According to the Minister the community law public order clause applies only in cases of withdrawal of a residence permit. With reference to the judgment of the Court of Justice of 20 November 2001, C-63/99 (*Jany*) the district court decided that the community law public order clause applies not only in withdrawal situations but also with regard to decisions on first admission, See Chapters VIII and XI.

Sala (C-85/96)

Concerning the issue whether EU-applicants for rent subsidy are required to present a document as mentioned in the aliens legislation to prove their lawful residence two contradictory judgments are delivered in 2006. District Court Haarlem (AWB 06/5827, LJN: AZ4863) decided on 21 November 2006 that such a document should be presented to the Minister of Housing in order to be entitled to rent subsidy. With reference to the *Sala* judgment of the Court of Justice (C-85/96), District Court Amsterdam 28 December 2006 (AWB 06/5362 and 5363) was in an injunction procedure of the opinion that the Minister of Housing may not require such a document as constitutive condition for entitlement to rent subsidy. The Minister of Housing has to consider the legal status of the EU citizen independently. See Chapter III.

Literature

Although no specific information is available on the application of the free movement case law of the Court of Justice in the sports sector, the following article should be mentioned:
G-R. de Groot en J.J. Kuipers, Sport en nationaliteit, *Migrantenrecht* 2006, nr. 4.

CHAPTER VII. POLICIES, TEXTS AND/OR PRACTICES OF A GENERAL NATURE WITH REPERCUSSIONS ON FREE MOVEMENT OF WORKERS

Integration legislation

Texts in force

The Act on Preliminary Integration Abroad (*Wet inburgering in het buitenland*) 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). According to this Act, the migrant has to pass in his country of origin a language test and a test with questions on the Dutch society, before he/she gets a visa for entry in the Netherlands. This integration exam has to be performed in a telephone conversation at a Dutch embassy or consulate with a computer in the USA. It is doubtful whether the obligation to pass the exam is in conformity with Article 7 of the Family Reunification Directive (2003/86).

The Act on Preliminary Integration Abroad is supplemented by the Act on Integration (*Wet inburgering*) of 7 December 2006 (*Staatsblad* 2006, 625) which entered into force 1 January 2007 (Royal Decree of 14 December 2006, *Staatsblad* 2006, 645). After admission, migrants are required to pass another integration test (language and society) on a higher level within five years. If not, the migrant can get a reduction on his benefits, fines can be posed on the migrant and a permanent residence permit will be refused.

The preliminary integration test abroad and the compulsory integration programme after arrival in the Netherlands will not be required from EU citizens, EEA or Swiss nationals or from EU citizens' family members who are non-EU nationals.

Originally the Bill on Integration made a distinction between three types of Dutch nationals: born in the Netherlands, born in the Dutch Caribbean and naturalized Dutch nationals. Only the first category was exempted from the integration obligations. After several institutions had indicated on the conflict of the regulation with international law and on the huge implementation problems, the Minister of Immigration and Integration finally decided to exclude all Dutch nationals form the applicability of the Act on Integration (TK 30308, no. 108 and EK 30308, no. F and H). Due to this last minute change of the personal scope of the integration legislation, it is doubtful whether the Act may be applied to migrants who are entitled to equal treatment according to EU law: Turkish nationals (and their family members) whose right of residence directly flows from the Association Agreement EEC/Turkey and third-country nationals who are long-term residents according to Directive 2003/109/EC. The First Chamber of Parliament asked searching questions in this respect. The Minister of Immigration and Integration waived – not convincingly - all the objections (EK 30308, no. G).

Knowledge migrants

During 2005 an evaluation took place of the knowledge migrant legislation: mainly positive although the application form is too complex and the cooperation between the institutions involved is poor (TK 30 308 VI, no. 112). By parliamentary motion of November 2005 (TK 30 300 VIII, no. 30) the cabinet was requested to address the bottlenecks in the existing regulation. The cabinet reacted March 2006 (TK 30 300 VIII, no. 75). The amendments concern students, scientific researchers, internships, practitioners, starting enterprises and employees of non-Dutch enterprises (see amendments to the Aliens Circular, *Staatscourant* 2006, no. 229). From 1 January 2005 to 1 December 2005 1,393 residence permits for knowledge migrants are granted. In the period 1 January till 1 November 2006: 2,898 (Sociaal-Economische Raad, *Advies Arbeidsmigratiebeleid* 16 maart 2007, p. 80 ff.)

Fees

May 2004 the Minister of Immigration and Integration proposed a new, very differentiated fee system (TK 29 200 VI, no. 165) based on the presumption that the fees should cover the actual costs. 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 an 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. Third-country nationals who are long-term residents according to Directive 2003/109/EC have to pay the same fee of € 201, which is according to the Minister of Immigration and Integration not an infringement of the Directive (EK 30567, no. C). 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).

Although the Netherlands Court of Audit had concluded that the Immigration and Naturalization Service was not able to indicate the actual costs, parliamentary motions to reduce the fees to the level of 1 January 2003 and to start an adequate cost price investigation were rejected in February 2006 (TK 30240, *Handelingen* 54).

In a parliamentary debate on 30 March 2005 (TK 29800 VI, no. 142) the issue of the compatibility of the new system with Article 8 ECHR and with the Association Treaty Turkey/EEC 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 29800 VI, 122; TK, *Handelingen* 12 April 2005, 71-4377 ff. and 19 April 2005, 74-4531). In December 2006 the Minister had to admit that due to a lack of registration she was not able to give an indication of the number of family reunification cases in which applicants were exempted from the fee requirements (TK 30800 VI, no 24, p. 58).

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). On 4 April 2006 the Commission delivered its reasoned opinion (2003/4125), on 12 December 2006 the case was referred to the EU-Court of Justice (see http://ec.europa.eu/community_law/eulaw/index_en.htm#infractions).

