



EMN - European Migration Network
Dutch National Contact Point

Small Scale Study III

Third country highly- skilled migrants in the EU

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Entry and residence conditions
in The Netherlands



Immigratie- en Naturalisatiedienst

The European Migration Network (EMN) is an initiative of the European Commission. It's objective is to provide the Community, its Member States and in the longer term the general public, with objective, reliable and comparable information on the migration and asylum situation on a European and national level.

The EMN's mission is to facilitate communication between decision-makers, government institutions, non-governmental organisations and the scientific community by bringing together people who deal with migration and asylum on a professional basis.

To that end, the EMN has a network of National Contact Points (NCPs), who on their part, have set up networks of national partners. In The Netherlands, the designated NCP is the department INDIAC (Immigration and Naturalisation Service Information and Analysis Centre) of the Dutch Immigration and Naturalisation Service (IND).

Contact

IND / INDIAC (National Contact Point for the European Migration Network)

P.O. Box 5800

2280 HV Rijswijk (The Netherlands)

Tel. +3170 779 4897

Fax +3170 779 4397

E-mail: emn@ind.minjus.nl

www.european-migration-network.org

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List of acronyms and abbreviations

AWVN	Association of Business and Trade Organisations
CAO	Collective Labour Agreement
CBS	Statistics Netherlands
GBA	Municipal personal records database
CWI	Centre for Work and Income
HBO	Higher Vocational Education
IND	Immigration and Naturalisation Service
ISCO-88	International Standard Classification of Occupations-88
MVV	Authorisation for Temporary Stay
TWV	Work permit
Vw 2000	Aliens Act 2000
Vb 2000	Aliens Decree 2000
Vc 2000	Aliens Act implementation guidelines 2000
VNO-NCW	The Confederation of Netherlands Industry and Employers
VSNU	Association of Universities in The Netherlands
Wav	Foreign Nationals (Employment) Act
WIA	Work and Income According to Work Capacity Act
WO	Academic education

1. Management summary

The study entitled 'Third country highly-skilled migrants in the EU; Entry and residence conditions in The Netherlands' was performed by, amongst others, the Dutch national contactpoint of the European Migration Network by order of the European Commission. Using the input of national reports provided by the individual participating Member States a synthesis report will be formulated. This will clarify the European framework that can be used by the European Commission as a foundation on which to base the further development of European policy in this field.

Chapter 2 provides the main outlines of an overall picture of the position of highly-skilled migrants in The Netherlands. After the cabinet took the standpoint to improve the Dutch knowledge climate, followed by the recommendations of the so-called Innovation Platform¹, the knowledge migrant scheme was established, which provides for the entry and residence of knowledge migrants. This knowledge migrant scheme came into effect on 1 October 2004. For this scheme, it was decided to use a salary criterion to define which migrants can avail themselves of the scheme. As a rule, no other additional criterion, such as education or work experience, is used. At this moment, the Dutch admission policy for knowledge migrants is typified by a demand-driven system. As yet, this system will be maintained.

The methodology is described in chapter 3. The information collected for the preparation of this report is based mainly on legislation and regulations, available literature and interim evaluation reports. Next to these information sources, there is ample material that reflects a public debate with which different point of views are discussed. Furthermore, the statistical information that was requested in the specifications was largely unavailable.

Chapter 4 describes the legislation and regulations in respect of knowledge migrants and looks at the entry and residence conditions. An important difference compared to other employment migration is that knowledge migrants no longer need a work permit (tewerkstellingsvergunning or TWV). The objective of this scheme is also to finalise residence applications within a two-week period, the so called accelerated procedure, which is not applicable for the applications of other labour migrants. This chapter also looks at the procedural aspects of the knowledge migrant scheme: from the initial application through to the issuance of a residence permit.

The attractiveness of The Netherlands to knowledge migrants is described in chapter 5. As an example, the knowledge migrant scheme includes a stipulation that the accelerated two-week procedure also applies to family members if they meet the statutory and procedural conditions, and their family members are free to operate within the Dutch employment market. Knowledge migrants can also take advantage of a special cost reimbursement arrangement: the Tax and Customs Administration's so-called 30% rule. This refers to a tax-free reimbursement of 30% of the salary from the current employment, including the reimbursement itself.

With regard to entry and residence, knowledge migrants and their family members do not have to meet additional criteria such as language requirements and integration obligations, unlike migrants who apply for a residence visa under the regular family reunification policy.

Foreign students have the option of finding a job that qualifies them as a knowledge migrant within three months of completing their studies in The Netherlands, that would enable them to continue to reside in The Netherlands if all requirements are met. This means that graduates who would normally be obliged to apply for an MVV do not have to return to their country of origin first to apply for an MVV.

For the category for employment migrants who can make a contribution to the innovative ability and knowledge economy of The Netherlands, but who cannot refer to the knowledge migrant scheme, it remains to be seen how to attract them to The Netherlands.

