

Position paper – the Dutch standpoint on EU migration policy

Compared to many countries, the EU is safe and prosperous. This makes the European Union an attractive destination for many people. Many EU member states are now experiencing the downside of the arrival of newcomers, and are confronted with asylum and immigration issues. There are concerns about the number of immigrants without prospects putting pressure on receiving societies. And concerns about the integration of newcomers and the related risk of crumbling support for immigration policy. The Dutch government is alert to these signals and believes it is time for a new balance to be struck between a strict asylum and immigration policy and one that is just.

The aim of this policy is a stronger, more prosperous and safer Netherlands within a strong EU. Our asylum and immigration policy can help to achieve that. The basic principle is that we want to prevent illegal immigration, while steering legal immigration in the right direction. This means a strict but just asylum policy and a policy on regular admission that provides opportunities for immigrants who can make a positive contribution to society and encourages newcomers to participate.

An effective migration policy is a European migration policy. That is why we are proposing changes that can make not just the Netherlands but the EU as a whole stronger. After all, making clear, fair agreements on the admission of immigrants and effectively enforcing these rules will increase political and public support for the European Union. The proposals that can help achieve this are presented in this position paper. It sets out the Dutch standpoint, and developments in legal immigration, asylum, illegal immigration and return, and integration.

We are aware that the Netherlands is just one partner in the EU decision-making process. However, we believe in the power of argument. This is why this paper does not simply state the changes we are proposing, but also the background and the anticipated impact. We are keen to enter into discussion with other EU member states and European institutions on this basis, so as to achieve the desired results. Because, in the end, achieving our goal is paramount. That is why we are open to hearing what other parties (member states, EU institutions and interest groups) have to say. We invite anyone that can improve on our proposals to help us to achieve a stronger, safer and more prosperous Europe.

You can contact us through the usual channels, or by mailing: MIA_EU@vz.minbzk.nl

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The Netherlands' proposals: objective and means

The Netherlands' proposals concern a wide range of legal instruments, each of which relates to part of the free movement of persons within the EU. The proposals should not be seen in isolation; after all, the overarching theme of a stronger, safer and more prosperous society is about more than just the separate areas examined one by one below. We believe that, in some areas, the current EU legal framework does not satisfactorily match the needs of society, in which migration figures significantly.

Where regular immigration is concerned, the main priority is achieving good, effective integration policy. Participation and integration are essential for successful individual lives and for social cohesion. Every individual should be expected to participate in society to the best of their ability and to be self-reliant. Any migrant coming to the EU to settle can therefore be expected to abide by the rules, participate in society and invest in the skills this requires. Integration policy is based on the understanding that social cohesion, acceptance of differences and solidarity do not develop spontaneously. Only then can we, as a European community in a diverse society, generate the binding force to live responsibly, freely and in solidarity with others.

The Dutch government's proposals for achieving a stronger, safer and more prosperous society relate to the following EU instruments:

- the Dublin Regulation (343/2003)
- the Qualification Directive (2004/83)
- the Family Reunification Directive (2003/86)
- the Long-Term Residents Directive (2003/109)
- the Free Movement of Persons Directive (2004/38)

Depending on any relevant developments that take place, other legal instruments could also play a role in the future. These include the directive on returning illegally staying third-country nationals (2008/115), the directive on victims of human trafficking (2004/81) and the Association Agreement between the EU and Turkey.

Each section looks at the following:

- the background to the proposal
- what is proposed
- the anticipated impact.

Dublin Regulation (343/2003)

Background

The Dublin II Regulation entered into force in 2003. It determines which member state is responsible for processing an asylum application. At the end of 2008 the European Commission presented a proposal to amend the Dublin Regulation. This proposal relates in part to the situation in which some member states find themselves temporarily unable to cope with the intake of large groups of asylum seekers. One example of this is the situation in Greece, on which the European Court of Human Rights ruled in January 2011 in the case of *M.S.S. v. Belgium and Greece*. As a result of this judgment, the implementation of the Dublin Regulation has been suspended where it requires transfer to Greece.

Anticipated impact

Support through the EASO for a member state experiencing high migration pressure will keep pressure at a manageable level. So the situation in that member state will not come to a standstill, making it impossible for a protracted period to implement the Dublin Regulation in relation to that member state. Each party to the Dublin Regulation – including Greece – must have its migration system in order. In exceptional situations other countries will intervene.

Proposed measure

The Netherlands is keen to see effective implementation of the Dublin Regulation. We agree with the European Commission that the basic principle of the Dublin Regulation should remain that responsibility for processing an asylum application rests with the member state most closely connected with the entry of the asylum seeker to the EU or his residence in the EU. There must be room for exceptions where these relate to protecting nuclear and other family ties. At the same time, the Netherlands will continue to argue that EU member states should provide operational support for other EU countries facing exceptionally high migration pressure through the European Asylum Support Office (EASO).

