

# Legal channels for migrant workers

THE NATIONAL, INTERNATIONAL AND EUROPEAN  
CONTEXT

**An exploratory  
study**



Adviescommissie voor  
**Vreemdelingenzaken**

The **Advisory Committee on Migration Affairs (ACVZ)** is an independent advisory body established by law. The Committee advises the government and Parliament on migration issues. It examines policy and legislation and indicates possible areas of improvement. The ACVZ issues practical recommendations aimed at solving both existing and anticipated problems.

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# Summary and conclusions

Three reasons motivated the ACVZ to conduct an exploratory study into legal labour migration channels. These reasons are:

- Current labour market shortages;
- The frequently-stated assertion that legal migration channels can serve as an alternative to irregular migration;
- Attempts by the ACVZ to contribute factual, clearly-explained information to the social debate about migration and to openly outline issues, opportunities, dilemmas and paths to solutions.

This exploratory study deals with the following questions:

- What risks and opportunities play a role in legal labour migration?
- What legal frameworks are provided by Dutch, EU and international agreements and schemes for legal labour migration?
- What lessons can be drawn from recent developments in German policy with regard to legal labour migration channels?
- What would be required if the Netherlands wished to open up new legal channels for labour migration?

In balancing competing interests for the application of a labour migration policy, four groups of actors and their distinct positions on the issue must be taken into account: migrants, employers, countries of origin and the Netherlands. The interests of these groups are not always the same and can sometimes even be opposed, but they can also coincide.

When talking about labour migration, confusion can arise around the concepts involved. Most foreign workers in the Netherlands come from another member state of the European Union (EU) and fall under the free movement of persons within the EU. But non-EU citizens (so-called 'third-country nationals') also engage in labour migration.

The current legal frameworks for labour migration to the Netherlands are summarised in Chapters 3, 4 and 6 and are highlighted in blue.

This exploratory study has resulted in the following conclusions:

*Conclusion 1:*

**If the economic interests of the Netherlands and/or the protection and improvement of refugees' and migrants' rights are taken as the starting points for the policy, there are grounds to reassess the labour migration policy. If the starting point for the policy is that migration must be restricted as much as possible, then there are no grounds for a reassessment.**

In the '[Onwards to 2030' futures study](#), the ACVZ noted that the migration debate in the Netherlands is dominated by three distinct points of view:

- Migration policy must serve the economic interests of the Netherlands;
- The purpose of migration policy is to protect refugees and migrants and to improve their rights;
- Migration is a burden on society and the policy must restrict migration to the Netherlands as much as possible.

Based on the first two points of view, there are currently sufficient grounds to reassess the labour migration policy. When considered from these two points of view, an inviting labour migration policy that succeeded in relieving the shortages in the labour market and reducing irregular migration would provide a wealth of opportunities. That is the route currently being explored by Germany. Based on the third point of view, no grounds for reassessment exist. According to this point of view, any economic and international strategic advantage that the Netherlands might gain from a more inviting labour migration policy is secondary to the risks, such as the (potential) costs of integration, the risk of displacement in the labour market and the risk of deepening the divisions in society.

*Conclusion 2:*

**The *Global Compact on Safe, Orderly and Regular Migration* and the *Global Compact on Refugees* provide a framework and thus an opportunity to make the process of migration easier to control.**

These pacts relating to refugees and migration, signed in late 2018, have the advantage of examining these two subjects alongside and in conjunction with each other. The objectives formulated in the *Global Compact on Safe, Orderly and Regular Migration* ('the Migration Pact') could serve as a starting point for weighing competing interests as part of the reassessment of Dutch labour migration policy.

*Conclusion 3:*

**If the Netherlands wishes to further expand the options for legal labour migration, EU tools such as the Seasonal Workers Directive, the Long-Term Residents Directive, Mobility Partnerships and EU-funded projects could be used.**

Compared to the EU as a whole, the Netherlands attracts a relatively high number of highly skilled migrants. To date, the Netherlands has not taken advantage of the possibilities offered by the Seasonal Workers Directive and applies a strict national assessment framework (including a labour market test) for people covered by the Long-Term Residents Directive. Furthermore, the Netherlands does not participate in the EU-funded labour migration projects developed in the context of mobility partnerships. If the Netherlands wishes to further expand the options for legal labour migration, the use of these tools should be considered (see also: De Lange, Oomes, Gons, & Spanikova, 2019, pp. 35-36). In this respect, lessons can be drawn from the experiences that other member states have gained from using these tools.

*Conclusion 4:*

**Current labour market shortages may be grounds for a closer examination of ancillary measures that would make our country more attractive for skilled workers from other EU member states who possess the specific knowledge and skills of which the Netherlands is experiencing a shortage.**

The free movement of persons within the EU means that, in general, there are no legal obstacles to EU citizens joining the Dutch labour market. However, there may be practical obstacles, such as a lack of information about the Dutch labour market, a lack of housing and international education, and obstacles to the creation of social networks, that could hinder relocation to the Netherlands.

*Conclusion 5*

**In light of experiences in Germany, there are indications that the development of a legal labour migration channel could contribute to reducing uncontrolled migration.**

In the Netherlands, legal labour migration is not currently used as an alternative to irregular migration. The Rutte III government has stated that 'promoting legal migration routes' is one of the six pillars of its comprehensive migration agenda. This is also one of the objectives of the Migration Pact (see objectives 5 and 23). Accordingly, in this regard the ACVZ reiterates the recommendation from its earlier advisory report, '[Search for safe \(r\) countries](#)', that labour migration should be permitted on a limited scale from countries that are cooperating with return (ACVZ, 2018, p. 9).

*Conclusion 6:*

**The German government promotes the view, more strongly than the Dutch government, that migration policy must serve economic interests.**

Germany is currently developing an inviting labour migration policy to address labour market shortages in a targeted way. As a consequence, draft legislation has been introduced that would allow skilled workers from outside the EU, who have completed at least two years of vocational training, to gain access to the German labour market under certain conditions. The Dutch business community could be offered a similar option, in the interests of promoting fair competition, among other reasons.

*Conclusion 7:*

**The earlier recommendation of the ACVZ, that a standing committee be set up to regularly investigate which qualifications are most in demand and the extent to which migrant workers could meet that demand (ACVZ, 2009), is still relevant.<sup>1</sup>**

The current German labour migration system is tailored to the supply and demand of migrant workers and the economic strategy of the German federal government. Efforts are focused on solving the problem of 'shortage occupations'. The UK, too, has a 'Migration Advisory Committee' that advises the government on labour migration in relation to the labour market.<sup>2</sup> With the recent SEO publication, '*Dutch labour market shortages and potential labour market supply from Africa and the Middle East: is there a match?*' (SEO Amsterdam Economics, 2019),

the Netherlands has made a start on tailoring its policies; however, the ACVZ believes this work should be formalised at an institutional level.

*Conclusion 8:*

**Unlike the top segment, the middle segment of the Dutch labour market is not supported by a tailored labour migration policy. In political assessments, Dutch economic interests play a secondary role in this regard.**

For a long time, the Netherlands has concentrated on the need of the knowledge economy for foreign workers, and has facilitated highly skilled migration through a scheme which generally functions fairly well, in which the employer, as recognised sponsor, plays a leading role. The 'job search year' for graduates is also designed to support the knowledge economy. The Netherlands also has schemes for self-employed persons and innovative start-ups, if they can contribute to 'an essential Dutch interest'.

Less consideration is given to less knowledge-intensive work or lower-paid specialist work, even where there is demand from the Dutch economy. For these occupations the Netherlands pursues a restrictive policy, in which the view that labour migration is a burden on society prevails. As a consequence, the practical implementation of the policy is unable to keep pace with the actual demand for workers; meanwhile, one in five employers is experiencing production constraints as a result of labour shortages (UWV, 2018).

*Conclusion 9:*

**The ACVZ believes that labour migration is a subject in which the Netherlands should take a greater interest, in the interests of its economy.**

At present there are gaps in our knowledge on the subject, making it difficult to assess the advantages and disadvantages of labour migration. The ACVZ considers the SEO report, '*Dutch labour market shortages and potential labour supply from Africa and the Middle East: is there a match?*', which was commissioned by the Ministry of Foreign Affairs and released in May 2019, to be a step in the right direction (SEO Amsterdam Economics, 2019). The social debate about legal labour migration is best served by an influx of factual, clearly-explained information and the transparent outlining of issues, opportunities, dilemmas and paths to solutions. This is also expressed in objectives 1 and 17 of the Migration Pact. The ACVZ therefore reiterates the key area for attention it identified in the 'Onwards to 2030' futures study, namely the drafting of an annual comprehensive overview of all efforts and results in the broad area of migration, including labour migration (a 'State of Migration'), and the publishing of monthly statistics that could inform the social debate on the subject (ACVZ, 2018).

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<sup>1</sup> See also: De Lange, Oomes, Gons, & Spanikova, 2019, p. 25

<sup>2</sup> <https://www.gov.uk/government/organisations/migration-advisory-committee>

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## Chapter 1

# Introduction

## 1.1 Motivation

There were three reasons why the ACVZ saw the need to conduct an exploratory study into legal migration channels for migrant workers.

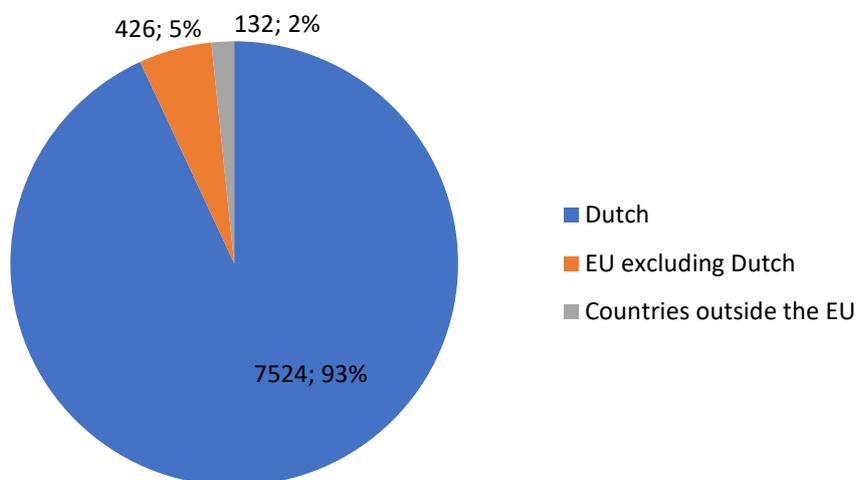
- 1. Labour market shortages are grounds for a new assessment of the opportunities and risks involved in labour migration.*

On 29 March 2018, the Rutte III government presented its comprehensive migration agenda.<sup>3</sup> In this document the government opted for a broad, integrated approach to the issue of migration. One of the six pillars of the agenda is 'promoting legal migration routes'. The government noted that most migration to the Netherlands, including labour migration, already occurs through legal channels.

Figures from Statistics Netherlands show that in 2017, 93% of jobs in the Netherlands were filled by Dutch citizens, 5% by other European Union (EU) citizens, and 2% by people from outside the EU – known as 'third-country nationals' (see Figure 1). The migrants who fill these jobs may have come to the Netherlands with a range of goals. This could include the goal of labour migration, but also the goals of family reunification or asylum.

According to the government, legal labour migration has both disadvantages (such as the risk of displacement in the labour market) and benefits (such as strengthening the economy, innovation capabilities and competitive position of the Netherlands). Accordingly, the government believes that a thorough assessment of the opportunities and challenges involved in migration is necessary. In the view of the ACVZ, the current shortages in the Dutch labour market are a good reason to conduct such an assessment in the near future. In this exploratory study, the ACVZ sets out the framework for such an assessment.

Figure 1. Workers in the Netherlands by Dutch, EU and non-EU nationality, 2017 (x1000, as a percentage)



Source: Statistics Netherlands Statline table, 'The world of work: gender, employment and employee characteristics, SBI2008', accessed on 11 April 2019. <https://opendata.cbs.nl/statline/#/CBS/nl/dataset/81434ned/table?ts=1554991281332>

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2. *Legal migration channels could potentially serve as an alternative to irregular migration.*

Aside from the fact that offering legal migration channels can provide benefits to the Dutch economy, legal migration channels could serve as an alternative to irregular, or 'illegal', migration. This could include humanitarian visas and expanded resettlement of family members (family reunification), but could also include labour migration, even if only on a temporary basis. Coming up with alternatives to irregular migration is high on the European and international agenda.<sup>4</sup> Although legal migration is often suggested as a solution to irregular migration, the ACVZ is not aware of any research showing a direct link between the opening of legal migration channels and a decrease in irregular migration. It is also difficult to generate data that could be used to demonstrate such a link, since irregular migration is difficult to measure. However, research has been performed which revealed that *closing* legal migration channels leads to a shift to other migration channels, including irregular migration (Czaika & Hobolth, 2016). A reverse 'displacement effect' is therefore a viable option. The ACVZ concluded last year in its futures study, 'Onwards to 2030' (ACVZ, 2018, pp. 53, 60), that in the future legal labour migration could contribute to a partial reduction in economically-motivated asylum applications and irregular economic migration. That thinking is in line with recent documents from the United Nations and the EU which also draw a link between legal labour migration and the prevention of illegal

migration.<sup>5</sup> The initial findings from German initiatives in this area are presented in Chapter 5.

The second motivation for this exploratory study is therefore to further investigate whether the expansion of legal labour migration channels could lead to people using legal routes instead of irregular, and often dangerous, migration channels.

3. *The social debate about legal labour migration is best served by an influx of factual, clearly-explained information and the transparent outlining of issues, opportunities, dilemmas and paths to solutions.*

The discussion in the Netherlands around the *Global Compact for Safe, Orderly and Regular Migration* ('the Migration Pact'), around migration in general, and – albeit to a lesser extent – around labour migration, shows that migration is a subject that is much debated, though not always on the basis of facts. Discussions are often based on assumptions about migration and its impact. That is hardly surprising; when it comes to labour migration, a range of different normative frameworks and interests are in play. In its futures study, '*Onwards to 2030*', the ACVZ noted that there is no normative consensus around migration policy and that the debate is dominated by three distinct objectives (ACVZ, 2018):

- Migration policy must serve the economic interests of the Netherlands;
- The purpose of migration policy is to protect refugees and migrants and to improve their rights;
- Migration policy must restrict migration to the Netherlands because migration is a burden on society.

Choosing between these normative frameworks, or choosing a mixture of the three, is a task for politicians. This exploratory study hopes to contribute to that task, so that this assessment can be based on rational arguments and facts as much as possible (see also De Beer & De Valk, 2019).

Chapter 3 describes how the Migration Pact includes recommendations to offer expanded channels for migration (specifically labour migration), with the aim of reducing irregular migration. Chapter 4 reveals that the European Commission (EC) and European Parliament support the expansion of legal migration channels, and that the EC has called for a greater focus on labour migration as part of the solution to shortages in the European labour market. Chapter 5 describes how Germany is taking concrete steps to expand labour migration channels. The Migration Pact confirms the sovereign right of states to determine their national migration policy and their exclusive right to regulate migration within their jurisdiction (in accordance with existing international law). The question that presents itself is whether the Netherlands, after weighing competing interests and considering the facts, should take such a step too.

## 1.2 Research questions

In this exploratory study, the ACVZ provides answers to the following questions:

- What risks and opportunities play a role in legal labour migration?
- What legal frameworks are provided by Dutch, EU and international agreements and schemes for legal labour migration?
- What lessons can be drawn from recent developments in German policy with regard to legal labour migration channels?
- What would be required if the Netherlands wished to open up new legal channels for labour migration?

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<sup>3</sup><https://www.rijksoverheid.nl/actueel/nieuws/2018/03/30/migratiebeleid-toekomstbestendig>

<sup>4</sup> European Commission, 'A European Agenda on Migration', 13 May 2015, COM (2015)240 final; European Commission, 'Enhancing legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy', 12 September 2018, COM(2018) 635.

<sup>5</sup>See Chapter 3 for a discussion of the UN Refugee Pact and UN Migration Pact; in the EU context, see the 'Agreement Establishing the EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa'.

[https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa\\_en](https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa_en)

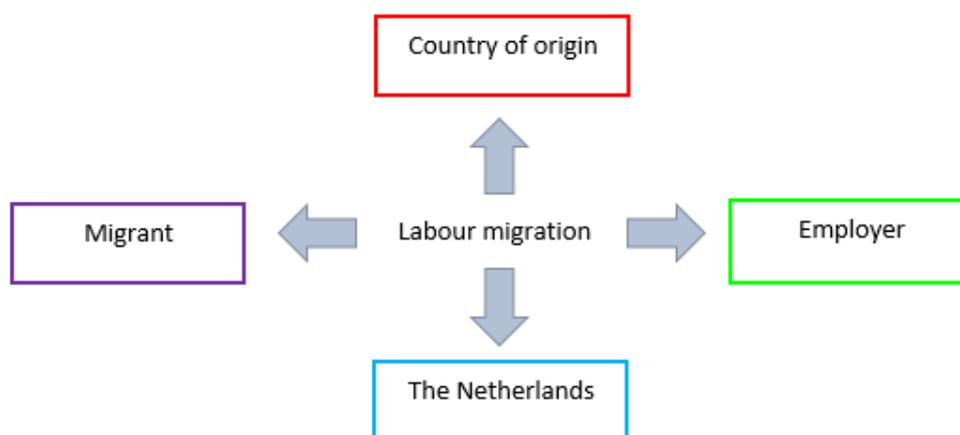
## Chapter 2

# Risks and opportunities

In this chapter, we discuss the balancing of interests that must be performed if the Netherlands wishes to reassess its labour migration policy. The ACVZ believes that consideration of the various interests, risks and opportunities against the background of the different legal frameworks within which the government must operate, is crucial to achieving a well-thought-out labour migration policy. The role of the free movement of persons within the EU is also relevant to this policy, since the majority of foreign workers in the Netherlands currently come from other EU countries (see Figure 1). The free movement of persons within the EU can only be regulated to a very limited extent by the Dutch government, but there is a wide range of conceivable ancillary measures through which workers from other member states could be encouraged to come and work in the Netherlands.