Currently, The Netherlands has no bilateral agreements with third countries in respect of highly-skilled migrants. Neither are there collaborations in place with other EU countries for the recruitment of knowledge migrants.

¹ The Balkenende II Cabinet established the Innovation Platform for the duration of this Cabinet and instructed it to develop proposals for increasing the innovative ability of The Netherlands.

Chapter 6 deals with the rights and obligations of highly-skilled migrants. Contrary to 'regular' employment migrants, knowledge migrants can renew their residence permit for a longer period, namely up to a maximum of five years, depending on the duration of the employment contract. The same applies to the family members of knowledge migrants. The Netherlands is currently also evaluating the ways in which brain drain can be combated and 'brain circulation' can be stimulated. Concrete plans related to knowledge migrants are not in place at this time.

The termination of an employment contract does not mean, by definition, that a knowledge migrant has to leave The Netherlands. If a subsequent employment contract meets the conditions, the holder may continue to reside in The Netherlands. In this way, the knowledge migrant scheme offers a number of options to extend residency if the knowledge migrant's circumstances change, even in the event of occupational disability and unemployment, for example.

Chapter 7 describes the cumulative experience with the knowledge migrant scheme to date. For instance, it has been shown that for the majority of applications the accelerated procedure with the intended completion period of two weeks is not accomplished, because the necessary information is not provided completely. Meanwhile, the IND Office for labour and highly-skilled migrants has taken several actions in order to receive the applications with the complete documents. There is also a need for improved collaboration between the co-operating authorities (amongst others, the IND, the municipalities and the Tax and Customs Administration) to streamline the procedure, from the initial application through to the issuing of the residence permit.

Not the entire target group can avail itself of the current scheme. For instance, migrants who do not meet the salary criterion cannot establish themselves in The Netherlands, although they could potentially contribute to the Dutch knowledge economy. Conversely, the current scheme also allows for migrants who do not, by definition, form part of the intended target group.

The knowledge migrant scheme has aspects of preventive checks. These are now mainly based on the employer's declaration and other documents needed that have to be provided. In the future, this aspect of preventive checks will be elaborated further and will be given legal base than it is the case at this moment. The repressive checks consists of checks at the companies concerned that are executed by the Labour inspection on the basis of risk profiles that are drawn up by the IND Office for labour and highly-skilled migrants. As yet, it has not been established that the knowledge migrant scheme has been frequently abused.

A number of improvements have been introduced to the knowledge migrant scheme in order to meet the needs of knowledge migrant. For general questions and questions relating to their file, knowledge migrants can use specially created e-mail addresses, as well as the normal options of written or telephone contact. The IND also plans to have the IND Office for labour and highly-skilled migrants deal with the applications of family members travelling to The Netherlands after the principal migrant by the middle of 2007, rather than distributing the handling of the residence application and the substantive processing between the municipality and the IND respectively.

In The Netherlands, a breakdown of the total labour force into the ISCO-88 occupational classifications is available, but no distinction is made between migrants and non-migrants. Because of this, a complete picture of the position of highly-skilled migrants related to the different occupational sectors and to the Dutch (highly-skilled) labour force cannot be provided.

Chapter 8 does elaborate on quantitative information on the knowledge migrant scheme. It shows that the knowledge migrant scheme is used by companies from various labour market sectors. The sector "IT and other business services" run in front, followed by the sectors "Industry", "Academic education" and "Financial Services". The year 2006 shows an increase to 2005 in nearly all labour market sectors of the number of residence permits that were granted under the restriction "residence as a knowledge migrant". The top three countries where migrants are coming from, who made use of the knowledge migrant scheme, are India, the United States of America and Japan.

The main conclusions drawn in chapter 9 are as follows:

- In order to remove obstacles that have become apparent since the implementation of the knowledge migrant scheme, solutions are being sought in the form of improvements to information provision and the operational structure, or by means of policy changes.

- It is not possible to give an unequivocal answer to the question whether the knowledge migrant scheme is currently reaching the intended target group. The prevalent opinion of the respondents who have cooperated on an interim evaluation of the knowledge migrant scheme that was executed at the end of 2005 is that it does provide for an improvement of the climate for settlement in The Netherlands.
- The current demand-driven system of the knowledge migrant scheme does not cover all the target groups that may play a catalysing role in optimising the knowledge climate. Migrant workers who do not meet the salary criterion but who can contribute to the knowledge climate are excluded from the current knowledge migrant scheme. It is yet to be seen how to attract this category of migrant workers to The Netherlands.