Judicial practice

In District Court Amsterdam 2 March 2006 (AWB 06/6412 and 06/6414, see www.rechtspraak.nl) the Court is of the opinion that under the circumstances of the case the visa application of a knowledge migrant should be decided within four weeks.

The Judicial Division of the Council of State 7 November 2006 (200605013/1, see www.rechtspraak.nl) is of the opinion that considered the qualifications of the applicant the salary mentioned in the application form for knowledge migrants is not in conformity with the market. The Minister could reasonably suppose that the salary of € 45.360,00 will not be paid and could therefore deny the visa application as knowledge migrant. The District Courts were of the opinion that the fulfilment of the income requirement of the knowledge migrants regulation should be checked afterwards (see for example District Court Amsterdam 27 June 2006, AWB 06/17931, www.rechtspraak.nl).
In Judicial Division of the Council of State 17 May 2006 (200600304/1, see *Jurisprudentie Vreemdelingenrecht* 2006, 256) the Judicial Division mitigated the above mentioned hardship clause for family reunification. An applicant should refer to the clause at the time of the application. If not, non-payment of the fee is an obligatory legal reason to put the application aside.

In cases in which EU-nationals wrongly had to pay the ordinary fees, the National ombudsman recommended to reconsider the issue of compensation (Report 2006/239, see www.nationaleombudsman.nl) and decided District Court Roermond 22 June 2006 (AWB 05/34500, see www.rechtspraak.nl) to restitution.

Literature

W. Verberk, Invoering Wet inburgering in het buitenland (Wib) en Wib-MONITOR, *Migrantenrecht* 2006, nr. 2.
K.M. de Vries, Het nieuwe Nederlandse inburgeringsstelsel, *Migrantenrecht* 2006, no. 8.
C.A. Groenendijk, Nieuw inburgeringsrecht strijdig met Gemeenschapsrecht, *Migrantenrecht* 2006, no. 10.
C.A. Groenendijk, Minister Verdonk: grote woorden, minder daden en riskante ideeën, *Nederlands Juristenblad* 2006, p. 1018 ff.

CHAPTER VIII. EU ENLARGEMENT

1. Information on transitional arrangements regarding EU 8

1.1 Changes in national law and practice since the previous report

During 2006 the Dutch government several times proposed to stop or gradually reducing reliance on the transitional measures. Each time the proposals were met with opposition by a majority in the Parliament by the left wing and Christian-democratic parties. Apparently, those parties were influenced by the major trade unions that opposed such liberalisation.

The Under-Minister for Social Affairs in a letter of 31 March 2006 to the Second Chamber, 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. Moreover, the share of the workers from EU 8 countries in the total labour force was rather small (less than 1%) and the unemployed level was low, also in sectors of the labour market were EU 8 workers were employed. Finally, the government promised that unequal pay and unfair competition could be countered better by liberalisation combined with more intensive activity of the labour inspectors. 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).

The political debate continued during the whole year 2006. The Second Chamber continued to demand more guarantees that Polish workers would not be paid lower salaries and that there would be no replacement of Dutch workers by EU 8 workers. At the end of 2006 the government proposed to end the transitional period for the EU 8 by 1 March 2007, arguing that the number of registered vacancies in international transport and construction, the two sectors most discussed in the press and the parliament, was far greater that the number of registered unemployed workers in those two sectors (TK 29407, no. 59). The Second Chamber delayed its debate on this proposal until after 1 March 2007, thus effectively again postponing the end of the transitional period for EU 8 workers.

In the meantime during 2006 the measures to reinforce control and monitoring of the legislation on labour permits and on payment of equal wages, introduced or discussed in 2005, were actually implemented. This included considerably more controls by the Labour Inspectorate (from 3,900 in 2003 to 11,000 in 2006), the imposition of high administrative fines by labour inspectors in case of illegal employment of Polish workers or of Polish workers employed by Polish service providers that were considered to be no real service providers, the introduction of the statutory competence of labour inspectors to impose high administrative fines on employers who do not comply with the legislation on minimum wages.

The total number of Polish workers found working without the required labour permit increased from 682 in 2003, to 901 in 2004 and to 1538 in 2005 (TK 29537, no. 29, p. 25). The increase may reflect the increased activity of the labour inspectorate. On the other hand, the number of Polish workers found to be working without the required permit in agricultural jobs decreased from 345 in 2004 to 114 in 2005 (TK 28442, no 14). This decrease clearly reflects the large scale issue of labour permits of those jobs in 2005.

1.2 Changes with regard to the second phase of the transitional period

Considering the opposition in the Second Chamber, the Dutch government was in fact forced to inform the European Commission that the Netherlands would continue to apply the transitional regime after 1 May 2006.

On the other hand, the government having lost the principle battle in Parliament, to a large extent liberalized the admission of EU 8 workers to large sectors of the labour market, by gradually abol-

ishing the labour market test for large sectors of the economy and by abolishing the obligation to report vacancies for certain jobs. In the nine months of 2006 almost 40,000 work permits were granted for employment of EU 8 workers, a considerable increase in comparison with the previous year. 83% of those permits were granted for temporary labour jobs in agricultural and horticulture (*Aanhangsel* TK 2006/2007, no. 350). The sudden increase in applications for labour permits for seasonal labour in agriculture caused delays in the issuing of those permits, which required more than the usual two weeks for applications without labour market test (TK 29544, no. 78).

In the official explanation of the first measure abolishing the labour market test for EU 8 workers employed in five sectors the government announced that in order to give effect to the second phase the labour permit obligation would be provisionally remain in place, but the labour market test would be gradually abolished for more sectors of the economy on the basis of the development of the employment situation, i.e. number of unemployed workers and number of registered vacancies for the sector. The abolishment of the labour market test, also implied that the employer no longer need to inform the official employment agency (CWI) about a vacancy in advance nor does the employer have to demonstrate that he has tried to find a worker for the job on the Dutch labour market. The labour permit is granted after the CWI has checked that the labour and the housing conditions are accordance with the statutory standards or the applicable collective labour agreement. The government in May 2006 again announced as its aim to abolish the labour permit for EU 8 workers altogether on 1 January 2007. The various decisions on the gradual liberalisation are specified in par. 1.3.