Qualification Directive (2004/83)

Background

The aim of this directive is to establish minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection (subsidiary protection). Moreover, the directive establishes minimum standards for the content of the protection granted. On 21 October 2009 the European Commission presented a proposal for the amendment of the Qualification Directive. The proposal extended the minimum standard for qualification as a refugee and for persons who qualify for subsidiary protection on other grounds, e.g. fear of torture. The proposal defines the protection to be granted and aims to clarify a number of legal terms and to approximate the rights and benefits extended to refugees and those receiving subsidiary protection.

Proposed measure

When asylum applications are processed it is the responsibility of the asylum seeker to make a plausible case that he will be subjected to persecution. Where there are protection alternatives (an alternative place of refuge or residence) a relatively heavy burden of proof rests on the government. The Netherlands proposes amending the directive so it is possible to shift the burden of proving the absence of protection alternatives onto the applicant. During negotiations the Netherlands proposed new wording that would make it clear that a certain burden of proof will still rest on asylum seekers to make a plausible case that there is no protection alternative available to them in the country of origin.

Anticipated impact

This measure will remove the need for member states to demonstrate each time they assess an asylum application that the applicant can find protection elsewhere in his country of origin. If the threat is only present in a particular region of the country of origin, it is in principle sufficient to ascertain that the asylum seeker can settle elsewhere in his country of origin. This may be the case if the threat of violence is generalised rather than directed at the alien as an individual. In those cases the need for protection will be met if the alien in question moves from one region in his country of origin to another where there is no violence.

Should the measure proposed by the Netherlands be introduced, the asylum seeker would have to show that the threat also applied to other parts of the country of origin before a member state would have to investigate whether the asylum seeker could avail himself of protection in those parts.

Family Reunification Directive (2003/86)

Background

The Family Reunification Directive was adopted in 2003 and evaluated by the European Commission in 2009. It constitutes a first step towards further harmonisation in this important area of legal immigration. The Netherlands supports this and has proposals for improving the integration and emancipation of immigrants (women in particular). These proposals are related to the green paper on family reunification, which will be published by the European Commission in 2011, and the subsequent proposals for amending the Directive.

Proposed measures

The Netherlands proposes a series of measures to improve the integration and emancipation of immigrants:

- increasing the age requirement for both partners to 24;
- tightening the income requirement;
- requiring the deposit of a bond;
- admitting a maximum of one partner every ten years;
- introducing an assessment to prove that ties with the proposed host country are stronger than those with the country of origin;
- excluding sponsors convicted of certain violent crimes (e.g. domestic violence);
- imposing educational requirements on sponsors in the case of family migration;
- revoking temporary residence permits if holders do not fulfil the civic integration conditions that apply in the member state;
- limiting the use of EU law by family reunification migrants from third countries ('the Europe route') to intra-EU traffic; the Family Reunification Directive would apply to the first admission to EU territory. This measure would need to be combined with an amendment to the Free Movement of Persons Directive (2004/38).

All these proposals are (or would need to be) consistent with international human rights protection, including article 8 of the European Convention on Human Rights. Moreover, there must always be the option of departing from the rules on the basis of an individual assessment in the framework of article 8 of the Convention.

Anticipated impact

The objective of the measures is to increase the chance that immigrants will integrate successfully in the receiving member state. We also expect an effect in terms of equality. By setting an educational requirement and increasing the age requirement, for example, both partners will be in a better position to choose their partner independently, complete their education and be able to provide for themselves.

In addition, the aim of raising the income requirement is to improve the economic self-sufficiency of the newly formed family. This makes it more likely that the immigrant partner will integrate successfully. The aim of the proposal to make the extension of temporary residence permits dependent on passing the civic integration examination is the same, and it will help member states to enforce civic integration requirements (where applicable). The deposit of a surety should guarantee that any costs incurred by the government in relation to the alien or the sponsor can be recovered.

Moreover, in the interests of preventing misuse of rights, the Netherlands proposes denying sponsors the possibility of bringing new partners into the country on a regular basis (which can occur e.g. in the event of unofficial polygamous relationships). It should, moreover, also be impossible for sponsors convicted of domestic violence, for example, to import a further partner. In addition, the two should have to show that their joint ties with the host country are stronger than those with another country. This test has already been applied successfully in Denmark. This, too, would establish a definite link with the receiving member state and give integration a better chance of succeeding.