In balancing the competing interests in relation to labour migration, four groups of actors and their distinct positions on the issue are key: migrants, employers in the Netherlands, Dutch society as a whole and the society in the migrants' countries of origin. This is clearly stated in the Migration Pact. The interests of these groups are not always the same and can sometimes even be opposed, but they can also coincide. An interesting question is whether, and if so how, the expansion, or potentially even just the clarification, of the possibilities for legal labour migration to the Netherlands could bring about an improvement for all four of these groups of actors. Below, we outline a number of factors that play a role in the balancing of risks and opportunities for the four groups of actors.

Figure 2. Actors involved in labour migration



## 2.1 Risks and opportunities for legal migrant workers

Figure 3. Risks and opportunities for legal migrant workers

Migrants	
Risks	Opportunities
Small chance of approval	Cheap, safe travel
No long-term job security	Better wages than in the country of origin
Weakening of social position in the country of origin	Better social position in the country of origin
Lower socioeconomic position in host country	Better future for children and family
Working below their skill level (deskilling)	Acquisition and/or improvement of networks, skills and competences

### Risks

#### *Small chance of approval (for third-country nationals only)*

For third-country nationals, legal access to the Dutch labour market is restricted and usually reserved for people with a certain income, network or level of education. Accordingly, for many potential migrants legal labour migration to the Netherlands is unattainable. Even if the Netherlands decided to expand the opportunities for labour migration, there will always be people who are not eligible. This limited access to the labour market could create a perception in advance that there's no point in trying to migrate through legal channels. This risk does not apply to the free movement of workers within the EU: generally speaking, they have free access to the labour market.

*No long-term job security (particularly for third-country nationals who fall under the Foreign Nationals (Employment) Act and those working as part of special projects)*

Work permits under the Foreign Nationals (Employment) Act are initially granted for one year. Projects that have been specially set up for shortage occupations or that have the goal of providing a legal migration channel as an alternative to irregular migration often operate on the condition that migrants can only come for a predetermined period of time. This risk is not so great for EU citizens or highly skilled migrants.

*Weakening of social position in the country of origin*

Damage to migrants' networks in their society of origin is a *possible* consequence of migration. Some groups of migrant workers (such as seasonal workers or migrants who migrate in the context of special projects) are not permitted to bring their families with them. Another possible consequence of migration is that migrants may lose their position on the social ladder in their own country, particularly if their career in the host country doesn't unfold as they had hoped or planned.

*Lower socioeconomic position in host country*

Migration can result in migrants having a lower socioeconomic position in the host country than they had in their country of origin, for example due to unfamiliarity with the language and culture, the lack of a network or a negative public perception of migrants. In the worst case scenario, migrants even run the risk of ending up in a situation of exploitation, as happens to some EU citizens who come to the Netherlands to work in the horticulture or construction sectors.

*Working below their skill level (deskilling)*

Many migrant workers work below their skill level. There are countless stories of dentists and civil engineers from Eastern Europe who come to the Netherlands and end up working in greenhouses. Another common situation is when diplomas are not recognised by the host country, or are valued at a lower level.

## **Opportunities**

*Cheap, safe travel*

A significant advantage of legal labour migration over irregular migration is that migrants do not have to make a dangerous journey and that the cost of the migration is often much lower than when smugglers are involved.

*Better wages*

The biggest driver of labour migration is that migrants can earn much better wages in the destination country than in their home country. An income difference of at least 30 to 40% between the sending and receiving countries makes migration an attractive alternative (CEPS, 2013).

### *Better social position in the country of origin*

Migrants *may* acquire a better social position in their country of origin through migration, for example because they can send money home or, after their return, can invest money in their own business, or in a better house.

### *Better future for children and family*

Research shows that an improvement in the wellbeing of family members in general and better educational opportunities for children in particular are drivers for labour migration. The latter driver can be achieved if the children are allowed to migrate with the migrant worker and attend school in the host country, but also if the migrant worker earns better wages and is thus able to afford better schooling for the children in their home country (OECD, 2016, pp. 141–150).

### *Acquisition and/or improvement of networks, skills and competencies*

Migrants can build up an international network through labour migration. Through their new job and their residence in the host country, migrants can also develop skills and competencies which they had no opportunity, or insufficient opportunities, to acquire in their country of origin.

## **2.2 Risks and opportunities for the country of origin**

*Figure 4. Risks and opportunities for the country of origin*

Country of origin	
Risks	Opportunities
Little tangible benefit with small numbers	Benefit through normalisation over the long term
Unequal bargaining position	Support for migration, border controls and implementation of international agreements
Negative for the image of the country	Money transfers
Socioeconomic problems due to population decline	Reduction in costs due to a decrease in population pressure
Brain drain	Brain gain

### **Risks**

#### *Little tangible benefit in the short term*

If legal labour migration can only take place at a limited scale, it is not a suitable solution to the socioeconomic problems faced by many of the countries of origin of migrants. Migration is thus not an effective means of addressing high population growth or high unemployment. It is even possible that it can increase social unrest

if it is perceived that the government has only succeeded in securing the possibility of labour migration for an extremely limited group.

*Unequal bargaining position (does not apply to the free movement of persons within the EU)*

It is conceivable that a country could feel backed into a corner if it is invited to the negotiating table, and in exchange for extremely limited possibilities for legal labour migration it has to comply with all kinds of conditions, for instance in the area of migration control or cooperation on return (ACVZ, 2015).

*Negative for the image of the country*

If a country has many residents who would prefer to migrate than to stay in their own country, it can give that country a negative image. The negative image may contribute to a further worsening of the situation in the country.

*Socioeconomic problems due to population decline*

Large-scale labour migration can result in socioeconomic problems in the country of origin, particularly since it is primarily the productive population that migrates. A possible consequence is that children and the elderly are left behind and their social safety net can become frayed. Population decline in a country, or in certain areas of a country, can lead to further economic stagnation. Various Eastern European countries are affected by this issue, as a result of free movement within the EU combined with low birth rates.

*Brain drain*

The 'battle for talent' often means that the highly educated and enterprising segment of the population migrates to countries where there are more opportunities for them and where they can earn higher wages. If the migration is permanent the country loses a valuable part of its workforce, along with the significant investment it had made in the form of education.

## **Opportunities**

*Benefit through normalisation over the long term*

If over the long term labour migration can offer genuine prospects to young people, where unemployment in the country itself is unlikely to be solved in the short term, this can help ensure the population remains peaceful.

*Support for migration, border controls and implementation of international agreements*

Partnerships relating to migration can provide opportunities to countries of origin to get help with the public duties they must carry out in the areas of migration, the movement of persons and the combating of human trafficking and smuggling (ACVZ, 2015).

### *Money transfers*

Money transfers by migrants back to their country of origin are an important source of income for many countries and contribute to the socioeconomic development of the country of origin (World Bank Group, 2015, pp. 175-179).

### *Reduction in costs due to a decrease in population pressure*

Labour migration can relieve the pressure on national social services.

### *Brain gain*

Against the phenomenon of *brain drain* can be put the concept of *brain gain*: the benefit that the country of origin derives from returning migrant workers. Migrant workers can develop skills and competencies in the host country and use them in the country of origin, or can bring back an international network of contacts to draw on. They may also have amassed capital that they can invest in their country of origin. This can promote the economic growth of the country of origin.

## 2.3 Risks and opportunities for employers

Figure 5. Risks and opportunities for employers

Employers	
Risks	Opportunities
Not a satisfactory solution to labour market shortages	Greater supply of workers
Costs and obligations for accommodation and education, etc.	Building up an international network
Greater sociocultural distance for workers	Stimulus for innovation
Impermanence	Highly-motivated workers
Legal uncertainty	Contribution to social entrepreneurship

### **Risks**

#### *Not a satisfactory solution to labour market shortages*

Labour migration is one of the tools that can contribute to solving labour market shortages. However, the relationship between an ageing society, innovation in the economy and labour migration is extremely complex (ACVZ, 2018, p. 30; WRR, 2012). Labour migration is not the only solution, and may not even be a satisfactory solution for an employer faced with a shortage of workers. Innovation, adjustments to education in the Netherlands, an increase in labour force participation and the upskilling/reskilling of the Dutch workforce may also be necessary.

### *Costs and obligations for accommodation and education, etc.*

In many labour migration schemes, employers are subject to obligations with regard to accommodation for migrant workers.<sup>6</sup> Special projects often involve additional obligations. Bilateral agreements between countries require employers to recruit in certain countries. In addition, it is usually agreed that the employment must last for a certain fixed period, and there may be additional obligations around education. The combination of all these obligations can be a reason for an employer to choose not to participate (HIT Foundation, 2011, pp. 15-16).

### *Greater sociocultural distance for workers*

Sociocultural differences can mean that, in spite of having the right qualifications, a foreign worker does not perform as expected and/or an additional investment in education or supervision is required.

### *Impermanence (does not apply to free movement within the EU)*

Work permits for migrant workers are primarily issued on a temporary basis. For example, section 11(1) of the Foreign Nationals (Employment) Act states that a work permit shall be issued for a maximum of one year. Employers run the risk of the permit not being extended, and of being forced to terminate the employment of a worker who has settled in well after a year. Special projects, too, generally have a requirement that workers are only granted temporary permits, after which they must return to their own countries.

### *Legal and political uncertainty (does not apply to free movement within the EU)*

Dutch labour migration policy is sensitive to normative and political discussions and, as a result, is subject to change. This is a risk for employers, because a change in policy may mean that a contract cannot be extended or that workers have to leave because their employment conditions have changed. For example, when the Netherlands was planning to terminate the 30% tax rule for highly skilled migrants, respondents to a Regioplan survey indicated that this would cause them to return to their country of origin (Regioplan, 2018, p. 30).

## **Opportunities**

### *Greater supply of workers*

Greater opportunities for labour migration increase the possibilities for employers to hire the right workers.

### *Building up an international network*

Foreign workers bring networks of contacts from their country of origin. This can potentially be a useful source of contacts for their Dutch employer.

### *Stimulus for innovation*

Foreign workers can bring with them insights which are unknown or not widespread in the Netherlands, but which can contribute to employers' business results.

Moreover, research shows that diversity and 'cognitive distance' contribute to innovation (WRR, 2008, pp. 45-46; AWTI, 2017, p. 20).

*Motivated workers*

Migrant workers have powerful drivers to migrate, often centred around a hope that they can bring about a long-term improvement in their own situation and that of their family members, in a way that would not be possible in their own country (see the 'Migrants' section). Migrating for work is a big step, and most migrants are highly motivated to make the most of it.

*Contribution to social entrepreneurship*

Employers who are willing to take part in projects that have a goal of providing an alternative to irregular migration and/or giving opportunities to workers from third countries to learn skills that they can use when they return to their country of origin, can list this among their efforts as a 'social entrepreneur'.

## 2.4 Risks and opportunities for the Netherlands

Figure 6. Risks and opportunities for the Netherlands

The Netherlands	
Risks	Opportunities
Not a satisfactory solution to labour market shortages	Addressing labour market shortages promotes economic growth
Difficult to guarantee temporary nature	Implementation of international agreements
Integration and accommodation costs	Better bargaining position vis-à-vis countries of origin with regard to border security, repatriation, etc.
Real or perceived displacement in the labour market	Controllable and manageable process
Deepening divisions in society	Increasing innovation capacity

### Risks

*Not a satisfactory solution to labour market shortages*

In paragraph 2.3, it was noted in relation to employers that labour migration cannot be the only solution to the complex situation facing the labour market in this era of innovation and ageing. Obviously, the same applies to society in general.

*Difficult to guarantee temporary nature*

Past experience has taught us that the temporary nature of labour migration (if that is what was intended) is difficult to guarantee and that repatriation can be a thorny issue. On the other hand, labour migration is by its nature generally

temporary (even if there is no obligation to return): recent figures from Statistics Netherlands show that after five years, six out of ten migrant workers have left the country.<sup>7</sup> Moreover, impermanence is not always a goal of labour migration; it is not the intention of the highly skilled migrant scheme, for example. Likewise, the new German draft legislation for labour migration (see Chapter 5) does not have a goal of ensuring that the labour migration is temporary.

#### *Integration and accommodation costs*

A contribution to the integration and accommodation of migrants can cost society money. Migrant workers can also increase the pressure on limited facilities such as housing (including social housing).<sup>8</sup>

#### *Real or perceived displacement in the labour market (including a negative effect on employment conditions)*

'Displacement in the labour market', based on the definition of the Netherlands Bureau for Economic Policy Analysis (CPB) and the Netherlands Institute for Social Research (SCP), refers to a situation where one existing group of workers experiences negative consequences from an increase in the labour supply of another group. This disadvantage includes not only reduced opportunities for work, but also lower wages. According to the CPB and SCP, for most groups the arrival of migrants does not lead to a displacement in the labour market, but at the lower end of the labour market, for groups who are directly competing with migrants, it can play a role in the short term (Van den Berge, et al., 2018, p. 38). In this study, people at the lower end of the labour market also indicated that they had experienced pressure in their labour market position due to the influx of a new labour supply (Van den Berge, et al., 2018, p. 9).

#### *Deepening divisions in society*

In the Netherlands, migration leads to heated debates: there is no normative consensus around the issue (ACVZ, 2018). Furthermore, the SCP expects that ethnic conflicts in society will increase over the next few years, and that spatial segregation will become a growing issue (SCP, 2016). The Netherlands Scientific Council for Government Policy (WRR) has observed that increasing diversity of ethnic origin leads to lower social cohesion in neighbourhoods (Jennissen, Engbersen, Bokhorst, & Bovens, 2018).

## **Opportunities**

#### *Addressing labour market shortages promotes economic growth*

If companies found it easier to employ the right workers and/or an adequate number of workers, this would have a positive impact on their business performance, and the Dutch economy in general would also benefit.

#### *Implementation of international agreements*

The Migration Pact contains a range of agreements to ensure better controlled and more sustainable migration schemes all over the world. If the Netherlands

permitted a broader application of opportunities for labour migration, this could contribute to our implementation of the agreements in the Migration Pact.

*Better bargaining position vis-à-vis countries of origin with regard to border security, return, etc.*

Expanding the opportunities for legal labour migration is high on the agenda of many of the countries of origin of migrants. If the Netherlands offered concrete opportunities for labour migration, it would have a better bargaining position with regard to other aspects of migration policy, such as border security and return (ACVZ, 2015).

*Controllable and manageable process*

It goes without saying that one advantage of legal labour migration over irregular migration is that the process can be controlled and managed. If offering a legal migration channel can contribute to a decrease in irregular migration, that would be a plus.

*Increasing innovation capacity*

As indicated in paragraph 2.3, diversity contributes to innovation capacity.

## 2.5 Conclusion

In paragraph 1.1, we noted that the migration debate in the Netherlands is dominated by three distinct points of view.

The first is that migration must serve Dutch economic interests. This point of view accords an important place to the interests of employers and Dutch society. According to this point of view, the balancing of interests as set out above would mean that in times of labour market shortages, the importance of addressing these shortages and promoting innovation would take precedence. It would therefore be logical to draw up an inviting labour migration policy that is tailored to the needs of the labour market. Moreover, providing legal migration channels as an alternative to irregular migration gives the Netherlands the opportunity to reduce the negative consequences of uncontrolled migration.

The second point of view is that the aim of migration policy should be to provide protection for refugees and migrants and to strengthen their legal position. According to this point of view, the interests of migrants are paramount. This point of view suggests that there are good reasons to provide legal migration channels, both to reduce irregular migration and to better protect migrants. When considered from these two points of view, an inviting labour migration policy that succeeded in relieving the shortages in the labour market and reducing irregular migration would provide a wealth of opportunities. Chapter 5 explains that this is the route currently being explored by Germany.

The third point of view on migration is that immigration to the Netherlands should be restricted as much as possible, because it is considered to be detrimental to society. According to this point of view, the interests of migrants and their countries of origin are not relevant when balancing the various interests, and the interests of employers are secondary to those of society in general. When weighing the competing interests for the Dutch situation, the risks outweigh the opportunities. In this point of view, the emphasis is on the risks around return, the cost to society in the area of integration, the perception of displacement in the labour market and the deepening of the divisions in society. Any economic benefit that the Netherlands might gain from a more inviting labour migration policy is subordinated to these risks. According to this point of view, the economic harm resulting from current labour market shortages and the possible benefits of offering legal migration channels are not sufficient reason to reassess current labour migration policy.

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<sup>6</sup> See, for example, s. 9(1)(d) of the Foreign Nationals (Employment) Act.

<sup>7</sup> <https://www.cbs.nl/nl-nl/nieuws/2019/14/bijna-60-procent-arbeidsmigranten-binnen-zes-jaar-weg>

<sup>8</sup> <https://www.nrc.nl/nieuws/2018/08/30/een-wijze-les-uit-1973-pas-op-met-massale-arbeidsmigratie-a1614683>



## Chapter 3

# International developments

The most notable recent international policy developments in the areas of labour migration and the combating of irregular migration are the Refugee Pact and the Migration Pact. Paragraph 1 of this chapter will address the following questions: what do these pacts say about labour migration as a solution or alternative to irregular migration, and what does that mean for the Netherlands? Paragraph 2 will look at international treaties relating to labour migration which apply to the Netherlands, and which could provide a framework for any future labour migration schemes. Paragraph 3 contains an interim conclusion.

### 3.1 The Refugee Pact and the Migration Pact

'A true attempt to provide an answer to global problems and to solve them together, as an international community. (...) It is crucial that we join forces to fight illegal migration in the interests of our citizens.' (*Chancellor Merkel, 10 December 2018*)

#### *Broad support for international cooperation*

On 19 September 2016, all 193 member states in the United Nations (UN) General Assembly adopted the *New York Declaration for Refugees and Migrants* ('The New York Declaration').<sup>9</sup> The Declaration was the UN's response to the large number of people, including refugees, regular migrants and irregular migrants, who were on the move at that time. The Refugee Pact<sup>10</sup> and the Migration Pact<sup>11</sup> were then signed in December 2018. There was debate around the Migration Pact in a number of countries, particularly because it was feared that signing this pact would mean that countries would be obliged to allow migrants to enter<sup>12</sup>. In the end, more than 160 countries signed the pact. Australia, Austria, Bulgaria, Chile, the Czech Republic, Estonia, Hungary, Israel, Poland, Switzerland and the United States did not sign the pact.