1.3 Details of the legal regime during the second phase

During the first half of 2006 the abolition of the labour market test continued to apply for one category, jobs aboard of inland navigation vessels (Decision CWI Board of 24 January 2006, *Staatscourant* 2006, no. 29, p. 22 and Decision CWI Board of 2 May 2006, *Staatscourant* 2006, no. 95).

The more general abolition of the labour market test for large sectors occurred by three subsequent decision of the Under Minister of Social Affairs, each time amending par. 19a of the Implementing Rules under the Employment of Aliens Act. As of 1 June 2006 the test was abolished in five sectors, agriculture, inland navigation, metallurgy, slaughter houses and scientific research (Decision of 30 May 2006, *Staatscourant* 2006, no. 104, p. 23). As of 17 September 2006 the test was abolished for all jobs in another 17 sectors, including hotels and restaurants, health sector, services, most public services and telecommunication (Decision of 14 September 2006, *Staatscourant* 2006, no. 180, p. 11). Finally, in December 2006 the labour market test was abolished for forty sectors, including construction, retail, (public) transport, banking, insurance and education (Decision of 13 December 2006, *Staatscourant* 2006, no. 245, p. 22).

Most of the national rules on the residence status and the access to employment for nationals of the EU 8 Member States during the second part of the transitional period, as in the first part, 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) in par. 19a of the Rules on the implementation of the Aliens Employment Act (*Wet arbeid vreemdelingen*). The rules on the issue of residence permits to those nationals and their third-country national family members have been ´codified´ in section B10/8 of the Aliens Circular.

At the extensive amendment of the Aliens Decree implementing Directive 2004/38/EC in the Dutch legislation, it was explicitly provided that the old rules on the issue of residence permits to EU nationals and their family members in Article 8.11 and 8.12 Aliens Decree would continue to apply to EU 8 nationals, as long as the transitional measures would apply to the persons concerned, Article IX of Royal Decree of 24 April 2006, *Staatsblad* 2006, 215. Rules on the special residence card issued to nationals of the EU-8 nationals not yet entitled to free movement are provided for in Article 3.2a Aliens Regulation (*Voorschrift Vreemdelingen*).

The Minister for Aliens Affairs and Integration in April 2006 introduced detailed rules in the Aliens Circular on the issue of residence permits to persons employed by service providers re-established in other EU/EEA Member States, taking into account the system of prior notification introduced by the Minister of Social Affairs in 2005, Decision of 4 April 2006, WBV 2006/18, *Staatscourant* 2006, no. 85, p. 12).

1.4 Practical problems pertaining to the transitional arrangements

There have been series of parliamentary questions on the purported practical effects of the admission of Polish workers, mainly concerning Polish workers employed by Polish service providers for construction or repair work, Polish drivers in international transport, Dutch workers being replaced by Polish workers, the negative effects for Poland of the admission of Polish workers in the Netherlands and other EU 15 Member States, TK questions and answers 2005-2006, nos. 1189, 1217, 1062, 1170, 1249, 987, 1731 and 2143. Most of those questions were apparently related to publications or other activities of trade unions on those issues. The unions generally raised three issues, unequal pay, lower professional qualification of Polish workers and the replacement of Dutch workers in construction, transport and harbours. The efforts of certain trade unions to convince Polish workers to become member of the union, especially in the agriculture, appears to have been large unsuccessful, partly due to language problems and to the temporary character of the employment in seasonal jobs (*De Groene Amsterdammer* 30 June 2006, p.22-25).

The press reported about a court case in Opole, Poland, were Polish workers claimed that the were unlawfully paid three to five euros per hour, whilst their Dutch colleagues were paid up to five times more (*NRC Handelsblad* 15 September 2006) and about efforts of trade unions to prevent employers from employing Polish workers in the Amsterdam and Rotterdam harbour (*NRC Handelsblad* 23 and 31 August 2006; oral parliamentary questions TK 15 March 2006, Hand. p. 3694). Press report on the risks for road safety, purportedly created by sub-standard qualifications of Polish drivers in international road transport resulted in parliamentary questions on this issue (TK 21 February 2006 Hand. p. 3415), in a special report by the Ministry of transport and the promise by the minister that the inspections by the road safety inspectors would be intensified.

The persisting issue of the substandard housing of seasonal workers from the EU 8 received a lot of attention in the political and media debate. After a report by Regioplan, commissioned by both the Ministry of Housing and the Ministry of Social Affairs, had been published see below, several measures were taken (TK 29407, nos. 40, 53 and 56). The activities of the housing inspectors were intensified, the CWI employment agencies informed municipal authorities about the issue of work permits for temporary labour in order to enable the local authorities to monitor the housing conditions, and Minister of Housing allowed for former asylum seeker reception centres to be used for the accommodation of temporary foreign workers.

Problems about the application of the transition period rule that after 12 months of lawful employment the EU 8 worker acquires full free movement of workers rights in the Member State, were not report in the press or in the published case law. Probably, the absence of reported problems is due partly to the fact that more than 80% of the work permits granted to EU 8 workers were valid for less than 24 weeks, leaving a small minority that may succeed in having 12 months of uninterrupted lawful employment and, on the other hand, to the fact that the workers who lawfully work more than a year, generally, are aware of their free movement rights and able to realise those rights in practise.

EU 8 workers continue to have to file applications for an EU residence card with the municipal authorities rather than directly with the IND, as is the case for all other EU nationals (TK 29407, no. 60). Late in 2006 and early in 2007 one of the new arguments against no longer applying the transitional measures after 1 March 2007 was that the IND would not be able to deal with the expected large increase in applications from EU 8 nationals.