Finally, the Netherlands believes that the Family Reunification Directive should apply to all family migration from outside the EU. That means that family members of legally resident aliens and of EU citizens (regardless of whether they have exercised their right of free movement within the EU) should fall within the scope of the Directive if they live outside the EU. This will prevent misuse of EU law (misuse of the 'Europe route') and uphold the principle of free movement within the EU. This point must be read in conjunction with the comments on the Free Movement of Persons Directive concerning the first admission of third-country nationals to EU territory.

Long-Term Residents Directive (2003/109)

Background

The Long-Term Residents Directive was adopted in 2003 to encourage the integration of third-country nationals. Once an alien has resided continuously for five years in a member state it is assumed that he will have developed sufficiently strong ties with that member state to justify the protection of his right of residence. This protection is embodied in the status of long-term resident, which is available on application.

The European Commission has proposed extending the scope of the directive to cover persons requiring international protection. Accordingly, the proposals detailed below are based on the directive's full scope, in its new form (i.e. including those resident in member states on the grounds of international protection). A political agreement on the text of the amended directive has now been reached between the Council and the European Parliament. The Netherlands' proposals do not, therefore, relate to this round of amendments, but to possible future amendments.

Proposed measure

The Netherlands proposes that long-term resident status be granted only to migrants who can demonstrate that they are in a strong starting position in economic and social terms. This involves expanding article 5, paragraph 2, which already allows member states to set integration conditions for long-term resident status. These conditions would encompass achieving a certain standard of language ability and sufficient knowledge of the host society, or following some other kind of training or education. It must, of course, be possible to grant dispensation in certain cases in which the alien cannot reasonably be expected to achieve such a starting position.

Anticipated impact

Member states already have the option of setting integration conditions. However, the proposed measure goes further, in the interests of improving economic and other integration and equality. The aim is to put the migrant in the best possible position to find long-term employment.

The EU has a shared interest in ensuring a strong starting position for economic and social self-sufficiency, in part with a view to the free movement of persons. That is why the Netherlands wants to see the introduction of a measure making the achievement of certain qualifications a condition for being granted long-term resident status. Member states should, however, have the freedom to determine their own qualification requirements, tailored to national needs and opportunities.

Free Movement of Persons Directive (2004/38)

Background

The free movement of persons is one of the fundamental freedoms within the European internal market, an area without internal frontiers. Since 2004 the rights of migrating EU citizens have been codified in the Free Movement of Persons Directive. According to the European Commission, 11 million EU citizens currently live in another EU member state. Even more are temporarily resident in another member state (e.g. as tourists). This movement has contributed to the economic and social integration of the European Union. Although the Netherlands is strongly in favour of the free movement of persons, we believe that the directive requires finetuning to allow it to better meet the needs of European societies, now and in the future.

It has been observed that there is a risk of family reunification migrants from third countries side-stepping national immigration regulations by invoking the right to the free movement of persons. And the generous protection afforded to EU citizens and their family members sometimes stands in the way of effectively maintaining public order. The residence of EU citizens and their family members can only be ended if they make disproportionate claims on the social benefit system in the member state in which they are residing, or if they have committed very serious or repeated offences. This must, in any case, be assessed in the light of their current situation and personal circumstances.

Proposed measures

The Netherlands calls for an extension of the scope for terminating the residence of and imposing exclusion orders on EU citizens convicted of criminal offences. This must not jeopardise the treaty-based right of free movement. Further interpretation of the existing frameworks is perfectly possible, provided the right to family life as established in international and European human rights conventions is protected.

In addition the Netherlands will investigate ways of establishing a stronger link between the possession of an income of one's own and residence rights.

The directive also applies to third-country nationals who form part of the family of an EU citizen moving to another EU member state. The Netherlands believes that this option should be limited to situations for which the directive was actually intended: simplifying free movement and establishment within the EU. Strictly speaking, the first admission of third-country nationals to EU territory is unrelated to this and should, therefore, be excluded. In this connection the Netherlands believes it should be possible to hold illegal residence prior to the application for a review under EU law against people, given that such residence followed de facto first admission to EU territory. Exceptions would of course have to be made for victims of human trafficking, for example.

Taking into account the increase in people exercising their right to free movement and the social problems this sometimes causes, the Netherlands also advocates discussion within the EU on the integration of EU citizens in other member states.

Anticipated impact

Taking a strong stance on the misuse of rights and effectively enforcing rules will increase political and public support for the European Union. Persons who wish to exercise their rights legitimately will be better able to do so, as less account will need to be taken of possible misuse. This will maximise the benefits of free movement for all interested parties (individuals and member states alike). At the same time, facilitating improvements in the integration of EU citizens will have a positive effect on the exercise of the right of free movement of persons within the EU.