The migration pact builds on a multitude of standards enshrined in international UN treaties, such as the International Covenant on Economic, Social and Cultural Rights.<sup>13</sup> Standards enshrined in human rights treaties, such as the International Convention on the Elimination of all Forms of Racial Discrimination,<sup>14</sup> *International Labour Organisation* (ILO) conventions<sup>15</sup> and a number of current agendas,

including the *2030 Agenda for Sustainable Development*<sup>16</sup> and the *Addis Ababa Action Agenda*<sup>17</sup> also formed the basis for the two pacts. According to the pacts, migration will have a crucial role in the global approach to sustainability and human rights.

The ACVZ has recommended in multiple reports that the Dutch government should address the issues around migration through interdepartmental cooperation and in collaboration with countries of origin (ACVZ, 2018, 2017, 2015). Consequently, the ACVZ is positive about the Netherlands signing the two pacts. The Migration Pact provides important guidelines for the necessary international cooperation in the area of migration. This aligns with the position of the Rutte III government.

It is generally recognised that the two pacts are not legally binding, but are merely 'soft law'.<sup>18</sup> In other words, these standards will not have a direct effect on national legal systems and cannot be directly invoked before national courts.

*The Refugee Pact states that a broader distribution of responsibilities between countries is required with regard to the reception of refugees*

The pacts place an emphasis on the benefits of labour migration for the receiving country, the country of origin and the migrant workers themselves. It also focuses on the opportunities that labour migration provides for migrants, the human rights perspective, and the matching of labour supply with demand. In particular, paragraphs 41 and 57 of the New York Declaration, the forerunner for the pacts, are related to the development of regular migration channels:

41. We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times. We will cooperate closely to facilitate and ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation.

57. We will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related opportunities. We will pay particular attention to the application of minimum labour standards for migrant workers regardless of their status, as well as to recruitment and other migration-related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people.

Source: New York Declaration.

The Refugee Pact represents a better distribution of responsibilities with regard to the reception of refugees between destination countries, countries of origin and transit countries. At present, countries in the immediate vicinity of conflict areas largely bear the burden of receiving large numbers of refugees from their neighbouring countries. According to the Refugee Pact, these countries deserve support from the international community. The pact states that a broader distribution of responsibilities is required, perhaps through the use of tools such as resettlement and other forms of legal migration, including labour migration. The

emphasis on finding solutions – alongside or as an alternative to offering protection – calls for ideas and initiatives for legal labour migration, including for people who require protection.

*The Migration Pact provides a framework for legal labour migration*

The Migration Pact deals more specifically with labour migration. The boxed text below sets out the objectives of the Migration Pact that are relevant to labour migration.

#### **Migration Pact: objectives relevant to labour migration**

- Collect and utilise accurate and disaggregated data as a basis for evidence-based policies (Objective 1)
- Minimise the adverse drivers and structural factors that compel people to leave their country of origin (Objective 2)
- Enhance availability and flexibility of pathways for regular migration (Objective 5)
- Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work (Objective 6)
- Address and reduce vulnerabilities in migration (Objective 7)
- Prevent, combat and eradicate trafficking in persons in the context of international migration (Objective 10)
- Provide access to basic services for migrants (Objective 15)
- Empower migrants and societies to realise full inclusion and social cohesion (Objective 16)
- Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration (Objective 17)
- Invest in skills development and facilitate mutual recognition of skills, qualifications and competences (Objective 18)
- Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries (Objective 19)
- Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants (Objective 20)
- Establish mechanisms for the portability of social security entitlements and earned benefits (Objective 22)
- Strengthen international cooperation and global partnerships for safe, orderly and regular migration (Objective 23).

Source: UN Migration Pact.

These objectives reflect the desire to strike a balance between the interests of receiving countries (including the needs of migrant workers in their national labour market and the interests of employers and employees), the interest of migrants in receiving fair opportunities and the interests of the country of origin. The objectives formulated in the Migration Pact could serve as a starting point for weighing competing interests as part of the reassessment of Dutch labour migration policy.

## **3.2 International agreements**

*International agreements concerning labour migration that apply to the Netherlands*

The Refugee Pact and the Migration Pact are not binding law. However, there are international rules concerning labour migration by which the Netherlands is bound. Together with EU law (Chapter 4) and the national framework (Chapter 6), these treaties form the legal framework for the various forms of labour migration to the Netherlands. A summary of these treaties that are binding on the Netherlands is set out below.

#### **Migration for Employment Convention (ILO), 1949**

This treaty was signed by the Netherlands on 20 May 1952 and establishes the right of legally-employed migrant workers to equal treatment (in relation to wages, working hours, on-the-job training, work-related benefits, etc.). It excludes cross-border workers and short stays by people with liberal professions, as well as artists and seamen.<sup>19</sup>

The treaty and associated model agreement for the recruitment of migrant workers was used in the 1960s and 70s as a framework for the recruitment of 'guest workers'. At that time, it was already noted that the temporary nature of the expected stay by migrant workers was not well regulated (De Lange, Staat, Markt en Migrant (State, Market and Migrant), 2007). That could again be an area of concern with any future use of this ILO convention.

#### **European Social Charter (Council of Europe), 1961**

The European Social Charter (ESC) came into effect in the Netherlands in 1980, after the treaty had been regularly raised in political debates during the 1970s about labour migration to the Netherlands (De Lange, Staat, Markt en Migrant, 2007, pp. 185-187). The 1996 review of the treaty came into effect in the Netherlands in 2006.<sup>20</sup> Article 18 of the ESC established the right to perform paid work in another member state of the Council of Europe, a right that would gradually become more flexible. This provision was not altered by the 1996 review. According to the Judicial Division of the Council of State (ABRvS) in 1980, the provision has no direct effect.<sup>21</sup> This does not alter the fact that the Dutch government is still required to comply with it. Article 19 of the ESC contains a provision on the right of migrant workers to equal treatment in contracting states. Since the treaty is based on reciprocity, in the Netherlands it has relevance to migrant workers from other EU member states and eleven other Council of Europe member states.

#### **European Convention on the Legal Status of Migrant Workers (Council of Europe), 1977**

The European Convention on the Legal Status of Migrant Workers (ECLSMW) took effect in the Netherlands in 1983. In addition to cross-border workers, artists, performers, sportspeople and seamen, interns, seasonal workers and employees seconded for a specific job are excluded from the effect of this convention. In the Netherlands, this convention is relevant only to migrant workers from Moldova and Ukraine, because it has been ratified by only ten countries in addition to the Netherlands.<sup>22</sup>

In the past, this convention has mainly prompted discussions around the issue of how long the Netherlands may 'bind' a migrant worker to a particular employer (De Lange, Staat, Markt en Migrant, 2007, p. 188). In the convention, the basic

principle is that a migrant worker may not be bound to the recruiting employer for more than one year.<sup>23</sup>

### **World Trade Organisation (WTO) and General Agreement on Trade in Services (GATS)**

The EU and its member states have been a party to the GATS since 1995. Under this agreement, international service providers may perform work for three months without a labour market test being performed – which means looking at whether any ‘priority labour supply’ is available.

‘Priority labour supply’ includes Dutch citizens, EU citizens and third-country nationals (foreign nationals from outside the EU) who have permission to work in the Netherlands, such as asylum status holders, family members of Dutch and EU citizens, and the holders of a permanent residence permit.<sup>24</sup> However, any employment in the context of the GATS does require a work permit. This relates to services such as accountancy, tax consultancy, architecture, IT services and technical advice. In the Netherlands, the convention is applied on a limited scale. Work performed for less than three months falls under the concept of ‘incidental labour’, for which a work permit is not required.

### **Bilateral trade agreements with most-favoured-nation clauses**

Since the late 19th century, the Netherlands has signed a substantial number of friendship treaties and trade agreements, which allow a limited amount of labour migration (intra-corporate transfers) and establishment as a self-employed person.

The ‘Treaty of Friendship, Commerce and Navigation’ signed with the United States in 1956 is the only one explicitly incorporated into Dutch legislation dealing with foreign nationals, although the majority of the other treaties also regulate aspects relating to residence rights and may be important for the admission of foreign nationals into the Netherlands.<sup>25</sup> In late 2018, the Amsterdam District Court issued a decision about the operation of the Netherlands-Bolivia Trade Agreement of 1929, which in that specific case had resulted in the issuing of a residence permit.<sup>26</sup> There are even older trade agreements that are still in force and could potentially facilitate the future migration of self-employed persons (Roelofs S., 2004).

#### *Relevant international agreements that do not apply in the Netherlands*

There are also a number of conventions relevant to labour migration that the Netherlands has **not** signed. These are named below.

#### *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (UN), 1990*

This convention establishes the rights of migrant workers. No country in Western Europe has signed this treaty. Nor have the USA, Canada, Australia, India, South

Africa or the Gulf States. The ICMW – which took effect on 1 July 2003 – is therefore one of the least-ratified human rights treaties. However, many countries of origin for migrants such as Mexico, Morocco and the Philippines have signed this treaty with the aim of safeguarding the rights of their migrant workers.

*Migrant Workers Convention (Supplementary Provisions) (ILO), 1975*

This convention has not been signed by the Netherlands, mainly because it also grants rights to illegally-staying migrant workers.

### 3.3 Conclusion

The pacts signed in late 2018 are not directly binding on the Netherlands. Nevertheless, these pacts require signatories, including the Netherlands, to implement the principles set out therein when developing legal migration channels, which means taking account of the existing international legal context. The advantage of the establishment of the two pacts is that the subjects of refugees and migration can be examined alongside and in conjunction with each other. The pacts provide a framework and thus an opportunity to make the process of migration easier to control, which is in everyone's interests (see Chapter 2).

The ILO *Migration for Employment Convention* provides a relevant framework for the admission of migrant workers. The Council of Europe conventions have only limited relevance to certain countries of origin and do not regulate the admission of migrant workers as such, but they do contain an obligation to gradually relax the admission regulations for citizens of contracting states, as well as regulating their legal status. Finally, bilateral trade agreements also offer limited scope for labour migration or, more broadly, a right for nationals of the contracting states to establish themselves as self-employed persons.

In the next chapter, the ACVZ will investigate the EU legal framework for legal labour migration.

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<sup>9</sup> [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/1](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1)

<sup>10</sup> [https://www.unhcr.org/gcr/GCR\\_English.pdf](https://www.unhcr.org/gcr/GCR_English.pdf)

<sup>11</sup> [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/195](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195)

<sup>12</sup> As an example, see: <https://www.nrc.nl/nieuws/2018/12/03/de-acht-heikele-punten-van-het-migratiepact-a3011435>

<sup>13</sup> <https://wetten.overheid.nl/BWBV0001016/1979-03-11>

<sup>14</sup> <https://wetten.overheid.nl/BWBV0002911/1972-01-09>

<sup>15</sup> <https://www.ilo.org/global/topics/labour-migration/standards/lang--en/index.htm>

<sup>16</sup> <https://www.un.org/sustainabledevelopment/development-agenda/>

<sup>17</sup> [https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf)

<sup>18</sup> For the views of the Dutch government on this matter, see the [letter](#) of 30 November 2018.

<sup>19</sup> Article 11(2) ESC.

<sup>20</sup> *Bulletin of Treaties* 2006-128

<sup>21</sup> ARRVs 25 September 1980, RV 1980, 79. It should be noted that the Netherlands signed the *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* (No. 158) in 2006, with a territorial reservation. That means that complaints

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about compliance with the ESC in the Netherlands may be submitted by social partners and non-governmental organisations to the *European Committee of Social Rights*.

<sup>22</sup> For the list of ratifications (of which there are only 11, including the Netherlands), see [https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/093/signatures?p\\_auth=I5xCRk4t](https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/093/signatures?p_auth=I5xCRk4t).

<sup>23</sup> Article 8(2) EVRMW.

<sup>24</sup> See also section 1(g) of the Foreign Nationals (Employment) Act.

<sup>25</sup> With regard to the legal status of Japanese migrant workers, see ABRvS 11 November 2016 (ECLI:NL:RVS:2016:3079, confirmed on 9 May 2018, ECLI:NL:RVS:2018:1573), in which the ABRvS found that Japanese nationals could no longer invoke the Dutch-Swiss Friendship Treaty. In making this finding, the ABRvS explicitly reversed its earlier decision of 19 June 2013 (ECLI:NL:RVS:2013:3230) in favour of Japanese self-employed persons and persons in paid employment. Various academics and lawyers criticised the fact that the Judicial Division did not submit any preliminary questions to the Court of Justice of the European Union. (Roelofs S., 2017/1).

<sup>26</sup> Court of The Hague, 7 September 2018, ECLI:NL:RBDHA:2018:12282. Not in dispute was the fact that, in light of the 'most favoured nation' clause in the Netherlands-Bolivia Trade Agreement, an identical decision should have been made to the one made under the Dutch-American Friendship Treaty, so that the policy as set out in paragraph B6/2.5 of the Aliens Act Implementation Guidelines should have been applied.



## Chapter 4

# The European legal context

In this chapter, the ACVZ looks at the possibilities offered by current EU law for legal labour migration **within** the EU (paragraph 4.1) and **to** the EU (paragraph 4.2). Paragraph 4.3 contains the conclusion for this chapter.

### 4.1 Legal labour migration within the European Union

The free movement of persons within the EU means that, generally speaking, EU citizens have free access to the labour market in other member states (Zwaan, et al., 2018, p. 98). Furthermore, EU law states that certain groups of third-country nationals are entitled to work in a member state of the Union that is different to the one where they have a right of residence. This paragraph sets out the relevant rules, accompanied by relevant data. Directives 2014/66 and 2016/801, which are discussed at the end of this paragraph, offer possibilities for third-country nationals to legally migrate both **to** and **within** the EU.

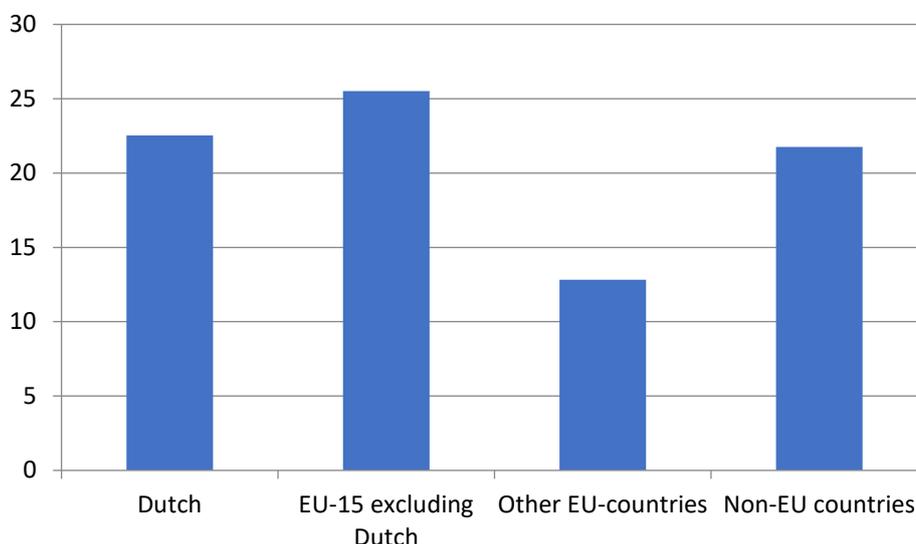
#### **Articles 21 and 45–62 of the Treaty on the Functioning of the European Union (TFEU) and the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004/38/EC)**

Article 21 of the TFEU grants EU citizens the right of freedom of movement. The right to freedom of movement as a worker, self-employed person or service provider is enshrined in Articles 45–62 TFEU (Zwaan, et al., 2018, p. 271). This right is further developed in Directive 2004/38/EC and, where it concerns employees, in Regulation 492/2011 (Zwaan, et al., 2018, p. 93). The right to reside for longer than three months is enshrined in Art. 7 of the directive. Generally speaking, under this directive EU citizens and their family members are free to reside in the Netherlands and enter the labour market (Zwaan, et al., 2018, p. 98).

In 2017, 580,599 citizens from other EU+ countries<sup>27</sup> were living in the Netherlands; in 2018, there were 611,795.<sup>28</sup> This means that 4% of the population of the Netherlands consists of citizens from other EU member states, or from Norway, Iceland, Switzerland or Lichtenstein. This includes economically inactive persons and students. According to data from Statistics Netherlands, in 2017 426,000 jobs (5% of the total) were filled by non-Dutch EU citizens (see Figure 1). The free movement of persons produces the largest source of foreign workers in the Netherlands. On average, workers from older EU member states have a higher

hourly wage than Dutch citizens, while those from newer EU member states have a lower hourly wage (see Figure 7).

Figure 7. Average hourly wage in euros of Dutch citizens, EU citizens from older member states (EU-15),<sup>29</sup> EU citizens from newer member states (other EU countries)<sup>30</sup> and third-country nationals



Source: Statistics Netherlands Statline table, 'The world of work: gender, employment and employee characteristics, SBI2008', accessed on 11 April 2019. <https://opendata.cbs.nl/statline/#/CBS/nl/dataset/81434ned/table?ts=1554991281332>

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Under EU law, third-country nationals who are family members of EU citizens residing in the Netherlands are also entitled to reside in the Netherlands. They are required to submit an application to the Immigration and Naturalisation Service (IND) for an EU document. In 2018, approximately 7,300 third-country nationals submitted an application for an EU document.<sup>31</sup> The approval rate was 82%. (Ministry of Justice and Security, 2019).

Of course, freedom of movement also means that Dutch citizens can reside in other member states. In 2017, at least 562,523 Dutch citizens were living in EU+ countries (figures for Ireland, Austria, Poland and Liechtenstein are missing). The 2018 figures showed a decrease to 472,249, because the number of Dutch citizens living in the United Kingdom was not included.<sup>32</sup>

#### **Directive on the status of third-country nationals who are long-term residents (2003/209/EC)**

This directive provides that third-country nationals who have been living legally in the EU for an uninterrupted period of more than five years can obtain the status of 'long-term resident' if they meet certain conditions (such as being able to provide for their own support and having health insurance). Persons who hold this type of residence permit may also go to live and work in another member state.

In 2017, just over three million third-country nationals living in the EU held long-term resident permits; approximately 32,000 of these were living in the Netherlands.<sup>33</sup> The extent to which permit holders have taken advantage of the opportunity to come from another member state to work or open a business in the Netherlands has not been recorded, or those figures are not publicly available. Since the Netherlands applies a labour market test for the first year of residence, according to De Lange (and others) this legal migration route to the Netherlands is likely to be very little used (Della Torre & De Lange, 2017, pp. 1418-1420; De Lange, Oomes, Gons, & Spanikova, 2019, p. 34).