In November 2006 the Ministry of Social Affairs published a press bulletin that the Dutch and Polish authorities had agreed on ways of exchanging information that would allow the Dutch labour inspectorate to check the information concerning Polish service providers employing Polish workers in the Netherlands (press bulletin 06/173).

2. Transitional measures for workers from Bulgaria and Romania

The position in the Second Chamber against proposals to end the transitional measures for worker of EU8 Member States on 1 January 2007 made it politically impossible for the Dutch government not to use the first phase of the transitional period for workers from Bulgaria and Romania. Although the number of Romanian and Bulgarian workers lawfully employed in the Netherlands is relatively small (in the first six months of 2006 1,417 labour permits were issued for Romanian workers and 16.200 for

Polish workers), during the debate on the EU 8 workers it became gradually clear that the exceptions of the transitional period would be relied on by the Netherlands.

In a letter of 28 November 2006 the government informed the Second Chamber about its decision to apply the transitional period for the two new Member States as of 1 January 2007. The main arguments proposed by the government are the large difference in the National Product between the Netherlands and the two new Member States and the fact that 13 of the EU 15 Member States were also making use of the first phase of the transitional period with regard to the two new Member States. The government further announces that if the labour market situation allows, it will consider applying the same liberalisation, introduced for EU 8 workers in the second half of 2006, for workers from the two new Member States one year after their accession on the basis of an evaluation of the labour market effects of that accession (TK 29407, no. 54).

With regard to the issue of residence cards to workers from Bulgaria and Romania the same rules of the Aliens Decree and the Aliens Circular applicable to the EU 8 workers, mentioned in par. 1.2 above will apply. The workers will have to apply for the EU residence card with the municipal authorities. The fee for the card will be 30 euro (IND website).

The Haarlem Aliens Chamber of The Hague District Court held in the case of a Bulgarian national who had applied for a long-term residence visa with the aim to work as a prostitute and after that application had been refused asked for an injunction allowing her to start working pending the procedure on her residence right in the Netherlands, that the Minister could not refuse the visa on the ground that she had violate public order by using a false passport. Referring to the Jany judgment of the ECJ the District Court the same strict public order exception as for EU workers applied. However, it was held that the injunction could not be granted because the applicant had not shown that she fulfilled all other requirements for the issue of a residence permit (District Court The Hague 10 January 2006, LJN AV8697).

Jurisprudence

In a series of five judgments the Judicial Division of the State Council rejected the appeals of Dutch persons and companies that had been imposed high administrative fines by labour inspectors for having employed Polish workers without the required labour permit. The persons and companies concerned contended that they had concluded a contract for services with a Polish firm that employed the workers and hence no labour permit was required. The appeals were rejected because the service contract could not be proven, it had not been proven that the service provider rather than the workers had performed the work, because the workers had already been employed in the Netherlands before, because the Polish firm had only provided the workers and not other services, that it had not been proven that the Polish worker had his main activities in the Member State of the service provider or that it had been proven that the Polish worker had performed the job together with Dutch workers under instructions and with the tools of the Dutch company. The absence of a hierarchical relation between the Dutch person of company and the use of the E 101-declaration were held to be irrelevant. All judgments all were dated 8 February 2006: no. 200503689, *Administratiefrechtelijke Beslissingen* 2006/ 120, no. 200601125, no. 200601961, LJN: AY5516, no. 200601402, LJN: AY5515, no. 200601393.

In several cases District Courts granted injunctions against the immediate payment of administrative fines in such cases, pending the appeals on the lawfulness of the fines. An injunction was granted in a case where an administrative fine of 20,000 euro was imposed (District Court Amsterdam 11 August 2006 no. AWB 05/5686 ve07000221) and in a case where an administrative fine of 56,000 euro was imposed (District Court Haarlem 15 September 2006, LJN: AX9426). The request for an injunction in a similar case of a fine of 32,000 euro was refused because it had not been proved that payment of that fine would cause the bankruptcy of the business concerned (District Court Rotterdam 15 June 2006, LJN:AX8962).

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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 2006 amounted to 30,300 persons. The registered emigration of persons born in other Member States in 20056 was 22,750. 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 2006, as 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. The number of immigrants from Poland was 1,500 higher in 2006 than in 2005, the number of emigrants to Poland increased with 1,140. For almost all other Member States the number of immigrants and emigrants was almost equal to the numbers in 2006. The immigration from EU 14 Member States almost equals the number of emigrants to those countries. However, with the EU 24 there is a clear migration surplus of about the same size as in 2005. Enlargement continues to contribute to a net immigration from the EU 10 Member States. Only with the UK and Spain there was in 2006 an emigration surplus. The relative large emigration surplus with the UK had about the same size as in 2005. This surplus may be partly due to the migration of Dutch nationals of Somali origin to the UK.

Table 1. Migration to and from the other 24 Member States in 2006

	Immigration	Emigration	Surplus
Poland	8.315	2,862	5,553
Germany	6,055	4,774	1.221
United Kingdom	3,297	3,976	-681
Belgium	1,916	1,599	417
France	1,883	1,732	151
Italy	1,415	1,189	226
Spain	1,351	1,590	-249
Portugal	1,188	1,034	154
Total 14 MS	18,752	18,405	1,347
Total 24 MS	30,292	22,755	7,487

Source: CBS, Stateline 2007.

Table 2. Immigration and emigration of persons born in other Member States (1995-2006)

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
19752	18405	30292	22755	8315	2862

Source: CBS, Stateline 2007.

From table 2 it appears that in 2006 both the immigration from and the emigration to the EU-14 Member increased slightly. The effect of the Enlargement in 2004 is clearly visible again: more than one third of the total immigration in 2006 originated from the EU-10, primarily from Poland. The immigration from Poland increased considerably in 2004 and rose even further in 2005 and 2006. In the last year the return migration increased as well. It almost doubled as compared with 2005.

Resident EU citizens

On January 1, 2006, the total number of EU citizens from the other 24 Member States registered as residents in the Netherlands amounted to almost 234,000. The fact that the number of male residents is almost equal to the number of female resident Union citizens 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. The increase in 2006 was more limited (5,700).

Table 3. Total number of resident nationals of 14 Member States (1996-2006)

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
2006	233,867

Source: CBS, Stateline 2007.

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, to 178,000 in 1991 and to 211,000 in 2004 (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.

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 five 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 2006 was relatively small.

Over the last ten years the share of women among the nationals of the other EU Member States registered as resident in the Netherlands gradually increased from 45% in 1996, 47% in 2000 and 49% in 2005, to 50% at the beginning of 2007 (source: CBS Stateline).

In the Annual report of the Immigration and Nationality Service (IND) of the Ministry of Justice 89% of the applications for an EU/EEA residence card were granted in 2006 (86% in 2005). This appears to imply that in 2006 11% of the applications were refused. According to the website of the IND in 2006 a total of 15,821 EC/EEA residence cards have been issued in 2005. This is a considerable decrease in comparison with the 22,500 residence cards issued to EU/EEA nationals in 2004. The decrease is clearly related to the implementation of Directive 2004/38/EC. Until June an average of more than 2,000 residence cards were issued per month, whilst as of July 2006 the monthly average was circa 500. Probably, most of the cards in the second half of 2006 have been issued to third-country national family members of Union citizens.

Table 4. Registered resident nationals of the 24 other Member States on January 1 (2002-2006)

	2002	2003	2004	2005	2006
Germany	55,000	56,000	56,500	57,190	58,500
UK	43,500	44,000	43,700	42,500	41,510
Belgium	26,000	26,500	26,200	26,105	25,995
Italy	18,000	19,000	18,500	18,400	18,500
Spain	17,500	17,500	17,400	17,200	16.850
Poland	6,300	6,900	7,400	11,000	15,200
France	14,100	14,500	14,500	14,500	14,730
Portugal	10,500	11,300	11,800	12,000	12,085
Greece	6,015	6,200	6,300	6,400	6,520
Ireland	4,100	4,200	4,200	4,100	4,050
Austria	3,500	3,500	3,600	3,600	3,540
Sweden	3,100	3,100	3,100	3,100	3,160
Denmark	2,700	2,600	2,700	2,700	2,645
Hungary	1,700	1,800	1,900	4,100	2,270
Finland	2,100	2,100	2,100	2,100	2,090
Czech	1,300	1,300	1,500	1,700	1,880
Slovakia	900	900	1,000	1,200	1,560
Lithuania	400	500	600	1,000	1,175
Latvia	200	200	300	400	450
Estonia	150	150	200	300	320
Slovenia	200	200	250	250	300
Luxembourg	300	300	300	300	290
Malta	100	100	100	100	110
Cyprus	50	50	50	50	80

Source: CBS, Stateline 2007.

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 2006 the total number of residents in the Netherlands having both Dutch nationality and one or more other nationalities was more than one million (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, 2005 and 2006

	1986	2003	2005	2006
Germany	37,700	44,200	45,500	48,100
Great-Britain	38,300	41,900	42,500	43,270
Belgium	26,300	28,900	29,400	30,290
Italy	14,059	17,500	18,200	19,430
Poland	10,700	15,000	15,700	16,585
France	11,800	14,300	14,900	15,735
Spain	9,570	10,510	10,945	
Hungary	6,290	6,530	6,655	
EU 14/EU 24	176,200	211,600	216,330	

Source: CBS, Stateline 2007.

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 4 and 5, it appears that the total number of nationals from Belgium, Germany, Great-Britain and Italy resident in the Netherlands, is two times the number men-

tioned in table 4. 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. The number of residents in the Netherlands having both Polish and Dutch nationality or both Hungarian and Dutch nationality is even greater than the number of residents having only Polish or Hungarian nationality This implies 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.

Table 6. Number of EU nationals naturalized in 2001, 2003, 2004 and 2005

nationality	2001 number of naturalisations	2003 number of naturalisations	(2003) %	2004 number of naturalisations	2005 idem
Danish	9	11	0.4	5	11
Finnish	8	11	0.5	12	15
Spanish	98	84	0.5	104	84
Irish	16	25	0.6	9	10
Portuguese	129	71	0.6	69	50
British	356	294	0.7	190	221
French	123	100	0.7	87	85
Austria	38	25	0.7	18	24
German	573	445	0.8	297	349
Belgian	189	250	0.9	122	118
Swedish	8	34	1.0	15	14
Greek	26	64	1.0	45	50
Italian	211	206	1.1	148	156
Polish		318	5.0	212	347
Slovak				35	46
Hungarian				33	65
Lithuanian				26	49
Czech				20	48
Latvian				11	17
Estonian				5	8
Slovenian				4	6
Cyprus				1	2
Malta				0	2

Source: CBS, Stateline and author's computation.

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).

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 recent years was considerably higher than that of nationals of the other Member States. This trend continued in 2005. In that year the absolute number of Polish nationals naturalized increased with almost two thirds as compared to the previous year. The number of Czech, Hungarian and Lithuanian nationals naturalized in 2005 was twice as high as in 2004.