Many member states, including the Netherlands, also offer national permanent residence permits, which are granted more frequently than EU long-term resident status (in the EU as a whole, this applies to more than 9.5 million people; in the Netherlands, nearly one hundred thousand people hold a Dutch permanent residence permit). In a recent fitness check, the EC concluded that the parallel national schemes dilute the effectiveness of the Directive.<sup>34</sup>

**Directive on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (2014/66/EU)**

The directive sets the conditions for entry and residence for longer than 90 days in the territory of a member state, as well as the rights of third-country nationals and their family members in the context of an intra-corporate transfer, and the conditions for their entry and residence in another member state.

In 2017, 4,089 third-country nationals came to the Netherlands under Directive 2014/66, of which the majority were of Indian nationality. These third-country nationals may be transferred from another EU member state or from an office outside of the EU.

*Figure 8. Number of people who came to the Netherlands in 2017 on the basis of Directive 2014/66/EU, by nationality*

Country	Number
India	3,080
United States	390
China	131
Canada	42
Taiwan	39
Brazil	36
Russia	35
South Korea	31
Japan	29
Malaysia	29
The Philippines	29
Other	225
<b>Total</b>	<b>4,096</b>

Source: Eurostat table, 'Intra-corporate transferee permits issued, renewed and withdrawn by type of permit, length of validity and citizenship' (migr\_resict1\_1), last accessed on 21 May 2019

**Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (2016/801)**

The directive sets the conditions for third-country nationals for entry and residence as researchers (and their family members), students, trainees and volunteers in the context of European Voluntary Service. Based on this directive, researchers and their family members also have the right to go to another member state for part of their research, if they meet certain conditions. The Netherlands has a national au pair policy that is not based on this directive.

## 4.2 Legal labour migration to the European Union

*The EU takes a positive view of the development of legal migration channels to the EU as an alternative to irregular migration*

Paragraph 4.1 showed that EU law offers legal labour migration channels **within** the EU for EU citizens and for certain non-EU citizens. In addition, both the EC and the European Parliament support the development of legal channels for migration **to** the EU. Back in 2004, the Prodi Commission called for attention to be given to combating irregular migration by opening legal migration channels, and the EU commissioned a study on the topic at the request of the European Council.<sup>35</sup> The researchers concluded that there is a link between legal and irregular migration, but it is complex; and there is certainly no direct link, since a wide range of factors must be taken into account. In 2005, the EC released a green paper on managing economic migration.<sup>36</sup> The European Parliament then called for attention to be given to the link between irregular and legal migration.<sup>37</sup>

In 2015, in its migration agenda the Juncker Commission again called for attention to be given to the proper management of legal migration and the visa policy.<sup>38</sup> In a number of resolutions, the European Parliament has put forward proposals for a holistic approach to migration, and it believes that additional opportunities for legal migration must be investigated.<sup>39</sup> The European Union Agency for Fundamental Rights (FRA) supports the development of legal channels for migration (Fundamental Rights Agency, 2015).

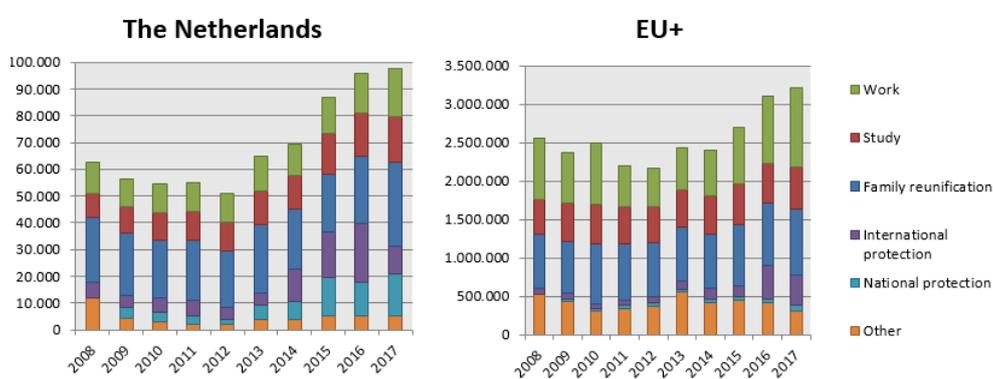
In September 2017 and September 2018, the EC put forward proposals for work to be done on a number of legal migration channels for asylum seekers and regular migrants.<sup>40</sup> This could include taking in refugees (where it is established in advance that they have a right to asylum) from the countries surrounding the EU. On 15 November 2018, the EC published a study into the development of sponsorship programmes as a possible migration channel to the EU, including resettlement (European Commission, 2018). It is relevant to note that the EC funds legal labour

migration projects. It uses this budget item to boost the admission policy for migrant workers without the need for additional legislation (Den Hertog, 2016).

*Extent of existing legal migration channels to the EU and the proportion accounted for by labour migration*

Before we discuss the specific options open to third-country nationals for legal labour migration to the EU, we must consider the extent of legal migration to the EU and, since we are examining this issue from a Dutch perspective, to the Netherlands.

*Figure 9. Residence permits granted by purpose of stay, in the Netherlands and EU+ countries, 2008–2017*



Source: Eurostat, edited by De Lange, Oomes, Gons, & Spanikova, 2019.

[Go to the table of figure 9](#)

Figure 9 shows the number of residence permits issued to third-country nationals by purpose of stay, for both the Netherlands and all EU+ countries combined, for the period 2008–2017. It reveals that the majority of Dutch residence permits<sup>41</sup> were issued for social reasons: more than one-third for family migration, and more than one-fifth for protection (national or international) in connection with an asylum application. Not many permits were issued based on economic reasons: just under one-fifth for employment reasons and the same amount for study/training purposes. Generally speaking, people who obtain a residence permit on the basis of a successful asylum application come to the Netherlands by irregular methods (at 4% for the Netherlands and 5% for all EU+ countries, the percentage represented by the 'resettlement' legal migration channel is very low).<sup>42</sup>

The majority of the residence permits issued relate to regular purposes of stay (work, study, family), with the third-country nationals having migrated to the Netherlands/EU+ countries using regular methods. There are therefore existing legal migration channels for work, study and family reasons to the EU and thus also to the Netherlands, and these channels are being used.

A broadly similar picture can be seen for the combined EU+ countries.<sup>43</sup> The key difference is that the percentage of permits issued for employment reasons (more than one-quarter) is higher than for the Netherlands, and the percentage for protection is lower (less than one-tenth). The number of residence permits issued has risen in recent years, both for the Netherlands (to almost 100,000 in 2017) and for the EU+ countries collectively (to more than 3 million in 2017). This increase is reflected in the figures for all purposes of stay.

*The Juncker Commission has called for well-managed migration as a possible means of addressing labour market shortages*

In September 2018, the Juncker Commission pointed out that unemployment in the EU was at its lowest level in ten years, and the number of workers had reached a record high. It stated the following:

'While this is still not felt evenly across Europe, there are a rising number of unfilled vacancies in several Member States and evidence of structural skill shortages in some economic sectors, such as Information and Communication Technology, or health, as well as in specific occupations. The share of employers reporting difficulties to fill jobs is on the rise, reaching on average more than 40%, and is even higher than 50% in Germany, Poland, Slovakia and Hungary. The occupations with the most common shortages include skilled trades, engineers, technicians and IT professionals, but also occupations requiring less formal skills such as sales representatives and drivers.

These trends will have an increasing impact in the future as the EU is facing a gradual shrinking of its working-age population (15–64). This is expected to intensify: as a result of demographic ageing, also taking into account recent migration trends, the working age population is projected to decline by around 22 million (a reduction of 7%) in the next two decades. Even if a higher participation of women and older workers in the labour market is likely to compensate for this trend in part, projections in terms of overall labour force point in the same direction: in the near future (over the period 2015–2035), it is estimated that the labour force in the EU will decrease by 18.3 million (a reduction of 7.4%).

At the same time, the demand for specific skills is likely to increase and change in line with societal and technological developments. For instance, it is expected that the demand for high-level qualifications will outpace the labour supply, as 43% of jobs forecasted to be created over the period up to 2030 will require a high level of education. Job openings up to 2030 are expected to be high for occupations such as business and administration professionals, but also for occupations that are traditionally considered as medium skilled, such as sales workers, cleaners and helpers. While a priority for the EU is to tap even better into existing talents and human

capital, notably through training and upskilling of the domestic workforce, a well-managed labour migration can also help fill some current and future needs of the EU labour market.

This situation is not specific to Europe. However, at the moment the EU is not ideally placed nor presently equipped to attract the labour migrants that it needs. So far, the EU has been less competitive than other OECD countries – the EU’s most obvious competitors in terms of economic profile – in attracting workers, punching well below its weight, in particular in terms of attracting highly skilled migrants. Of all migrants residing in OECD countries in 2015–16, only 25% of those with a high level of education chose an EU destination, while 75% chose a non-EU destination (mainly US, Canada, Australia).’<sup>44</sup>

#### *Existing EU tools for legal labour migration **to** the EU*

In 2017, more than three million legal migrants came to the EU from third countries (see Figure 9), including more than one million migrant workers. The EU has a number of directives that regulate labour migration by third-country nationals to the EU. Directives 2014/66 and 2016/801, already discussed in paragraph 4.1, are relevant to labour migration both **within** and **to** the EU. A summary of the other relevant directives is set out below.

#### **Blue Card Directive – entry and residence of third-country nationals for the purposes of highly qualified employment (2009/50/EC)**

The directive sets the conditions of entry and residence for highly-qualified non-EU citizens who wish to take up a highly-qualified job in an EU country (with the exception of Denmark, Ireland and the United Kingdom) and for their families.

The Blue Card Directive is not widely used in the Netherlands (or indeed in many other member states), since the conditions of the Dutch highly skilled migrant scheme are more favourable (see Figure 10 and Chapter 6). A review of the directive is therefore being negotiated, and it is possible that this review might result in residence being granted to a broader group of migrant workers than is currently the case.

#### **Directive on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (2014/36/EU)**

The aim of this directive is to contribute to effective management of seasonal migration and to guarantee fair working and living conditions for seasonal workers, while, at the same time, providing for incentives and safeguards to prevent workers from staying longer than permitted, and to prevent a temporary stay from becoming permanent.

The Netherlands does not admit seasonal workers from third countries, so it does not use this directive (see Figure 10).

**Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (2011/98/EU)**

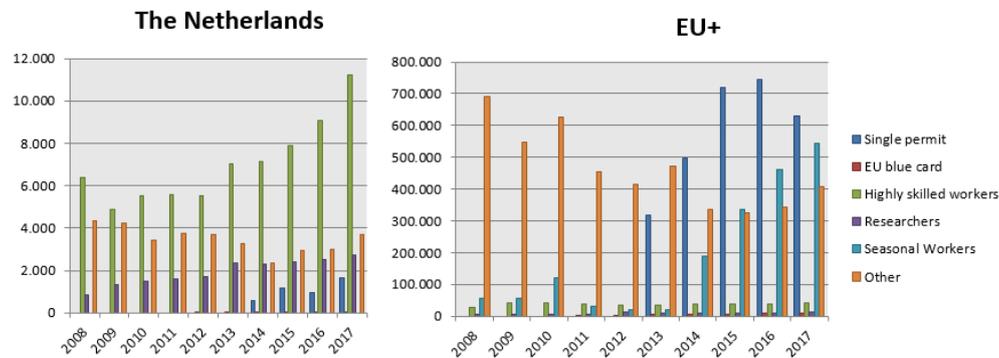
The aim of this directive is to simplify and further harmonise member states' procedures for migrant workers.

According to Article 5(2) of the directive, a decision on applications must be made within four months. However, since the directive does not include the temporary residence permit (MVV) process, under which applications must be considered within six months, it is possible that the application process could take as long as ten months.<sup>45</sup>

*Compared to the EU as a whole, the Netherlands attracts a high percentage of highly skilled workers*

Figure 10 shows the number of residence permits issued to third-country nationals for employment reasons, by member states individually and all EU+ countries collectively, by legal basis<sup>46</sup>, in the period 2008–2017.

*Figure 10. Residence permits granted for employment reasons in the Netherlands and EU+ countries, by legal basis, 2008–2017*



Source: Eurostat, edited by De Lange, Oomes, Gons, & Spanikova, 2019

[To the table of figure 10](#)

In 2017, the Netherlands granted residence permits to 17,744 people<sup>47</sup> for employment reasons. The majority related to highly skilled work (11,252, 63%)<sup>48</sup> and scientific researchers (2,751, 16%).<sup>49</sup> No residence permits were issued for seasonal work. The category 'Regular employment – other' amounted to 3,683 (20%).<sup>50</sup>

For the EU as a whole, the picture is quite different. The percentage of highly skilled workers is much lower: approximately 11,500 residence permits were issued under the Blue Card Directive out of a total of 1,027,741 residence permits

in 2017 for employment reasons (1%), 41,883 (4%) permits based on national highly skilled migrant schemes and 12,477 (1%) permits for researchers. By contrast, 542,595 permits (52%) were issued for seasonal work (the vast majority by Poland) and 409,199 (40%) for other types of work (mainly by the United Kingdom, Poland and Germany).

### **Cooperation with third countries through trade agreements**

Just as the Netherlands has entered into bilateral trade agreements and friendship treaties (see Chapter 3), the EU, too, has signed a substantial number of trade agreements with third countries. Effectively, these can now all be used, and no further schemes are necessary with regard to legal migration within the framework of these agreements. These trade agreements generally offer opportunities for legal labour migration, for the transfer of specialist or management personnel, and for setting up businesses in the EU.

For example, the EU trade agreement with Russia offers such opportunities for mobility for businessmen and key personnel (Guild, 2018).

On 31 January 2019, the trade agreement between the EU and Japan took effect, facilitating the migration of independent 'craftsmen'. In most cases, craftsmen can invoke the trade agreement as natural persons.<sup>51</sup> This depends on the text of the trade agreement. The trade agreement between the EU and Canada (CETA) specifically excludes this option.<sup>52</sup> Other trade agreements have been signed with Algeria (2005), Armenia (1999), Moldova (1999), Ukraine (1998, replaced in 2016), Uzbekistan (1999) and Jordan (2002).<sup>53</sup>

#### *European cooperation with third countries in the area of migration and mobility*

In the previous chapter, we discussed the fact that the UN Refugee Pact and Migration Pact are not legally binding. The EU, too, has non-binding policy instruments in the area of migration that may assist with the further development of labour migration policy. The Netherlands has not so far made any use of these instruments.

The *Global Approach to Migration* has been the overarching framework for the EU's external migration and asylum policy since 2005. The framework establishes how the EU will conduct policy dialogue and operational cooperation with third countries in the area of migration and mobility. A second phase began in 2011 with the *Global Approach to Migration and Mobility*, which introduced new elements. For example, international protection and the external dimension of asylum were included as new thematic priorities and the scope of the policy framework was expanded to include 'mobility'. The Valletta Action Plan was adopted in 2015, followed in 2017 by the African Union – European Union (AU-EU) Declaration, in which facilitating legal migration and mobility was a key focus. However, to date little has been achieved (SEO Amsterdam Economics, 2019, p. i).

### **Mobility partnerships and common agendas**

The EU has entered into mobility partnerships with Armenia, Azerbaijan, Georgia, Jordan, Cabo Verde, Morocco, Moldova, Belarus and Tunisia. The EU has established a more informal form of cooperation through 'common agendas for migration and mobility' with Ethiopia, India and Nigeria.

In principle, the Netherlands takes a positive view of the concept of a mobility partnership, but expressly emphasises the powers of member states to control their own labour market (ACVZ, 2015, p. 18). The Netherlands has entered into mobility partnerships with Cabo Verde, Georgia, Armenia, Morocco and Azerbaijan. Mobility partnerships and common agendas do not necessarily contain legally binding agreements; they recognise partnerships between the EU and third countries that can form a basis for cooperation with those third countries, including the development of existing and future legal migration channels. Germany uses mobility partnerships for this purpose (see Chapter 5).

#### *Financial framework*

The *EU Emergency Trust Fund for Africa* was set up to address the root causes of migration, improve border management and combat human smuggling.<sup>54</sup> In parallel to these efforts, the EU will engage in dialogue with countries of origin and transit and receiving countries, to seek sustainable solutions to migration, instability and conflict. The Cotonou Agreement, which covers a wide range of policy areas and was entered into between the EU and countries in Africa, the Caribbean and the Pacific, will expire in 2020. Negotiations for a replacement partnership started in 2018.

### **Legal migration schemes for labour or traineeship purposes**

The EC funds pilot projects for '*legal migration schemes for labour or traineeship purposes*', giving priority to specific partner countries, mainly in Africa.<sup>55</sup>

Implementation of legal migration schemes is handled by the ICMPD (*International Centre for Migration Policy Development*).<sup>56</sup> Two pilot projects are currently in the implementation phase. First, the 'Digital Explorers' project, that was developed within the framework of the common agenda for migration and mobility between the EU and Nigeria, in which fifty young Nigerian ICT specialists were given temporary permission to work in Lithuania. Second, the 'Addressing Labour Shortages through Innovative Labour Migration Models' project. This project is taking place in the context of the mobility partnership between Belgium and Morocco, and involves sixty ICT specialists being trained in Morocco, with thirty of them being offered six-month employment contracts in Belgium.<sup>57</sup>

## **4.3 Conclusion**

This chapter aimed to give a brief insight into developments at the EU level with regard to legal labour migration channels. The free movement of persons within the EU is a substantial source of current and potential migrant workers for the Netherlands. Current labour market shortages may be grounds for a closer

examination of ancillary measures that would make our country more attractive for skilled workers from other EU member states who possess the specific knowledge and skills of which the Netherlands is experiencing a shortage. The free movement of persons within the EU means that, in general, there are no legal obstacles to EU citizens joining the Dutch labour market. However, there may be practical obstacles, such as a lack of information about the Dutch labour market, a lack of housing and international education, and obstacles to the creation of social networks, that could hinder relocation to the Netherlands.

Alongside admission regimes present in member states and based on labour migration directives, the EU encourages legal migration channels through international cooperation in the area of migration; the EU funds projects, both in countries of origin to prevent migration and pilot projects to make legal migration possible; and the EU signs trade agreements that primarily facilitate the establishment of businesses, but also support self-employed persons.