From table 6 it also appears that the introduction of the strict naturalisation test in 2003 considerably 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. This trend continued in 2005: the number of nationals of EU-14 Member States naturalized is still clearly below the level of 2001. Only the absolute number of German nationals naturalized increased again in 2005, but remains clearly below the level in 2001. 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, increased further to 26,400 in 2005 and more than doubled to almost 54,000 in 2006. This increase reflects a clear liberalisation of the policy on issuing labour permits to nationals of the EU-8 Member States after accession, and, especially the abolishment of the labour market check for many sectors during the second half of 2006. Apparently, primarily Polish workers made use of this liberalisation. The number of permits granted to workers from Hungary in 2006 again decreased in 2006; it is now below the level of 1999. The number of permit issued for worker from the Czech Republic and Slovakia increased in 2006, Slovakia now being the second in size of the EU-8. In 2006, according to data from the CWI, 346 (378 in 2005) labour permits were granted to nationals of Lithuania and 171 (61 in 2005) to nationals of Latvia.

Table 7. Number of labour permits granted to citizens of four CEEC states (1996-2006)

	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	24,340
2005	26,442	646	1,163	1,030	29,450
2006	53,981	633	1,402	1,505	58,040

Source: Sopemi 2002 and CWI.

The overwhelming majority of labour permits for Polish workers in 2006 were granted for jobs requiring low qualifications, primarily for seasonal labour in agriculture and horticulture. Almost than three quarter of the work permits for Polish workers were va1lid for less than 24 weeks. Of the total of almost 54,000 work permits, 3,500 were valid for between 12 and 24 months, another 1,800 work permits were valid for 36 months.

Data on the sector or branch of employment are only available for EU-nationals who still need to have a labour permit. No data are recorded or published on that nationality of workers who are not required to apply for a labour permit, including all EU-15 nationals and their third-country national family members.

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. [**No data for 2006 are available yet**.]

CHAPTER X. SOCIAL SECURITY

Text in force

- Export of Supplementary Benefits Act
Since 5 May 2005 the export of the Dutch Supplementary Benefits Act (*Toeslagenwet*) has also been restricted for EU/EEA and Swiss-citizens, by adding this Supplementary Benefits Act to Appendix IIbis of Regulation 1408/71 (effected by Regulation 647/2005). In December 2006 the Dutch parliament approved of a transitional arrangement, intending 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, starting form 1 January 2008 (*Staatsblad* 2006, 695 and 696).

- Transposition of 2004/38 and social assistance
At the occasion of the transposition of Directive 2004/38 the government has changed the Social Assistance Act and introduced legislation excluding all EU citizens explicitly from social assistance benefits during the first three months of their stay. Under the old legislation these EU citizens were formally entitled to social assistance from the moment they entered The Netherlands. However, an appeal on social assistance would lead immediately to a termination of the residence status and consequently to a loss of social assistance entitlement. Job seekers do not have access to social benefits during the time they are looking for a job. The relevant bill is also discussed in Chapter XI since is limited the access to student grants as well.

The Dutch government has taken the opportunity of this change of legislation to introduce in the Social Assistance Act the condition of residence for the entitlement of social assistance for all claimants (Dutch or non-Dutch). This introduction was challenged in the First Chamber, because it was seen in breach with the Dutch Constitution, which entitles in Article 20(3) every Dutchmen to social assistance, being a resident or not. After the State Secretary of Social Affairs had assured the First Chamber that this change of legislation did not mean that there was a waiting period of three months for Dutch people, who came from abroad to The Netherlands, the Bill was approved (*Handelingen EK* 2005-2006, nr. 36, p. 1747-1753, *Staatsblad* 2006, 373 and 456). This solution raises the question whether it is possible in the light of Article 12 EC to impose this three months waiting period on EU citizens or not.

- Entitlement to day care allowances
In reaction to a letter from the Commission of 15 July 2005 the Dutch government has changed the Child Day Care Act (*Wet kinderopvang*) to bring it in conformity with Article 39 EC and Articles 4(1)(h) and 76 of 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 level of the Child Benefit and the Day Care allowance together is higher than the family allowance, to which the beneficiary is entitled in his country of residence. These changes have retroactive effect as from 1 January 2005 (TK 2005-2006, 28447, nr. 123).

- New Health Insurance Act
As of January 2006, a new insurance system for curative healthcare came 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. 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. 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. Dutch pensioners living abroad challenged this obligatory nature of the insurance, finding it not compatible with Regulation 1408/71.

The District Court of The Hague ruled that the health care premium for Dutch pensioners who are living abroad is too high and that the Minister of Health will have to reduce the premium. The judge ruled that it is incompatible with the law to oblige all pensioners to pay the same premium irrespective of their country of residence. Not in the least because some countries offer hardly any long-term health care facilities (which are known as "AWBZ facilities" in the Netherlands). Consequently, health premiums will have to be adjusted to the level of facilities in the pensioners' country of residence. However, it continues to be mandatory for pensioners who are living abroad to take out a national health insurance policy in their country of residence, which minister Hoogervorst has always claimed to be in accordance with European regulations. Most of Dutch pensioners concerned live in France, Spain and Portugal.

The Court also decided against the pensioners' claim to have the right not to make use of the health care package in their host country, so that it continues to be mandatory for the pensioners to contribute 850 euro annually to the Netherlands. In return, they are allowed to make use of the national medical care system of their host country. Besides, the pensioners will have to pay the obligatory income-related premium (see District Court The Hague 31 March 2006, www.rechtspraak.nl under LJN: AV7778).

- Supplementary pension schemes

Regarding supplementary pension schemes, Directive 98/49/EC has been implemented in The Netherlands in 2001, by introducing new Articles 32(f), 32(g) and 32(h) of the Pensions and Savings Fund Act. See COM(2006)22 final.

Judicial practice

A recurrent problem in Dutch case law is the refusal of social assistance benefits of EU citizens on the mere fact that the status, they were registered under in the Municipal Basic Administration (*Gemeentelijke basisadministratie, GBA*) was changed by the Immigration and Naturalisation Service (IND) into 'unlawful residence'. The Central Appeals Tribunal has decided once again that the residence right of EU citizens is directly derived from Community law. A beneficiary EU citizen is entitled to a national assistance benefit, independent of the issuing of a residence permit. The municipality has to judge independently whether the applicant is a beneficiary EU citizen or not (Central Appeals Tribunal 13 June 2006, *Rechtspraak Vreemdelingenrecht 2006*, 89, with annotation by P. Minderhoud).

In a judgment of the District Court Maastricht 11 April 2006, (*Jurisprudentie Vreemdelingenrecht* 2006, no. 308, with an annotation by P. Minderhoud) it was also confirmed that the residence right of an EU citizen is directly derived from Community law. In this case the judge also decided, with a reference to the *Trojani* case of the ECJ that the appeal to social assistance does not make the stay of an EU citizen immediately unlawful.

Miscellaneous

The Netherlands and France cooperate to combat illegal labour and social fraud

The Netherlands and France will cooperate to combat undeclared labour and social security fraud in movement of workers and services between both countries. The Dutch Minister of Social Affairs and Employment and the French Minister for Employment, Labour and the Integration of Young People into Employment have signed an agreement to that effect, on the sidelines of the informal Council of Ministers of Employment and Social Affairs in Berlin (18 January 2007).

This agreement stems from the cooperation programme both ministries initiated in July 2006, in which combating illegal labour is one of the main issues. The agreement is a further elaboration of the Secondment Directive of 1997 taking into account the Resolution of the Council of Ministers of 1999 and the communication of the European Commission (on secondment) of April 4th, 2006. Both countries wish to conclude such bilateral agreements with other Member States of the European Un-

ion, to boost protection of posted workers and combat illegal practices in cross-border services. The Netherlands earlier reached agreements with the United Kingdom and the Slovak Republic. Negotiations are ongoing with Germany, Poland, the Czech Republic and Hungary. In concluding this agreement France and the Netherlands aim to enhance cooperation between the agencies in both countries that work to combat illegal labour and social fraud. This closer cooperation should bolster prevention and surveillance, mainly through an improved exchange of information, but also through exchange of officers. Both parties will review the effect of the agreement both qualitatively and quantitatively once a year.

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CHAPTER XI. ESTABLISHMENT, PROVISION OF SERVICES, STUDENTS

Establishment

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. In District Court The Hague 10 January 2006 (AWB 05/4732; LJN: AV8697) the Minister was of the opinion that in the framework of the Association Agreement Bulgaria/EC a long stay visa for the establishment as a self employed person may be denied according to the national public order clause. According to the Minister the community law public order clause applies only in cases of withdrawal of a residence permit. With reference to the judgment of the Court of Justice of 20 November 2001, C-63/99 (Jany) the district court decided that the community law public order clause applies not only in withdrawal situations but also with regard to first admittance decisions.

In the framework of the Association Agreement Hungary/EC the District Court Amsterdam 30 November 2006 (AWB 06/5485) rejected the argument that the decision on an application for a residence permit should be taken as soon as possible when in the preceding procedure for a long stay visa already was decided that all conditions for a residence permit were fulfilled. The judgment of the Court of Justice of 27 September 2001, C-257/99 (*Barkoci and Malik*) does not provide an argument for the contrary. According to the district court the ordinary time limit of six months still applies.

In her decision of 30 November 2006 (9307-12-0234) the Minister for Immigration and Integration decided that in the framework of the Association Agreement Macedonia/EC it is not required that the applicant for establishment as a self employed person demonstrates an "important Dutch interest".

In his letter of 1 May 2006 the minister of Economic Affairs presented a new policy for the establishment of self-employed persons form outside the European Union (TK 2005-2006, 29696, no. 3).

Provision of services

In District Court Amsterdam 11 August 2006(AWB 05/5686 WAV) the court ruled that the work permit requirement for Polish providers of services constituted an infringement of the free movement of services provision of Article 49 EC. The court annulled the fine of € 20.000!

As mentioned in the Report 2005, since 1 December 2005 the obligation for companies which provide services in the Netherlands to apply for work permits for their employees is replaced by an obligation to notify the Dutch authorities of the use of their workforce before the start of the service provision. The obligation to notify applies to all service providers whose work force is excluded from the free movement of workers. Although generally worded the obligation to notify concerns mainly employees from the eight new Member States in Central and Eastern Europe as long as the transition period for free movement of workers will be in force. The relevant amendments of the Aliens Regulation 2000 and Aliens Circular 2000 are published on 2 May 2006 (*Staatscourant* 2006, no. 85).

After an informal discussion fall 2004 the European Commission has sent a letter of formal notice on 21 March 2006 concerning the alleged infringement of Article 49 EC Treaty on the provision of services, while the Netherlands required companies established in the eight new Member States in Central and Eastern Europe that provide 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. A settlement was not reached and the Commission started the second stage of the infringed procedure with a reasoned opinion on 27 July 2005. Obviously, the introduction of the obligation to notify did not satisfy the Commission either. The Commission continued the infringement procedure with a letter of formal notice. On 19 July 2006 the Commission sent a supplementary letter of formal notice and issued a press release.

In the meantime the government announced its willingness to implement the free movement of workers from the eight new Member States in Central and Eastern Europe step by step (TK 2005-2006, 29407, no. 32), originally foreseen for 1 January 2007 but later postponed to 1 March 2007 (TK 2006-2007, 29407, no. 61), and finally materialised 1 May 2007 (*Staatscourant* 2007, no. 82). Considering the reluctance of the Netherlands to open the borders for the eight new Member States in Central

and Eastern Europe, it seems rather contradictory that according to the European Commission the Netherlands is the main investor in Eastern Europe (*NRC Handelsblad,* 4 May 2006, p. 7).

The remaining legislation and policies specifically applicable to free movement of workers, establishment and 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 had been discussed in Chapter VIII on Enlargement in this report.