Compared to the EU as a whole, the Netherlands attracts a relatively high number of highly skilled migrants. To date, the Netherlands has not taken advantage of the possibilities offered by the Seasonal Workers Directive and applies a strict national assessment framework (including a labour market test) for people covered by the Long-Term Residents Directive. Furthermore, the Netherlands does not participate in the EU-funded labour migration projects developed in the context of mobility partnerships. If the Netherlands wishes to further expand the options for legal labour migration, the use of these tools should be considered (see also De Lange, Oomes, Gons, & Spanikova, 2019, p. 35–36).

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<sup>27</sup> In other words, the member states of the EU plus Norway, Iceland, Switzerland and Lichtenstein.

<sup>28</sup> Eurostat table, 'Population on 1 January by age group, sex and citizenship' (migr\_pop1ctz), last accessed on 5 April 2019.

<sup>29</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom

<sup>30</sup> Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia

<sup>31</sup> <https://data.overheid.nl/data/dataset/immigratie--eu-documenten>

<sup>32</sup> Eurostat, 'EU and EFTA citizens who are usual residents in another EU/EFTA country as of 1 January' table (migr\_pop9ctz), last accessed on 5 April 2019

Eurostat table, 'Long-term residents by citizenship on 31 December of each year' <sup>33</sup> [migr\_reslong], last accessed on 8 April 2019.

<sup>34</sup> European Commission: Legal migration fitness check, 29 March 2019. [https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en)

<sup>35</sup> See the communication from the EC to the Council: 'Study into the correlation between legal and illegal migration', 4 June 2004, [COM\(2004\)412](#) final.

<sup>36</sup> See the EC Green Paper on managing economic migration: an EU approach, A6-0136/2005, 11 January 2005, [COM/2004/811](#) final.

<sup>37</sup> See 'Report on the links between legal and illegal migration and integration of migrants', (2004/2137(INI)), 3 May 2005, Committee on Civil Liberties, Justice and Home Affairs.

<sup>38</sup> See the communication from the EC to the Council and to the European Parliament, 'A European Migration Agenda', 13 May 2015, [COM\(2015\)240](#) final.

<sup>39</sup> See (among other documents) the resolution of the European Parliament of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2014/2907(RSP)).

<sup>40</sup> See the EC communication 'on the implementation of the European migration agenda' [COM\(2017\)558](#) of 27 September 2017 and EC 'Enhancing legal pathways to Europe: an

indispensable part of a balanced and comprehensive migration policy' [COM\(2018\)635](#) of 12 September 2018.

<sup>41</sup> 700,000 of such permits were issued for the first time in the period 2008–2017.

<sup>42</sup> Based on Eurostat data for the period 2008–2017, it appears that the percentage represented by resettlement in the Netherlands was 4% (6,975 resettled refugees out of a total of 158,700 asylum permits granted) and the resettlement percentage was 5% in all EU+ countries combined (100,825 resettled refugees out of a total of 1,987,675 asylum permits (national and international protection)).

<sup>43</sup> 25 million residence permits were issued for the first time in the period 2008–2017.

<sup>44</sup> Communication from the Commission to the European Parliament and the Council. Enhancing legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy. A contribution from the European Commission to the Leaders' meeting in Salzburg on 19–20 September 2018 <http://ec.europa.eu/transparency/regdoc/rep/1/2018/NL/COM-2018-635-F1-NL-MAIN-PART-1.PDF>

<sup>45</sup> Brussels, 29/3/2019 COM(2019) 160 final, p. 5-6

(REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL about Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State).

<sup>46</sup> EU Blue Card, Researchers and Seasonal Workers relate to EU directives. Highly Skilled Workers relates to national programmes for highly skilled work (in the Netherlands, the highly skilled migrant scheme).

<sup>47</sup> When this data was supplied to Eurostat, 1,257 permits granted to au pairs were counted in the category 'other remunerated activities'. These au pairs were not included in Figure 13 in Chapter 6, so the total in that figure is lower.

<sup>48</sup> The 'highly skilled workers' category combines highly skilled migrants (7,100), transfers within a company (4,096) and innovative start-ups (55).

<sup>49</sup> 58 permits were also issued under the Blue Card Directive.

<sup>50</sup> The 'other remunerated activities' category combines paid employment (1,555), au pairs (1,257), self-employed persons (493), the job year for highly skilled persons (369) and cross-border provision of services (9).

<sup>51</sup> See Article 8.2, Chapter 8 'TRADE IN SERVICES, INVESTMENT LIBERALISATION' of the AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN FOR AN ECONOMIC PARTNERSHIP, which can be accessed at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1684> (last accessed on 20 March 2019)

<sup>52</sup> See Article 30.6(1) of the CETA and ABRvS 19 November 2018, ECLI:NL:RVS:2018:3769.

<sup>53</sup> See the comprehensive website of the European Commission for a list of trade agreements that are in effect or under negotiation:

<http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>.

<sup>54</sup> *EU Emergency Trust Fund for Africa (economic development, migration management, stability and government)*. Sahel and Lake Chad region: Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Gambia, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria and Senegal. Horn of Africa: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania and Uganda. North Africa: Morocco, Algeria, Tunisia, Libya and Egypt.

<sup>55</sup> See COM(2017)558, COM(2018)635.

<sup>56</sup> See 'Pilot projects on legal migration: Guidelines for a restricted Call for Proposals with an open deadline', which can be accessed at:

<https://www.icmpd.org/our-work/capacity-building/european-and-global-initiatives/mobility-partnership-facility-mpf/pilot-projects-on-legal-migration-call-for-proposals/>

<sup>57</sup> [https://www.icmpd.org/fileadmin/1\\_2018/staff\\_photos/Information\\_on\\_Funded\\_Actions\\_01-18.pdf](https://www.icmpd.org/fileadmin/1_2018/staff_photos/Information_on_Funded_Actions_01-18.pdf)

## Chapter 5

# Labour migration to Germany

## 5.1 Introduction

Like the Netherlands, Germany signed the Refugee Pact and the Migration Pact, after a legal discussion about the extent to which the norms laid down in the pacts are binding. In this chapter, the ACVZ will look at the legal labour migration channels in Germany, since Germany has adopted a more inviting approach to labour migration, and the Dutch economy is closely interconnected with the German economy. After briefly outlining the situation in the German labour market (paragraph 5.2), we will provide information about the legal channels for labour migration to Germany (paragraph 5.3) and the new draft legislation for attracting skilled workers (paragraph 5.4). We will round off the chapter with an interim conclusion (paragraph 5.5).

## 5.2 The German labour market in 2019

In recent years, the German labour market has consistently improved, and some sectors are currently experiencing shortages,<sup>58</sup> even in comparison to the European and international situation.<sup>59</sup> In February 2019, Germany had the second-lowest unemployment percentage in the EU: 3.1% of the population was out of work. The average unemployment percentage in the EU in February 2019 was 6.5%.<sup>60</sup>

To support efforts to attract skilled migrant workers (from both within and outside the EU), Germany has set up an interministerial website, 'Make it in Germany'.<sup>61</sup> Germany is thus working to create an inviting migration climate for specific groups of migrants (Griesbeck, 2014). In October 2018, more than 700,000 vacancies were open (for ICT professionals, engineers, medical professionals, skilled workers, etc.).<sup>62</sup> These vacancies are a good representation of the 'White List', which was drawn up in August 2018 by the Bundesagentur für Arbeit to identify the professions with the highest demand for 'skilled workers' in Germany (Düvell, 2019, p. 7).<sup>63</sup>

Demographic developments in Germany, the need outlined above for skilled workers and the call for labour migration from German industry, are all grounds

for the German government to provide new immigration options (Bünthe & Knödler, 2018). More than in other member states, the current German labour migration system is tailored to supply and demand in the labour market.<sup>64</sup> In the Netherlands, the UWV periodically publishes a forecast of labour market needs and shortages at a national and regional level (UWV, 2018) and Statistics Netherlands publishes details of labour market tension, including through its 'Labour Market Dashboard'.<sup>65</sup> In addition, the Research Centre for Education and the Labour Market (ROA) releases publications about labour market developments in the Netherlands (see, for example, ROA, 2017: *The labour market in 2022 by education and profession*). Neither the UWV nor the ROA discuss labour migration in their reports; nor is Dutch labour migration policy in any way tailored to these reports. However, at the request of the Ministry of Foreign Affairs, in 2019 SEO published a report which investigated, based on ROA publications, whether skilled workers were available in Nigeria, Tunisia and Jordan who could contribute to solving the anticipated shortages in the Dutch labour market (SEO Amsterdam Economics, 2019).

The stable labour market situation in Germany offers workers with lower levels of education good opportunities to find work, according to an EMN report on labour migration to Germany of lower-educated migrant workers.<sup>66</sup> The EMN report lists four specific groups of lower-educated migrant workers:

- Migrant workers from Eastern European EU member states (who take advantage of the free movement of persons within the EU) (January–September 2017: 387,000)
- Migrant workers from the 'GIPS' countries, namely Greece, Italy, Portugal and Spain (who are also entitled to free movement) (January–September 2017: 67,000);
- Migrant workers from other migration countries, i.e. the most common countries of origin for asylum seekers from the Balkans (Albania, Bosnia-Herzegovina, Kosovo, Macedonia and Serbia) (January–September 2017: 68,000);
- Labour migration from other countries in Eastern Europe (Russian Federation and Ukraine) (January–September 2017: 21,000).

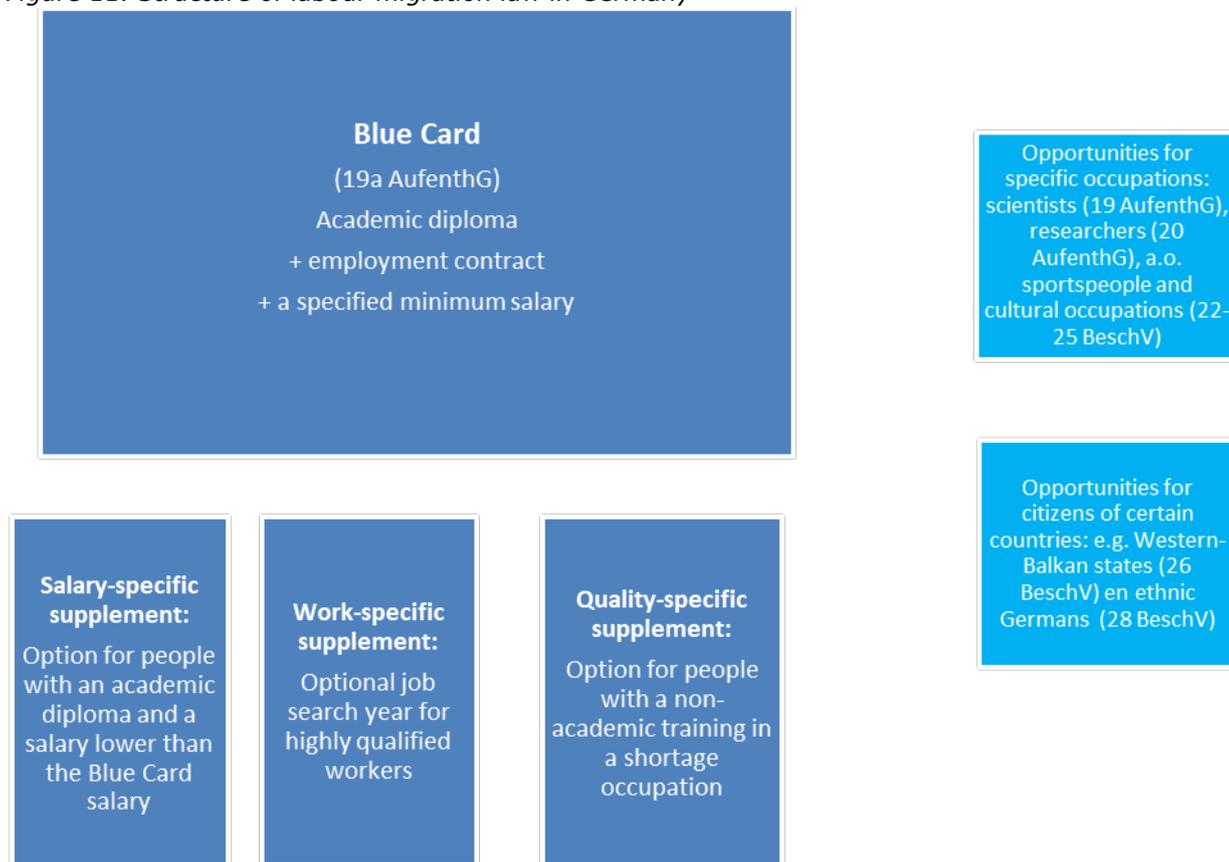
As part of Germany's inviting attitude with regard to the workers it needs, Germany has created a website, 'Recognition in Germany', which makes it easier for migrant workers to determine whether they can practise their profession in Germany with their basic qualifications.<sup>67</sup>

### 5.3 Legal channels for labour migration to Germany

Like the Netherlands, as a member of the EU Germany has implemented EU regulations concerning labour migration. For example, since 1 August 2012 Germany has applied the European Blue Card Directive for highly-skilled migrants from non-EU countries who have been offered a job in Germany.<sup>68</sup> In Germany,

the European Blue Card is the key permit for highly skilled persons, whereas in the Netherlands these migrants fall under the Dutch highly skilled migrant scheme. The structure of the various German schemes is depicted in Figure 11 in a simplified form.

Figure 11. Structure of labour migration law in Germany



Source: Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR, 2018), translated from German to English by ACVZ

[To the description of figure 11](#)

Access to the German labour market for non-EU citizens is regulated by the German Act concerning foreign nationals, the *Aufenthaltsgesetz* (AufenthG.), in combination with the Regulation on the admission of foreign nationals for the purpose of accessing work (*Beschäftigungsverordnung* (BeschV)), which is comparable to the Dutch Foreign Nationals (Employment) Act and secondary legislation. This legislation provides for special schemes for citizens of certain countries and for ethnic Germans. In addition, as explained above, Germany has a list of shortage occupations. Migrants who have completed vocational training in a shortage occupation have a smoother path to eligibility for labour migration to Germany. For certain *occupations* and certain *countries of origin*, Germany has thus developed special legal migration channels. As a result, there are initiatives under which, to take an example, health workers are recruited in the Philippines and Albania. A programme has been set up in Manila where health workers can learn the German language.<sup>69</sup>

### *Labour migration in the context of European mobility partnerships and projects funded by the World Bank*

As indicated in the previous chapter about the EU legal framework, the EU has entered into mobility partnerships with current and potential countries of origin. These mobility partnerships are implemented by the International Centre for Migration Policy Development (ICMPD), referred to above, of which Germany is a donor country, but the Netherlands is not. The German authority responsible for implementing the Mobility Partnerships is the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH,<sup>70</sup> a public-private organisation. GIZ has developed a separate programme for this purpose, focusing on the one hand on repatriation and reintegration, and on the other on developing targeted migration.<sup>71</sup> The GIZ has also set up *Migration Advice Centres* in a number of countries, which provide information about migrating to Germany, and it runs training courses, including for returnees.<sup>72</sup> In Morocco, the GIZ has set up a programme that is funded by the World Bank, in which 110 school leavers are placed in the hospitality industry in Germany as part of an on-the-job training programme.

A recent publication by Düvell (2019) provided a comprehensive description of German cooperation with Tunisia, Morocco and Egypt, among other countries, in the context of mobility partnerships and projects funded by the World Bank. A publication by the *Sachverständigenrat deutscher Stiftungen für Integration und Migration* (SVR) provides an overview of all of the initiatives (SVR, 2018, p. 28).

#### *Legal migration instead of asylum migration*

Unskilled migrants can obtain a residence permit for employment purposes in Germany pursuant to para. 18(3) of the AufenthaltG. This applies to nationals from Andorra, Australia, Canada, Israel, Japan, the Republic of Korea, Monaco, New Zealand, San Marino and the USA (BeschV, para. 26(1)). For the period from 2016 to 2020, this list of 'western' countries of origin has been expanded to include Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia (BeschV, para. 26(2)).

The *Bundesagentur für Arbeit* approves the employment pursuant to BeschV, para. 26 only if the following conditions are met:

- The migrant worker has a concrete job offer from an employer;
- No German citizen, or foreign national with the same legal status (e.g. EU citizen, recognised refugee), is available for the job (labour market test);
- The migrant worker will not receive poorer employment conditions (with regard to wages and working hours) than those that apply to equivalent German workers;

- Citizens from countries in the Western Balkans may not have been recipients of asylum services in Germany in the previous 24 months.

The expanded labour migration scheme for Western Balkans countries is running from 2016 to 2020.<sup>73</sup> In addition to the possibility of going to work in Germany, Germany is trying in a variety of ways to provide better prospects in the Western Balkans in general and in Albania in particular. The Albanian government and the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) are working together to dispense vocational training in Albania, such as the Vocational Education and Training (VET) Programme. Likewise the ProSEED project, 'Make it in Albania', aims to create employment opportunities in Albania, so that young people in particular have better work prospects. According to the GIZ, these programmes have been successful; to date, around 7,000 Albanians between the ages of 19 and 34 have participated in short or long-term vocational training. The *Deutsches Informationszentrum für Migration, Ausbildung und Karriere* (DIMAK) has an office in Tirana to help both returning Albanians and the local population with reintegration and looking for work.<sup>74</sup> It aims to provide information about employment opportunities in Albania and about the possibilities (or impossibility) of finding legal employment in Germany.

In 2018, the ACVZ advised that the German example of commitment to legal migration and organising of vocational training in countries of origin was worth following, to prevent asylum applications from so-called 'safe countries of origin' (ACVZ, 2018, pp. 32-34). There are indications that the German approach has been successful, although the *Sachverständigenrat deutscher Stiftungen für Integration und Migration* notes that due to a lack of data, it is not possible to show a direct causal link between the measures and the drop in the number of asylum applications in Germany from Western Balkans countries (SVR, 2018, p. 25). The measures were launched in 2016. If we take the decrease in asylum applications in Germany from the Western Balkans in 2018 compared to the reference year of 2015, and compare it to the decreases for the whole of the EU and for the Netherlands, we see that the number of asylum applications in Germany in percentage terms has fallen more steeply than in the EU as a whole or in the Netherlands (with the exception of Kosovans, for whom first-time asylum applications have fallen sharply in the EU and the Netherlands as well). These figures are set out in the following table.

Figure 12. Decrease in percentage terms of the number of first-time asylum applications from six countries in the Western Balkans in 2018 compared to 2015, in the EU, Germany and the Netherlands

	EU	Germany	The Netherlands
Albania	-71%	-97%	-45%
Bosnia and Herzegovina	-76%	-89%	-52%
Kosovo	-95%	-98%	-95%
North Macedonia	-69%	-86%	-18%
Montenegro	-90%	-95%	-50%
Serbia	-77%	-93%	-72%

Source: Eurostat table, 'Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)' [migr\_asyappctza], last accessed on 5 April 2019

Note that over the same period, the percentage and number of people in Germany from the Western Balkans with a residence permit for employment increased significantly. At the end of 2015, 9% of foreigners holding a residence permit for employment in Germany came from this region; by the end of 2018, it was nearly 25%. According to Destatis, the German office of statistics, the number of people from the Balkans who hold a residence permit for employment in Germany increased by 53,000 over that period (from 13,000 to 66,000), while the number of people from that region with a humanitarian status (in the words of Destatis) only marginally increased, by 7,000. According to Destatis, this change is probably partly the result of policy changes which have seen the Balkan countries classified as safe countries of origin, while at the same time it has been made easier for people from these countries to gain access to the German labour market.<sup>75</sup>

## 5.4 New development: draft legislation for attracting skilled workers

To address the ongoing labour market shortages, in March 2019 the German CDU/CSU and SPD coalition introduced draft legislation for the *Fachkräftezuwanderungsgesetz*, a Migration Act for skilled workers. Agreement on the main points of the legislation had been reached in October 2018.<sup>76</sup> The legislation aims to increase the supply of skilled workers by facilitating targeted, controlled immigration of skilled workers from outside the EU. This expressly relates to both highly skilled 'Fachkräfte mit akademischer Ausbildung' and to skilled workers with vocational training, 'Fachkräfte mit Berufsausbildung'. It is worth noting that a strict distinction has been made between refugees and migrants. This is consistent with remarks by the Chancellor in Marrakesh, when she noted the importance of a clear distinction between these two categories.<sup>77</sup> The draft legislation provides an insight into how Germany is balancing the various interests involved in labour migration. These interests, which we discussed in

Chapter 2, are those of employers, migrants, countries of origin and the receiving society.

### *Skilled workers*

At its heart, this draft legislation imposes two conditions on migrant workers: they must have a job, and education relevant to that job. The bill defines 'skilled workers' as anyone who has completed at least two years' vocational training. They can work in jobs which require the skills, knowledge and abilities they acquired during their studies.<sup>78</sup> Skilled workers who meet the conditions for a European Blue Card will receive a Blue Card; the rest will receive a German residence permit. Migrants without the necessary qualifications can also obtain a permit if the '*Beschäftigungsverordnung*' or an agreement between states determines that the foreign national can be admitted for a specific job. This could be relevant for foreign nationals who have specific practical skills or are needed in a particular region.<sup>79</sup> This is thus a continuation of the current German policy of permitting labour migration for specific shortage occupations, and in some cases only for specific regions. This serves the interests of the local economy and employers, but also the interests of the skilled workers themselves, who are gaining access to a legal migration channel to Germany. The countries of origin can also benefit, at a minimum from the money transfers made by migrants back to their country of origin.

### *Changing the status of asylum migrants*

In recent years, Germany has granted refugee or asylum status to large groups of people (more than the Netherlands), and is working to integrate them into the German labour market. On the one hand, it has been noted that the German labour market still needs more migrant workers.<sup>80</sup> On the other hand, it would not make sense to recruit migrants from outside the EU if they are already present in Germany. In the transition period between the current situation and the new strict distinction, the draft legislation facilitates a change in the status of asylum seekers whose applications have been rejected but who cannot be expelled, and who are tolerated in Germany (they have a '*Duldung*' permit), so that they can become regulated migrant workers.<sup>81</sup> Conditions are attached: the migrants must first prove that they are capable of integrating, that they speak German, and that they have a job. It should be noted that asylum seekers in Germany, even those whose applications are still being processed, gain access to the German labour market after three months. Under certain conditions, they can also receive assistance with finding a job. In the transition period, holders of a *Duldung* will also be offered government support with finding suitable vocational training or work. The group of asylum seekers who are already living in Germany and are tolerated, but whose applications have been rejected and who have exhausted all legal remedies, will be offered the possibility of pursuing vocational training with the aim of qualifying for a job as a skilled worker under the new bill. The sense of hopelessness experienced by this migrant group will thus be addressed and the efforts of local

government authorities to find employment for them will be rewarded. The draft legislation will make it easier for holders of a *Duldung* to obtain an ordinary residence permit if they have completed recognised vocational training or have worked in a job for an uninterrupted two-year period, based on an equivalent diploma obtained abroad, or have worked for three years in a skilled occupation and are able to provide for themselves, have a place to live and have sufficient mastery of German. They are encouraged to work hard to integrate themselves into German society. The bill lays down other strict requirements, such as: the persons concerned must not have committed any fraud in the context of an earlier application procedure, they must not have evaded or impeded any termination-of-residence measures, they must not have ties to terrorist organisations, and they must not have been convicted of a criminal offence punishable by up to 90 days, excluding acts that, under asylum law, can only be committed by foreign nationals.<sup>82</sup> The key benefit is that this legislation will end the situation of 'toleration'.

#### *Avoiding the pull factor from other EU member states*

Excluded from the scheme are asylum seekers and status holders from other EU member states and foreign nationals who are under an obligation to leave another EU member state. Foreign nationals who have a mobility right within the EU on other grounds, such as long-term residents, must exercise that option, and can therefore not come to Germany under this new scheme.<sup>83</sup>

#### *Job search periods*

The draft legislation provides for a range of job search periods which skilled workers can use to find a job in Germany. The draft legislation thus facilitates both supply-driven and demand-driven labour migration. Another provision worth mentioning is the opportunity provided for skilled workers from countries outside the EU to come to Germany for six months to look for work. This is subject to the condition that they must be able to demonstrate basic mastery of the German language and they must be self-sufficient. During the search period, they may work for up to ten hours per week in any occupation.<sup>84</sup> In preparation for this search period, the federal government will facilitate German language learning through the branches of the Goethe Institute in the relevant countries. The German government will also facilitate the social and cultural integration of new arrivals and emphasise the importance of language skills to labour market success.

#### *Role of employers*

It is worth noting the role assigned to employers by the draft legislation. Employers can follow the procedure and apply for permits on behalf of proposed employees. Employers and the competent authority (equivalent to the IND) will enter into an agreement which will establish, among other matters, what the consequences will be if the agreements made are not complied with.<sup>85</sup> The accelerated procedure will

also apply to family reunification, specifically for spouses and minor children. The new law thus shares certain features with the Dutch 'recognised sponsor' procedure. However, it appears that Germany has placed a greater emphasis on actual demand in the labour market and on German economic interests. That's why the draft legislation provides for an expansion to include skilled workers, with the income requirement being removed but a training requirement being imposed instead. In Germany, there is a much greater focus on economic interests and direction from above, whereas in the Netherlands it is up to any employers who are prepared and able to act as recognised sponsors to take the initiative.

#### *No labour market test*

If the migrant worker is offered an employment agreement, no labour market test will be performed.<sup>86</sup> However, if there are changes in the labour market, a labour market test could be reintroduced. The draft legislation seeks to establish a clear connection between the interests of German industry and the labour market by protecting the labour market from displacement if necessary, in the event that a sector ceases to experience shortages. In the event of unexpected unemployment, affected workers can avail themselves of a job search period to try to find a new job.

#### *Four-year residence permit*

According to the bill, skilled workers will be issued with a four-year residence permit.<sup>87</sup> If they still hold the specified job, have paid contributions for at least 48 months and speak German sufficiently well, they can obtain a permanent residence permit. Migrants who have successfully completed a *domestic* vocational training or study course may apply for permanent residence after only two years.<sup>88</sup> Blue Card holders may apply for permanent residence after 33 months. Providing early and definite access to a residence permit will likely serve multiple interests; it can be assumed that being given certainty of residence will motivate migrants to work hard to meet the specified conditions.

It is an extensive and detailed piece of legislation. However, at its core, in view of the recommendations in the Migration Pact and EU efforts with regard to labour migration from partner countries, the bill aims to take a practical and substantive approach to the task of opening up a genuine legal migration channel for skilled workers, even if they are not 'highly skilled' or 'highly remunerated'. However, it is still only a draft.

## 5.5 Conclusion

### *Legal migration channels to prevent irregular migration*

To prevent futile asylum applications, Germany has opened up legal migration channels for migrants from safe countries of origin. There are signs that this approach is having an effect: since 2015, the number of asylum applications in Germany from six Balkans countries has fallen more steeply than in the Netherlands or the EU as a whole, while the percentages and numbers of migrant workers arriving from these countries have grown rapidly. It therefore seems that the development of a legal migration channel can contribute to reducing uncontrolled migration. The ACVZ reiterates the recommendation from its earlier advisory report, 'Search for safe(r) countries', that a similar approach should be applied for countries that are cooperating with return (ACVZ, 2018, p. 9).

### *Legal labour migration as a tool to solve labour market shortages*

In line with the agreements in the Refugee Pact and Migration Pact, Germany has drawn a clear distinction between refugees and migrant workers. Germany is looking for legal migration channels that are in Germany's interests and for which agreements can be made with other countries.<sup>89</sup> German plans and ideas with regard to migrant workers could be of interest to the Netherlands. In Germany, greater attention is paid to actual demand in the labour market and to German economic interests than is the case in the Netherlands. The German government has come to the conclusion that there is a structural shortage of skilled workers which cannot be solved within the EU. Accordingly, Germany is working to develop an inviting labour migration policy to address labour market shortages in a targeted way. As a consequence, Germany is currently offering broader opportunities for labour migration than the Netherlands, and in March 2019 draft legislation was introduced to expand these opportunities still further. Under this legislation the income requirement for skilled workers will be completely removed, but a training requirement will be imposed instead. After four years, migrant workers will be eligible for permanent residence and naturalisation, provided they meet certain criteria such as learning the German language, paying contributions and keeping their jobs. One noteworthy feature of the German bill is that it assigns a role to employers that is comparable to the 'recognised sponsor' procedure in the Netherlands, although the assessment of German economic interests is still determined at a central level.

The current German labour migration system is tailored to the supply and demand of migrant workers and the economic strategy of the German federal government. The UK, too, has a 'Migration Advisory Committee' that advises the government on labour migration in relation to the labour market.<sup>90</sup> With the recent SEO publication, '*Dutch labour market shortages and potential labour market supply from Africa and the Middle East: is there a match?*' (SEO Amsterdam Economics, 2019), the Netherlands has made a start on tailoring its policies; however, the

ACVZ believes this work should be formalised at an institutional level. The ACVZ has previously recommended that a standing committee be set up to regularly investigate which qualifications are most in demand and the extent to which migrant workers could meet that demand (ACVZ, 2009, pp. 20–22). This recommendation is still relevant.

<sup>58</sup> Bundesagentur für Arbeit (2018), [Statistik/Arbeitsmarktberichterstattung](#), Berichte: Arbeitsmarkt kompakt – Auswirkungen der Migration auf den deutschen Arbeitsmarkt.

<sup>59</sup> Manpower Talent Shortage Survey (Q3 2018). The percentage of employers reporting difficulties in filling jobs is on the rise, reaching more than 40% on average across the EU, and has even passed 50% in Germany, Poland, Slovakia and Hungary.

<sup>60</sup> Eurostat table Unemployment by sex and age – monthly average [une\_rt\_m], last accessed on 5 April 2019.

<sup>61</sup> <https://www.make-it-in-germany.com/en/>

<sup>62</sup> Bundesministerium für Wirtschaft (2018), [Job listings](#) October 2018.

<sup>63</sup> Bundesagentur für Arbeit (2018), [Whitelist immigration into recognised occupations](#).

<sup>64</sup> Bundesministerium des Innern, für Bau und Heimat (2018):

<https://www.bmi.bund.de/EN/topics/migration/immigration/labour-migration/labour-migration-node.html> .

<sup>65</sup> <https://www.cbs.nl/nl-nl/visualisaties/dashboard-arbeidsmarkt>

<sup>66</sup> EMN (2018) Ad-Hoc Query on Economic Migration Policy regarding Low Skilled Workers.

<sup>67</sup> <https://www.anerkennung-in-deutschland.de/html/de/>

<sup>68</sup> Bundesamt für Migration and Flüchtlinge (2018), Blaue Karte EU:

<http://www.bamf.de/DE/Migration/Arbeiten/BuergerDrittstaat/BlaueKarte/blaue-karte-node.html>.

<sup>69</sup> <https://www.moz.de/artikel-ansicht/dg/0/1/1721676/>; <https://www.moz.de/artikel-ansicht/dg/0/1/1654351/> ; <https://www.zeit.de/gesellschaft/2018-06/bundesregierung-pflege-fachkraefte-ausland-afd-anfrage-mangel/>;

<sup>70</sup> The programme is running from 2015–2020, see <https://www.giz.de/de/weltweit/62318.html>

<sup>71</sup> The programme has been implemented in Afghanistan, Albania, Cameroon, Colombia, Ecuador, Ethiopia, Georgia, Ghana, India, Indonesia, Iraq, Jordan, Kenya, Kosovo, Morocco, Nepal, Nigeria, the Palestinian territories, Peru, Senegal, Serbia, Tunisia, Ukraine and Vietnam.

<sup>72</sup> Albania, Ghana, Senegal, Kosovo, Serbia, Tunisia, Morocco and Iraq, <https://www.giz.de/en/mediacenter/64714.html>

<sup>73</sup> For the period from 2016 to 2020, for nationals from Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia, BeschV, para. 26(2).

<sup>74</sup> See: <https://www.returningfromgermany.de/programmes/giz-deutsche-informationszentren-fuer-migration-ausbildung-und-karriere-dimak-in-albanien>.

<sup>75</sup> [https://www.destatis.de/DE/Presse/Pressemitteilungen/2019/04/PD19\\_149\\_12521.html](https://www.destatis.de/DE/Presse/Pressemitteilungen/2019/04/PD19_149_12521.html)

<sup>76</sup> Bundesregierung (2018), [Eckpunkte zur Fachkräfteeinwanderung aus Drittstaaten](#), 2/10/2018. Süddeutsche Zeitung, Fachkräfteeinwanderungsgesetz.

<sup>77</sup> Es ist auch klar zwischen Flucht und Migration unterschieden worden, was besonders wichtig ist. [www.bundestkanzlerin.de/bkin-de/aktuelles/rede-von-bundestkanzlerin-merkel-bei-der-internationalen-konferenz-zur-annahme-des-globalen-pakts-fuer-sichere-geordnete-und-regulaere-migration-am-10-dezember-2018-in-marrakesch-1559050](http://www.bundestkanzlerin.de/bkin-de/aktuelles/rede-von-bundestkanzlerin-merkel-bei-der-internationalen-konferenz-zur-annahme-des-globalen-pakts-fuer-sichere-geordnete-und-regulaere-migration-am-10-dezember-2018-in-marrakesch-1559050)

<sup>78</sup> Article 1(2)(d) *Skilled Workers Bill* p. 9.

<sup>79</sup> *Skilled Workers Bill*, para. 19(c).

<sup>80</sup> Süddeutsche Zeitung, Fachkräfteeinwanderungsgesetz. Was ändert sich für Unternehmen und Zuwanderer?, 2/10/2018,

<https://www.sueddeutsche.de/politik/fachkraefteeinwanderungsgesetz-das-aendert-sich-fuer-unternehmen-und-fuer-zuwanderer-1.4153872>.

<sup>81</sup> *Skilled Workers Bill*, para. 19(e).

<sup>82</sup> *Skilled Workers Bill*, para. 19(d) (p. 25).

<sup>83</sup> *Skilled Workers Bill*, para. 19(f) (p. 27).

<sup>84</sup> *Skilled Workers Bill*, para. 20 (p. 28).

<sup>85</sup> *Skilled Workers Bill*, para. 81(a) (p. 35).

<sup>86</sup> *Skilled Workers Bill*, para. 18(2) (p. 17)

<sup>87</sup> Para. 18(4) (p. 17).

<sup>88</sup> Para. 18(c)(5) (p. 18).

<sup>89</sup> 'Germany is a country that in future will continue to require higher numbers of qualified experts, including more experts from countries outside the European Union. We therefore have an interest in legal migration. And what is in our interests is also subject to our sovereign right to self-determination. The Compact states specifically that the Member States

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have the sovereign right to determine their own policies. At the same time, the Compact is not legally binding. So we will be reliant on legal migration as far as qualified experts are concerned and will need to talk to other countries about what is in our interests.' (*Chancellor Merkel, 10 December 2018*)

<sup>90</sup> <https://www.gov.uk/government/organisations/migration-advisory-committee>

## Chapter 6

# Labour migration to the Netherlands

## 6.1 Introduction

In this final chapter of our exploratory study into legal migration channels, we will discuss the current options for labour migration to the Netherlands. To date, the primary focus of the Dutch government has been on labour migration that is favourable to the Netherlands and can strengthen the knowledge economy.<sup>91</sup> The question is whether existing forms of legal migration can be better exploited to combat the use of illegal channels, and whether labour market shortages constitute grounds to expand existing channels and/or to open up new channels for migrant workers.

## 6.2 State of affairs

When we talk about labour migration in the Netherlands, it includes both the mobility of EU citizens (such as Polish or Spanish workers in the Netherlands) and the migration of non-EU citizens to the Netherlands.<sup>92</sup> In the Netherlands, this latter group mainly comprises highly educated professionals, such as those in the 'highly skilled migrants' category.

In response to the ACVZ advisory report 'Search for safe(r) countries', in a letter dated 26 June 2018 the government highlighted current efforts to improve repatriation by applying a strategic approach in relationships with countries of origin in the area of return (see also ACVZ, 2015) and announced an exploratory study into legal migration channels.<sup>93</sup> The government stated that both incentives and disincentives may need to be applied to countries of origin for effective repatriation and prevention of irregular migration, and that it is currently exploring the options for limited study and labour migration for the residents of certain countries.<sup>94</sup> Two conditions will be attached: prior evidence of improved cooperation with return, and a broader package of agreements on migration cooperation, preferably developed at the EU level. As we have shown, these frameworks already exist and are being used by Germany, Lithuania and Belgium, to take three examples.