Students

To transpose Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and to implement the European Court of Justice's verdict of March 15th 2005 in case 209/03 (*Bidar*) a Bill was introduced on 23 March 2006 to amend inter alia the social assistance and study grants legislation (TK 2005-2006, 30493, nrs. 1-3). The Bill became Act on 7 July 2006 (*Staatsblad* 2006, 373) and entered into force 11 October 2006. According to the Act EU-citizens who reside less than three months in the Netherlands or who are seeking for employment or reside in the country as students are excluded form social assistance. According to the new Article 2.2 of the Study Grants Act 2000 students from EU, EEA Member State and Switzerland are in principle equally treated as Dutch citizens, irrespective whether they reside in the Netherlands or not, but by a Royal Decree, the Study Grants Decree 2000, groups of students may be designated who are only entitled to a reimbursement of the enrolment fees (the so-called *Raulin*-compensation). According to a new Article 3a of the Study Grants Decree 2000 (*Staatsblad* 2006, 374) an EU/EEA/Swiss-students, who is not (a family member of) an (ex-)worker or (ex-)self-employed and who has not (yet) acquired permanent residence as mentioned in Article 16 of the Directive (legal residence for a continuous period of five years), is entitled to the reimbursement of the enrolment fees only. On arguments of legislative technique it was decided to determine the personal scope of *Bidar* not in the Act itself but in a Royal Decree. If future developments (judgments of the Court of Justice) require an adaptation of the national rules, it is easier to amend a decree than an act.
The policy rule of the Study Grants Office of 9 May 2005 concerning the implementation of *Bidar*, mentioned in the Report 2005, is withdrawn on the date of the coming into force of the above mentioned legislation: 11 October 2006 (*Staatscourant* 2006, no. 223).

To increase the international mobility of students (see last year's report) a Bill was introduced on 19 January 2007 creating the possibility for students to export their full study grant not only to all 44 "Bologna countries" with a bachelor-master system, but to all countries of the world with education of a comparable quality as in the Netherland (TK 2006-2007, 30 933, nrs. 1-3). 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. It seems rather contradictory that reference to the same ruling of the Court in two different legislative proposals leads to two different periods of time.

Also students who qualify as worker by working approximately 32 hours or more a month are entitled to the full study grants. Should the 32 hours norm be applied strictly per months or considered on an average during a longer period of time? Since 2003 the norm is applied on an average of a year. But in case a student has worked on an average less than 32 hours a month, the Study Grants Office considers the student still as a worker during the months he/she has worked for more than 32 hours. According to District Court Assen 24 May 2006 (05/210; LJN: AX7224) and 23 June 2006 (05/171; LJN: AY2534) the Study Grants Office applies a too narrow interpretation of the term "worker" while a person is alternately considered a worker dependent on the number of hours he/she has worked during that month. With reference to the judgment of the Court of Justice of 6 November 2003, C413/01 (*Ninni-Orasche*) the District Court is of the opinion a migrant worker is not necessarily voluntarily unemployed solely because his contract of employment, from the outset concluded for a fixed term, has expired. According to the District Court the Study Grants Office has still to determine whether the activity pursued by the applicant was genuine and effective and therefore the status of worker has continued during the months in which the applicant has worked less than 32 hours.

To implement Directive 2004/114/EC on the admission of third-country nationals for the purposes of study the institutions for higher education, independent education-related organizations and the Dutch government concluded by the way of self regulation a Code of Conduct, which came into

force 1 May 2006 (see www.internationalstudy.nl). In accordance with this Code of Conduct the educational institutions provide timely, reliable and easily accessible information to international students and offer a fast and easy procedure for non EU-students to apply for a study in the Netherlands. Based on a new Article 3.41a Aliens Decree (*Staatsblad* 2006, 456) new Articles 3.18a (*Staatscourant* 2006, no. 84) and 3.31 (*Staatscourant* 2006, no. 233) of the Aliens Regulation 2000 provide a easy and fast admission procedure to third country students, who are enrolled at institutions which have subscribed the Code of Conduct; see also a transition provision in the Aliens Circular (*Staatscourant* 2006, no. 154).

Based on OECD-figures (OECD, *Education at a glance,* 2006) the student mobility in the Netherlands in 2004 was 3,9%. This percentage is higher than in Italy and Spain, but less than in Member States as Belgium, Sweden, France, Germany and the United Kingdom. It is also less than the OECD average of 6%. The Netherlands Organization for International Cooperation in Higher Education (Nuffic) uses for 2005/2006 a much higher percentage: 8,6%, most probably while Erasmus and Leonardo students are included (Nuffic, *International Mobility in Education in the Netherlands 2005*). The Immigration and Naturalization Service (IND) estimates the number of students from outside the EU and EEA in 2005/2006 at 16.000 which is about 2,9%. Of these students 25% are from the PR of China, but other Asian countries (Indonesia, India, Pakistan, Nepal and Vietnam) figure in the top ten as well (Advisory Committee on Aliens Affairs-ACVZ, *Benefiting from educational migrants: a report on the labour market position of foreign graduates*, February 2007, p. 20).

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CHAPTER XII. MISCELLANEOUS

From an empirical study on the effects of the introduction of the new formalised naturalisation test it appeared that both immigrants with low and with high education felt frustrated by the tests or decided not to apply for naturalisation after they had been informed about the test. The test consists of two elements: a multiple choice test of knowledge of the Dutch society to be taken on a computer and a three hours language test of the ability of the applicant to speak, understand, read and write the Dutch language. The second part of the test may only been taken after the applicant has passed the first part. If the applicant has a Dutch secondary or higher education diploma he is exempted from the test. A Belgian applicant with a degree of a university in the Dutch speaking part of Belgium was not exempted from the test (Van Oers 2006, see below).

A course on Directive 2004/38/38 and its implementation in the Netherlands was organised by the Dutch Judges Academy (SSR) in May 2006. Elspeth Guild and Kees Groenendijk have taught the course that was attended primarily by judges of the Aliens Chambers of the District Courts.

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