*'Trust in the future' coalition agreement, 10 October 2017*

'Asylum migration should offer protection, not facilitate access to employment. The asylum procedure is not intended for people who wish to come to the Netherlands for economic reasons. That fusion is undesirable and must be opposed. However, there are also migrant workers who can make a meaningful contribution to the Dutch economy and to Dutch society. Accordingly, labour migration that is favourable to the Netherlands should be facilitated. It can strengthen the knowledge economy, innovation capabilities and competitive position of the Netherlands. For this reason, the government intends to pursue a positive legal migration policy according to the needs of the labour market.'

The government is seeking to develop legal migration channels under Pillar Five of the Integrated Migration Agenda that was presented to the Lower House of Parliament on 30 March 2018.

With the release of the study, *'Dutch labour market shortages and potential labour market supply from Africa and the Middle East: Is there a Match?'*, conducted by SEO and commissioned by the Ministry of Foreign Affairs, a start was made on investigating shortages in the labour market in relation to the question of the extent to which migrants can supply the demand for workers, as recommended in the Migration Pact. In the Netherlands, the main shortages are in the healthcare, ICT and technology sectors.<sup>95</sup> However, the Netherlands is not recruiting migrant workers from countries outside the EU fast enough to resolve specific shortages (EMN, 2015). On this matter, the EMN said:

'Measures to resolve shortages in the Netherlands are primarily focused on the working population of the Netherlands and the EU/EEA, such as reskilling and job placement services. However, employers may, on their own initiative, hire migrants from third countries, but only if they can demonstrate that it is not possible to fill the vacancy with someone from the Netherlands or the EU (or EEA).'

### **6.3 The Dutch legal framework for labour migration**

In Chapter 4, we discussed the EU schemes for labour migration, which apply to the Netherlands as a member state of the EU. In addition, the Netherlands has a national admission policy for migrant workers. The combination of all of these schemes (in addition to the free movement of persons within the EU) means that there are a number of grounds for legal labour migration to the Netherlands. These are summarised in Article 3.4(1) of the Aliens Decree. In the Aliens Decree, the grounds are referred to as 'restrictions'. This term indicates that residence permits will be granted only on those specific grounds, and that foreign nationals who wish to continue their residence in the Netherlands on the basis of a different basis must submit a 'change of restriction' application. The relevant 'restrictions' are:

- Work as a self-employed person (3.4(1)(c) of the Aliens Decree);
- Work as a highly skilled migrant (3.4(1)(d) of the Aliens Decree);
- Residence as the holder of a European Blue Card (3.4(1)(e) of the Aliens Decree);
- Seasonal work (3.4(1)(f) of the Aliens Decree);
- Intra-corporate transfer (3.4(1)(g) of the Aliens Decree);
- Paid employment (3.4(1)(h) of the Aliens Decree);
- Cross-border provision of services (3.4(1)(i) of the Aliens Decree);
- Research, as defined by Directive 2016/801/EU (3.4(1)(j) of the Aliens Decree);
- On-the-job training (3.4(1)(k) of the Aliens Decree);
- Paid employment as non-privileged military personnel or non-privileged civilian personnel (3.4(1)(l) of the Aliens Decree);
- Looking for and performing work, which may or may not be paid employment (3.4(1)(n) of the Aliens Decree).

Migrants who come to the Netherlands for a different purpose may also gain access to the Dutch labour market. This applies to people with an asylum permit for example, and to most family migrants. The rules concerning labour market access for these foreign nationals can be found in the Foreign Nationals (Employment) Act. Employers do not have to apply for a residence permit for third-country nationals who come to work in the Netherlands for less than three months, only a work permit. The rules that apply to this group can also be found in the Foreign Nationals (Employment) Act. These groups will not be discussed any further in this chapter. Likewise, hybrid forms of cultural exchange combined with work, such as the au pair scheme and 'working holiday programmes', will not be further discussed. The purpose of this chapter is to discuss the grounds on which a residence permit can be granted specifically for work.

Figure 13. Number of migrant workers who arrived in the Netherlands in 2017 on labour migration grounds (excluding free movement of persons)

Category	Number in 2017
Self-employed persons, including 55 start-ups (Netherlands)	550
Highly skilled migrants (Netherlands)	7,100
Blue Card (EU)	60
Seasonal work (EU)	0
Transfers (EU)	4,100
Paid employment (Netherlands)	1,560
Cross-border provision of services (Netherlands)	10
Research (EU)	2,750
On-the-job training (Netherlands)	360
Non-privileged military personnel or non-privileged civilian personnel (Netherlands)	- <sup>96</sup>
Looking for and performing work (Netherlands)	370
<b>Total</b>	<b>16,860<sup>97</sup></b>

Source: IND Metis. The figures are rounded to the nearest ten.

#### Work as a self-employed person (Netherlands)

A residence permit for self-employed persons may be granted if doing so will serve an essential Dutch interest, if the work provides the self-employed person with a sufficient and stable means of support, and if the self-employed person meets both the competency requirements to carry on that work and the requirements to operate the business in question. The assessment of the essential Dutch interest will be performed by the Netherlands Enterprise Agency (RVO) and will be based on a points system (De Lange, 2016).<sup>98</sup>

A start-up scheme for innovative entrepreneurs was launched on 1 January 2015. Residence permits are issued for one year, after which entrepreneurs must meet the conditions for work as a self-employed person, which have been relaxed.<sup>99</sup> An exemption to the temporary residence permit (MVV) procedure has been in effect since 1 October 2015. Since 1 January 2016, it has been relatively easy for foreign nationals who hold a start-up permit to convert the permit into an ordinary self-employed persons permit. All that is required is a positive declaration from their supervisor (a supervisor is required for all foreign start-ups).<sup>100</sup> The declaration then supplies the basis for the RVO to issue a positive recommendation. The points system that applies to ordinary self-employed persons applications does not apply in this case (De Lange, 2016, pp. 37–82). To stimulate entrepreneurship, from 1 April 2017 highly skilled migrants, holders of a European Blue Card, academic staff, students and employees of multinationals who are the subject of an intra-corporate transfer (a later addition), may also work as self-employed persons provided their main activity remains their work as an employee.<sup>101</sup> On 6 June 2019, the

government announced a pilot to issue residence permits to key personnel of start-ups from outside the EU.<sup>102</sup>

### **Work as a highly skilled migrant (Netherlands)**

The highly skilled migrants scheme was launched on 1 October 2004. 'Highly skilled migrants' are third-country nationals who earn (or will earn) a certain minimum monthly market salary.<sup>103</sup> The same applies to third-country nationals who, following the job search year for highly skilled persons, or within three years after completing a higher professional education programme or academic degree programme in the Netherlands, are employed on the basis of an employment agreement and earn at least a market salary (currently €2,464 gross per month). A condition for the granting of the permit is that the highly skilled migrant is going to work for an employer who is a recognised sponsor.<sup>104</sup> The recognised sponsor procedure is set out in section 2(c) of the Aliens Act. Section 2(e) of the Aliens Act and Articles 1.9 and 1.18–1.19 of the Aliens Decree contain conditions that employers must meet to be recognised as a sponsor, and criteria that are used to assess whether sponsors are of sufficiently good repute.

Foreign nationals who meet the salary criteria or the qualification requirement of academic researcher or doctor training to be a specialist, may be granted residency as a highly skilled migrant, provided their employer is a recognised sponsor. The highly skilled migrant residence permit may be issued for a maximum of five consecutive years.

### *Blue Card (EU)*

See Chapter 4. Since the conditions of the Dutch highly skilled migrant scheme are more favourable from the employer's perspective, this directive is not widely used in the Netherlands.

### *Seasonal work (EU)*

See Chapter 4. The Netherlands has not so far made any use of this directive.

### *Transfers (EU)*

See Chapter 4.

### **Paid employment (Netherlands)**

Selectivity is at the heart of the admission policy for paid employment: The Netherlands is welcoming to highly skilled migrants and reluctant to admit any other migrant workers, with the exception of certain specialist jobs. The Aliens Act sets the conditions for both entry to and residence in the Netherlands by foreign nationals, while the Foreign Nationals (Employment) Act contains rules for access to the Dutch labour market. The basic rule of the Foreign Nationals (Employment) Act is that an employer may not engage a foreign national to work in the Netherlands without a work permit, unless the foreign national holds a combined residence and work permit.<sup>105</sup> An application submitted by an employer for a work permit or a combined residence and work permit will be assessed for the presence of priority labour supply, the recruitment efforts of the employer, market-based remuneration (the legal minimum wage or higher<sup>106</sup>) and adequate accommodation.

The Netherlands has a multitude of special programmes for migrant workers. Most of these relate to specialist work. Several noteworthy programmes are listed below.

The *Asian catering industry scheme in connection with the temporary employment of cooks in the Asian catering industry* came into effect on 1 October 2016. This scheme is a continuation of an earlier temporary scheme and the Asian catering industry agreement, which was signed by employer organisations in the Asian catering industry, the UWV and the IND on 1 October 2014. The temporary scheme and the agreement expired on 1 October 2016.

Under the new Asian catering industry scheme, for specific roles the IND and UWV will issue a maximum number of work permits and combined residence and work permits for qualified Asian cooks. For these applications, the UWV will not assess whether there are any Dutch or European jobseekers who should be given priority. However, during the period of the permit employers are required to train or hire cooks from the Netherlands or Europe and to pay the agreed wages to the foreign cooks. On 15 April 2019, the Minister of Social Affairs and Employment informed Parliament that a permanent scheme would take effect on 1 October 2019, and that the quota would be removed. An exception is made in the scheme to the requirement relating to the recruitment efforts of the employer. Unlike in the current scheme, the UWV will assess whether any priority labour supply is present in the Netherlands or the EEA that could fill the vacancy. The emphasis will be on preventing displacement of the labour supply known to the UWV (such as beneficiaries); employers themselves are not expected to actively recruit. During the transition period up to 1 October 2019, the quota will be increased to 800.<sup>107</sup>

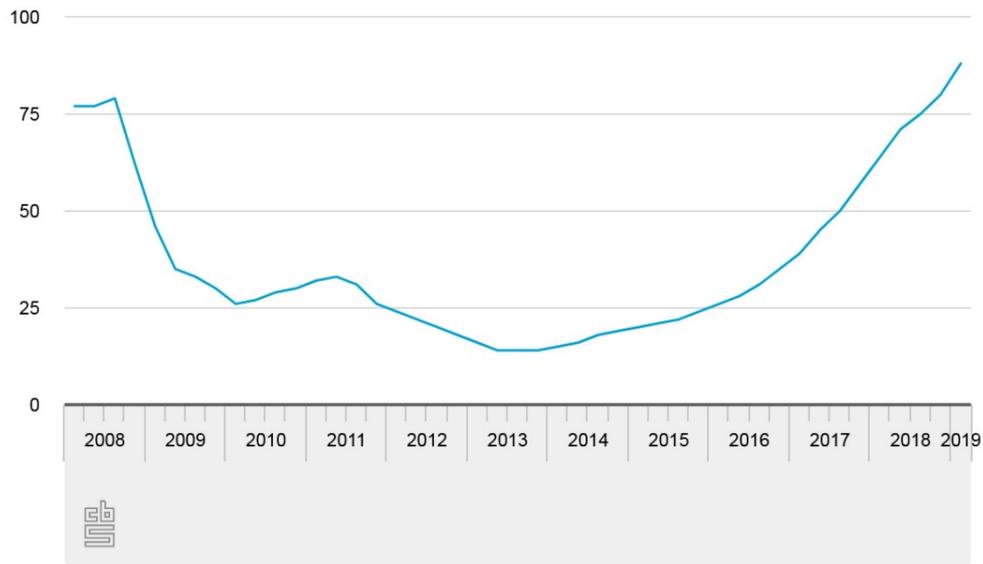
The *International trade scheme* took effect on 1 July 2017. This scheme offers international businesses the possibility of bringing flexible workers from overseas for temporary work in the Netherlands. This could relate to workers trained to work with new machines, or providing training to employees of a foreign customer of a Dutch company.

Migrants who are not covered by priority schemes, such as those that apply to highly educated migrant workers or other special schemes, must pass the strict tests in the Foreign Nationals (Employment) Act. It has become apparent that the restrictive nature of this Act means that practical implementation is unable to keep pace with the actual demand for workers. Prior to 2014, the Foreign Nationals (Employment) Act provided a more flexible assessment framework which gave the UWV more discretion. When the Act was amended in 2014, it was noted that this might be excessively limiting the ability to keep pace with the needs of the labour market (De Lange, 2013).

A comparison of Figures 14 and 15 shows that the number of permits granted in the period 2008–2017 had reduced (from 4,338 in 2008 to 2,399 in 2014). From the relatively low number of permits granted in times of significant shortages in

the labour market, it can be inferred that employers are making little use of labour migration as a means of meeting their need for workers. This is despite the UWV reporting in June 2018 that one in five employers was experiencing production constraints resulting from a shortage of staff. Many hard-to-fill vacancies are at the low-to-medium professional level (UWV, 2018).

Figure 14: Labour market tension 2008–2019

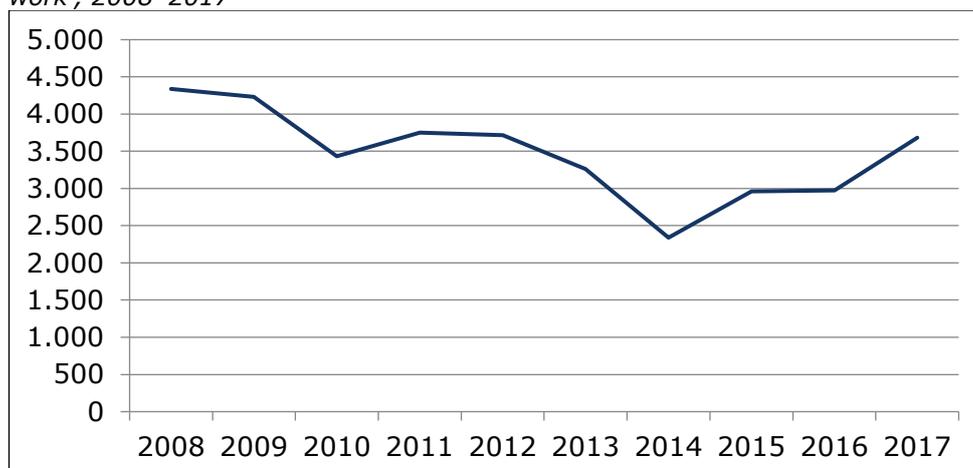


— Number of vacancies per 100 unemployed persons

<https://www.cbs.nl/nl-nl/nieuws/2019/20/krapte-arbeidsmarkt-neemt-verder-toe>

[To the table of figure 14](#)

Figure 15: Number of residence permits granted in the Netherlands for 'other work', 2008–2017



Source: Eurostat, last accessed in October 2018

[To the table of figure 15](#)

In Chapter 4, it was noted that the fitness check of the directive on a single application procedure showed that the fact that the procedure for obtaining a MVV is not covered by the directive has a negative impact on the processing time. In the Netherlands, the processing time for a MVV application can be up to six months, while the processing time for the combined permit is up to four months. This means that it could be up to ten months before an employer can actually use the worker for whom the application was submitted. This long processing time makes the tool less suitable for rapidly reducing acute shortages in the labour market.

#### **Cross-border provision of services**

A residence permit may be issued on this basis to a foreign national who, in the context of the cross-border provision of services, is temporarily performing work in the Netherlands in the service of an employer who is based in another EU member state, the EEA or Switzerland.<sup>108</sup>

#### *Research*

See Chapter 4.

#### **On-the-job training**

A residence permit may be issued on this basis to a foreign national who is acquiring or wants to acquire relevant work experience in the Netherlands in the context of service, work or study outside of the Netherlands, provided they meet certain conditions.<sup>109</sup>

#### **Non-privileged military personnel or non-privileged civilian personnel**

A residence permit may be issued on this basis to certain groups of military and civilian personnel living in the Netherlands who are in the service of a foreign military or who work at international military headquarters.<sup>110</sup>

### **Looking for and performing work**

The Netherlands allows a job search year for graduates.<sup>111</sup> Foreign nationals who have completed a post-doctoral programme in the Netherlands or graduated from a foreign university on the 'Top 200 universities' list, and foreign nationals who have performed academic research in the Netherlands, are allowed to spend one year looking for a job.<sup>112</sup> The job search year may be applied for within three years after study completion.

In addition, under the EU-Turkey Association Decision, a residence permit to look for and perform work may be granted to foreign nationals who have held a residence permit in the Netherlands for at least one year under this agreement on the grounds of a marriage or registered partnership, and whose marriage or registered partnership has broken down or been dissolved after three years.

## **6.4 Conclusion**

To sum up, a range of legal routes already exist for migrant workers to come to the Netherlands. These routes are based partly on EU law and partly on Dutch law. For a long time, the Netherlands has concentrated on the need of the knowledge economy for foreign workers, and has facilitated highly skilled migration through a scheme which generally functions fairly well, in which the employer, as recognised sponsor, plays a leading role. The 'job search year' for graduates is also designed to support the knowledge economy. The Netherlands also has schemes for self-employed persons and innovative start-ups, if they can contribute to 'an essential Dutch interest'.

Unlike the top segment, the middle segment of the labour market is not supported by a tailored labour migration policy. For less labour-intensive work or for lower-paid specialist work which is subject to increasing shortages in the labour market, the Netherlands uses a restrictive framework, which is set out in the Foreign Nationals (Employment) Act. An application submitted by an employer for a work permit will be assessed for (among other things) the presence of priority labour supply in the EU and the recruitment and training efforts of the employer, and any recruitment and training efforts of the employer undertaken pursuant to the Foreign Nationals (Employment) Act. The permit will then be granted for no more than a year, after which a further assessment will be conducted to determine whether a priority labour supply has since become available. For countries requiring a visa, the procedure is preceded by a MVV procedure, which can take up to six months. This framework discourages employers from submitting applications. As a consequence of the restrictive nature of this law, the practical implementation of the policy is unable to keep pace with the actual demand for workers; meanwhile, one in five employers is experiencing production constraints as a result of labour shortages. Migration is one of the tools that could contribute to solving this problem. From the comparison with Germany, we learnt that

Germany considers more carefully than does the Netherlands the contribution that foreign workers can make to the national economy.

To date, the Netherlands has not used labour migration as an alternative to irregular migration in the way that Germany has. Nor has the Netherlands taken the opportunity to make agreements with countries of origin concerning labour migration in conjunction with return.

At the time of this exploratory study, it was difficult to find figures on labour migration to the Netherlands. It was necessary to refer to a wide range of different sources, and figures for certain categories (such as the job search year for highly skilled persons, paid employment and self-employed persons) have not been made publicly available, for example through Eurostat, the Immigration Services Report or IND annual reports. This stands in sharp contrast to the detailed monthly figures available for asylum applications. The UWV, the body responsible for implementing the Foreign Nationals (Employment) Act, publishes monthly figures on the Unemployment Insurance Act, the Older Unemployed Persons Income Scheme Act, the Work and Income (Capacity for Work) Act, the Invalidity Insurance Act, the Invalidity Insurance (Self-Employed Persons) Act, the Disablement Assistance Act for Handicapped Young Persons, the Sickness Benefits Act and the Work and Care Act, but not the Foreign Nationals (Employment) Act.<sup>113</sup> The UWV annual report does include figures on applications and the processing of applications for work permits (UWV, 2019, p. 42). However, these figures do not give any insight into the number of migrant workers who have been issued with a work permit for the purposes of employment in the Netherlands, since some groups of foreign nationals who have come to the Netherlands on other grounds (such as asylum or study) do not have completely free access to the Dutch labour market and must apply for a work permit. Finally, Statistics Netherlands regularly publishes figures on labour migration, but uses definitions that result in other migrants and even some Dutch citizens with a migrant background being captured by the figures.<sup>114</sup>

The ACVZ believes that labour migration is a subject in which we should take a greater interest, in the interests of our economy. At present there are gaps in our knowledge on this subject, making it difficult to assess the advantages and disadvantages of labour migration. The ACVZ considers the SEO report, *'Dutch labour market shortages and potential labour supply from Africa and the Middle East: is there a match?'*, which was commissioned by the Ministry of Foreign Affairs and released in May 2019, to be a step in the right direction (SEO Amsterdam Economics, 2019). The social debate about legal labour migration is best served by an influx of factual, clearly-explained information and the transparent outlining of issues, opportunities, dilemmas and paths to solutions. The ACVZ therefore reiterates the key area for attention it identified in the *'Onwards to 2030'* futures study, namely the drafting of an annual comprehensive overview of all efforts and results in the broad area of migration (a *'State of Migration'*), and the publishing of monthly statistics that could inform the social debate on the subject (ACVZ,

2018), and refers to the adopted Groothuizen resolution, which was along the same lines.<sup>115</sup>

<sup>91</sup> See *Parliamentary Papers II*, 2017/18, 19,637, No. 2375.

<sup>92</sup> Labour migration (SER): Labour migration from outside the EU. In principle, member states can

determine for themselves how many people they will admit from outside the EU. However, a number of collective European rules apply with regard to entry, residence and the right to relocate to a different member state.

Labour mobility (SER): Cross-border labour mobility in the EU internal market. This concerns employees, entrepreneurs and their family members who take advantage of the freedom of movement in the EU for persons and/or services.

<sup>93</sup> See: <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/06/26/tk-kabinetsreactie-op-acvz-rapport-op-zoek-naar-veilige-r-landen>

<sup>94</sup> The High-Level Taskforce (HAT) on migration delegated the exploratory study announced by the government to the Ministry of Social Affairs and Employment, which is now exploring the options for limited study and labour migration within the framework of the Foreign Nationals (Employment) Act.

<sup>95</sup> UWV [Labour market forecast 2018-2019](#).

<sup>96</sup> This restriction is not separately recorded by the IND.

<sup>97</sup> When this data was supplied to Eurostat (Figure 10), 1,257 permits granted to au pairs were counted in the category 'other remunerated activities', and 360 permits for on-the-job training were not counted. In this table, the au pairs are not counted but people in on-the-job training are. This explains the differences in the totals.

<sup>98</sup> Art. 3.30 Aliens Decree.

<sup>99</sup> Bulletin of Acts and Decrees 2014.450. Art. 3.30(6) in conjunction with Art. 3.58(1) of the Aliens Decree 2000.

<sup>100</sup> *Parliamentary Papers II* 2015/16, 30,573 No. 133, p. 1-2.

<sup>101</sup> Bulletin of Acts and Decrees 2017, 134. Currently regulated by Article 1(d), (f) and (i) of the Foreign Nationals (Employment) (Implementation) Decree.

<sup>102</sup> <https://www.rijksoverheid.nl/actueel/nieuws/2019/06/03/kabinet-investeert-65-miljoen-euro-in-beleid-startups-en-scale-ups>

<sup>103</sup> Starting from 1 January 2019, for highly skilled migrants the following minimum gross monthly salary criteria applies, excluding 8% holiday pay: Highly skilled migrants under 30 years of age: 3,299 euros (2018: 3,229 euro) Highly skilled migrants aged 30 or over: 4,500 euros (2018: 4,404 euros)

<sup>104</sup> Art. 3.30(a) Aliens Decree

<sup>105</sup> Article 2(1) Foreign Nationals (Employment) Act.

<sup>106</sup> Article 8(1) Foreign Nationals (Employment) Act. This refers to the remuneration on which the social insurance assessment is based.

<sup>107</sup> *Parliamentary Papers II*, 2018/19, 29,544, No. 910.

<sup>108</sup> Art. 3.31(a) Aliens Decree; Art. 1(e) Foreign Nationals (Employment) (Implementation) Decree.

<sup>109</sup> Art. 3.39 Aliens Decree.

<sup>110</sup> Art. 3.40 Aliens Decree.

<sup>111</sup> Art. 3.42 Aliens Decree.

<sup>112</sup> The permit is granted for a maximum of one year and cannot be extended, Art. 3.58(1) Aliens Decree.

<sup>113</sup> <https://www.uwv.nl/overuwv/kennis-cijfers-en-onderzoek/index.aspx>

<sup>114</sup> On this point, see: <https://www.socialevraagstukken.nl/geen-838-duizend-maar-558-duizend-buitenlandse-werknemers-in-nederland/>

<sup>115</sup> *Parliamentary Papers II*, 2018-19 session, 35000 IV, No. 78



# Bibliography

- ACVZ. (2009). *Tijdelijke arbeidsmigratie 2015–2035*.
- ACVZ. (2015). *The strategic country approach to migration: between ambition and reality*.
- ACVZ. (2017). *Peaks and troughs: towards a sustainable system for the reception of asylum seekers and the housing and integration of asylum residence permit holders*.
- ACVZ. (2018). *Onwards to 2030. Migration: futures study*.
- ACVZ. (2018). *Search for safe(r) countries. Investigating the motivations of asylum seekers*.
- AWTI. (2017). *STI Diplomacy :Advancing the internationalisation of science, technology and innovation*.
- Bünthe, R., & Knödler, C. (2018). Einwanderungsgesetz: Plädoyer für weitere Ausdifferenzierung. *ZRP*, 102.
- CEPS. (2013). *The Global Economy in 2030: Trends and Strategies for Europe*. Brussels: European Union.
- Committee on Civil Liberties, Justice and Home Affairs. (2005). *Report on the links between legal and illegal migration and integration of migrants (2004/2137)*.
- Czaika, M., & Hobolth, M. (2016). Deflection into irregularity? The (un)intended effects of restrictive asylum and visa policies. *European Union Politics*, 345–365.
- De Beer, J., & De Valk, H. (2019). Feit of fictie: Kan de wetenschap bijdragen aan een toekomstbestendig migratiebeleid? *Journal Vreemdelingenrecht*, 39–44.
- De Lange, T. (2007). *Staat, Markt en Migrant*. The Hague: BJU.
- De Lange, T. (2013). De wet arbeid vreemdelingen herzien: arbeidsmarktregulering in tijden van crisis. *PS Documenta*, 907–920.
- De Lange, T. (2016). *Wezenlijk Nederlands belang. De toelating tot Nederland van ondernemers van buiten de EU*. Wolf Legal Publishers
- De Lange, T., Oomes, N., Gons, N., & Spanikova, V. (2019). *Labour Migration and Labour Market Integration of Migrants in the Netherlands: Barriers and Opportunities. Annex D to 'Dutch labour market shortages and potential labour supply from Africa and the Middle East'*.
- Della Torre, L., & De Lange, T. (2017). 'The importance of staying put': third country nationals' limited intra-EU mobility rights. *Journal of Ethnic and Migration Studies*, 1409–1424.
- Den Hertog, L. (2016). EU budgetary responses to the 'refugee crisis': reconfiguring the funding landscape. CEPS. *Liberty & Security in Europe papers No. 93*.
- Düvell, F. (2019). *Germany: Selected Migration Policies. Annex E to 'Dutch labour market shortages and potential labour supply from Africa and the Middle East'*.

- EMN. (2015). *Labour market shortages and migration. Determining labour market shortages and the need for labour migration of third-country nationals in the Netherlands.*
- European Commission. (2018). *Study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the EU, including resettlement.*
- Fundamental Rights Agency. (2015). *Legal entry channels to the EU for persons in need of international protection: a toolbox.*
- Griesbeck, M. (2014). Erleichterung der Fachkräftezuwanderung durch rechtliche Regelungen und flankierende Maßnahmen - ein Zwischenbilanz. *ZAR*, 181.
- Guild, E. (2018). Intra-Corporate Transferees: Between the Directive and the EU's International Obligations. In P. Minderhoud, & T. De Lange, *The Intra-Corporate Transferee Directive: Central Themes, Problem Issues and Implementation in Selected Member States.*
- Guild, E. (2019). The UN Global Compact for Safe, Orderly and Regular Migration: What Place for Human Rights? *International Journal of Refugee Law*, doi:10.1093:ijrl/eey049.
- HIT Foundation. (2011). *Pilot Circular Migration: Towards sensible migration policies. Lessons learned and recommendations.*
- Jennissen, R., Engbersen, G., Bokhorst, M., & Bovens, M. (2018). *The new diversity: increased ethnic heterogeneity in the Netherlands.* WRR.
- Ministry of Justice and Security. (2019). *Rapportage vreemdelingenketen 2018.*
- OECD. (2016). *Perspectives on Global Development 2017: International migration in a shifting world.* OECD Publishing.
- Regioplan. (2018). *Aantrekkelijkheid van Nederland voor kennismigranten. Een onderzoek naar hoe aantrekkelijk kennismigranten Nederland vinden als potentieel vestigings- en carrière land.*
- ROA. (2017). *De arbeidsmarkt naar opleiding en beroep tot 2022.*
- Roelofs, S. (2004). A Pandora's box for the admission of foreign nationals. Migrants' rights.
- Roelofs, S. (2017/1). Een doos van Pandora voor de toelating van vreemdelingen. *A&MR.*
- Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR). (2018). *Steuern, was zu steuern ist: Was können Einwanderungs- und Integrationsgesetze leisten? Jahresgutachten 2018.*
- Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR). (2018). *Alternativen zum Asylantrag? Legale migrationswege nach Deutschland für Drittstaatsangehörige ohne Schutzperspektive.*
- SCP. (2016). *De toekomst tegemoet. Leren, werken, zorgen, samenleven en consumeren in het Nederland van later.*
- SEO Amsterdam Economics. (2019). *Dutch labour market shortages and potential labour supply from Africa and the Middle East: is there a match?*
- UWV. (2018). *Arbeitsmarktprognose 2018–2019.*
- UWV. (2018). Moeilijk vervulbare vacatures: overzicht van beroepen.
- UWV. (2019). *Kwantitatieve informatie 2018.*

- Van den Berge, W., Vlasblom, J. D., Ebregt, J., Putman, L., Zweerink, J., & De Graaf-Zijl, M. (2018). *Verdringing op de arbeidsmarkt. Beschrijving en believing*. SCP; CPB.
- World Bank Group. (2015). *Global Economic Prospects, having Fiscal Space and Using it*.
- WRR. (2008). *Innovatie vernieuwd. Opening in viervoud*
- WRR. (2012). *In betere banen. De toekomst van arbeidsmigratie in de Europese Unie*.
- Zwaan, K., Terlouw, A., Strik, T., Oosterom-Staples, H., De Lange, T., De Hart, B., Fernhout, R. (2018). *Nederlands migratierecht*. Boom Juridisch.

# Description of figures

Table of figure 1. Workers in the Netherlands by Dutch, EU and non-EU nationality, 2017 (x1000, as a percentage)

Nationality	Number of employees	Percentage
Dutch	7.524	93%
EU excluding Dutch	426	5%
Countries outside the EU	132	2%

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Table of figure 7. Average hourly wage in euros of Dutch citizens, EU citizens from older member states (EU-15), EU citizens from newer member states (other EU countries) and third-country nationals

Nationality	Average wage per hour
Dutch	22,52
EU-15 excluding Dutch	25,51
Other EU countries	12,83
Countries outside the EU	21,76

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Table of figure 9. Residence permits granted by purpose of stay, in the Netherlands and EU+ countries, 2008–2017

## 1. The Netherlands

Year	Family	Study	Work	Int. protection	Nat. protection	Other	Total
2008	24,092	8,850	11,613	6,088	0	11,946	62,589
2009	23,077	9,944	10,433	4,473	4,017	4,544	56,488
2010	21,560	10,510	10,448	5,301	3,702	2,952	54,473
2011	22,327	10,701	10,961	6,039	2,698	2,348	55,074
2012	21,160	10,747	10,921	4,314	1,925	2,095	51,162
2013	25,376	12,878	12,673	4,696	5,089	4,027	64,739
2014	22,115	12,746	11,780	12,466	6,336	4,126	69,569

2015	21,683	15,263	13,308	16,896	14,328	5,213	86,691
2016	24,962	16,317	14,621	21,988	12,379	5,486	95,753
2017	30,968	17,239	17,744	10,564	15,402	5,478	97,395

## 2. EU+

Year	Family	Study	Work	Int. Protection	Nat. Protection	Other	Total
2008	696,920	458,637	794,312	78,481	0	526,648	2,554,998
2009	674,123	507,625	655,356	68,945	34,342	431,697	2,372,088
2010	784,606	514,052	797,894	61,503	33,762	308,878	2,500,695
2011	730,792	497,035	531,560	64,258	34,777	346,044	2,204,466
2012	701,961	469,353	500,046	81,710	42,144	375,170	2,170,384
2013	703,080	479,608	555,694	103,473	42,022	551,238	2,435,115
2014	708,845	490,212	594,193	136,493	54,877	412,224	2,396,844
2015	792,053	540,491	725,838	146,058	46,285	445,037	2,695,762
2016	816,082	514,143	872,172	433,848	59,997	410,923	3,107,165
2017	864,209	545,364	1,027,741	390,978	73,722	309,410	3,211,424

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*Table of figure 10. Residence permits granted for employment reasons in the Netherlands and EU+ countries, by legal basis, 2008–2017*

### 1. The Netherlands

Year	EU blue card	Highly skilled workers	Researchers	Seasonal Workers	Other remunerated activities	Total
2008	:	6,411	864	0	4,338	11,613
2009	:	4,895	1,305	0	4,233	10,433
2010	:	5,531	1,485	0	3,432	10,448
2011	0	5,594	1,616	0	3,751	10,961
2012	1	5,514	1,689	0	3,717	10,921
2013	3	7,046	2,363	0	3,261	12,673
2014	8	7,123	2,310	0	2,339	11,780
2015	20	7,909	2,418	0	2,961	13,308
2016	42	9,084	2,519	0	2,976	14,621
2017	58	11,252	2,751	0	3,683	17,744

### 2. EU+

Year	EU blue card	Highly skilled workers	Researchers	Seasonal Workers	Other remunerated activities	Total
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2008	0	26,158	4,759	57,572	690,286	794,312
2009	0	40,482	6,659	56,565	546,159	655,356
2010	0	41,321	7,235	121,358	627,681	797,894
2011	156	39,172	7,642	29,661	454,929	531,560
2012	1,646	36,175	12,683	22,095	416,172	500,046
2013	5,096	35,001	10,470	19,160	472,583	555,694
2014	5,825	37,853	10,249	190,386	337,104	594,193
2015	4,908	37,321	10,952	335,477	327,011	725,838
2016	8,988	37,749	10,978	460,367	344,057	872,172
2017	11,554	41,883	12,477	542,595	409,199	1,027,741

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*Description of figure 11. Structure of labour migration law in Germany*

### **Blue Card (19a AufenthG)**

Academic diploma + employment contract + a specified minimum salary

- Salary-specific supplement: Option for people with an academic diploma and a salary lower than the Blue Card salary.
- Work-specific supplement: Optional job search year for highly qualified workers

### **Opportunities for specific occupations**

- Scientists (19 AufenthG)
- Researchers (20 AufenthG)
- a.o. sportspeople and cultural occupations (22-25 BeschV)

**Opportunities for citizens of specific countries**, a.o Western-Balkan states (26 BESCHV) and ethnic Germans (28 BeschV)

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*Table of figure 14: Labour market tension 2008–2019*

Year	Quarter	Number of vacancies per 100 unemployed
2008	Q1	77
2008	Q2	77
2008	Q3	79
2008	Q4	62
2009	Q1	46
2009	Q2	35
2009	Q3	33

2009	Q4	30
2010	Q1	26
2010	Q2	27
2010	Q3	29
2010	Q4	30
2011	Q1	32
2011	Q2	33
2011	Q3	31
2011	Q4	26
2012	Q1	24
2012	Q2	22
2012	Q3	20
2012	Q4	18
2013	Q1	16
2013	Q2	14
2013	Q3	14
2013	Q4	14
2014	Q1	15
2014	Q2	16
2014	Q3	18
2014	Q4	19
2015	Q1	20
2015	Q2	21
2015	Q3	22
2015	Q4	24
2016	Q1	26
2016	Q2	28
2016	Q3	31
2016	Q4	35
2017	Q1	39
2017	Q2	45
2017	Q3	50
2017	Q4	57
2018	Q1	64
2018	Q2	71
2018	Q3	75
2018	Q4	80
2019	Q1	88

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*Table of figure 15: Number of residence permits granted in the Netherlands for 'other work', 2008–2017*

Year	Number
2008	4,338
2009	4,233
2010	3,432
2011	3,751
2012	3,717
2013	3,261
2014	2,339
2015	2,961
2016	2,976
2017	3,683

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