2. Introduction: highly-skilled migrants in The Netherlands

Objective of the small scale study 'Entry and residence conditions for highly-skilled migrants from third countries in the EU'

The objective of this study is to clarify the framework in which highly-skilled migrants move around the various EU member states. To this effect the study will focus on, among other aspects, legislation and regulations and the attractiveness of The Netherlands to highly-skilled migrants. The rights and obligations of highly-skilled migrants will also be discussed. Finally the available information obtained from previous experiences will be clarified. The information resulting from this small-scale study can be used by the European Commission for the further development of a European Directive for the entry and residence of this target group.

The 'Third country highly-skilled migrants in the EU; Entry and residence conditions in The Netherlands' study was performed by the European Migration Network (EMN) by order of the European Commission. A number of member states that participate in the EMN have submitted a contribution to this study based on their individual national context. By means of a synthesis report that is based on these national reports an analysis will be made of the differences and similarities in a European context.

Need for highly-skilled migrants

In the coming years the employment market will be characterised by the economic recovery. The employment market forecasts by education and profession are related to a number of expectations with regard to a range of indicators for the period 2005 - 2010². The growth in employment and the size of the workforce, among others, are some of these indicators. Expectations are that from 2006 onwards, employment will increase significantly and unemployment will decrease. This involves an average annual employment growth in excess of 70,000. The employment growth is expected to be greater for those with a higher level of education than for those with a lower level of education, because the sectors and professions in which these higher-educated people work will grow faster and because the upgrading³ of the qualification requirements will continue. The predicted growth in employment relates to those in possession of higher vocational qualifications in economic or paramedical disciplines. With regard to those with a higher academic education, an increase in the demand⁴ is expected particularly for those with higher education qualifications in medical disciplines, language & literature and in socio-cultural disciplines. As far as the workforce itself is concerned, the replacement demand⁵ plays a crucial role. Two important developments may be distinguished in this respect. Firstly, we are witnessing an increasing ageing of the workforce. At the same time the trend of the growing participation level offsets this ageing of the workforce. For the period up to 2010 this second factor will play an important role. However, ultimately the issue of the ageing of the workforce will have a significantly greater impact on the need for replacement than the increase in labour participation. The reason for this is that the ageing of the workforce will increase steadily whereas the increase in labour participation can only offer a limited solution for a limited period of time. The number of jobs will therefore grow more quickly in the years to come than the size of the workforce⁶.

The predicted shortage of highly-skilled workers will impede the development towards a knowledge economy. One possible solution to this problem involves attracting the workers the country needs from

² Researchcentrum voor Onderwijs en Arbeidsmarkt (Research Centre for Education and the Employment Market), 'De arbeidsmarkt naar opleiding en beroep tot 2010' (The employment market by education and profession until 2010), Faculty of Economic Sciences and Business Management, University of Maastricht, Maastricht, November 2005.

³ Employers demand higher levels of education as a result of the increasing complexity of the work.

⁴ The demand for new workers as a result of the growth in the number of jobs.

⁵ The demand for new workers as a result of vacancies created by people retiring, having an occupational disability or (temporarily) withdrawing from the employment market.

⁶ CWI, CWI (Centre for Work and Income) Employment market forecast 2005-2010, CWI Communication, Amsterdam.

abroad. This is one of the reasons that prompted the cabinet to promote the admission of knowledge migrants⁷. In this context, knowledge migrants are defined as being anyone with a higher vocational or higher academic qualification and all others who play a catalysing role in innovation processes.

The rationale behind the knowledge migrant scheme

The position of The Netherlands as a knowledge economy, in which the development and use of high-quality knowledge plays a central role, has been on the political agenda⁸ since the agreements that were reached in this respect in the European Councils of Barcelona and Lisbon. During these Councils it was decided to make the European Union the most dynamic knowledge economy in the world by 2010 and it is the ambition of the Dutch government to be one of the front-runners within the EU⁹. This ambition, coupled with the aforementioned need for highly-skilled personnel, gave rise to one of the solutions: that of knowledge migration. With the introduction of the knowledge migrant scheme the government intends to remove the existing obstacles in the legislation and regulations as much as possible, and to smooth the way for the necessary talent to come to The Netherlands.

Relaxation of the legislation and regulations for highly-skilled migrants

Until recently The Netherlands did not have specific legislation and regulations aimed at easing the entry conditions for highly-skilled migrants. In order to be granted entry and residence a potential knowledge migrant had to deal with a variety of Ministries and agencies. The various admission procedures were also insufficiently coordinated and streamlined. In the autumn of 2003, the Innovation Platform¹⁰ recommended that the obstacles that existed at that time should be eliminated in order to increase the competitive power of The Netherlands in the area of attracting knowledge migrants. The government and the enforcing agencies had to make efforts to modernise the entry procedures. One of the solutions was to establish a single office, a single procedure and a single document specifically for all knowledge migrants. A reduction in the fees for this target group and improving the information provision and the access to this information would also make a positive contribution.

The recommendations of the Innovation Platform were further defined in a government position on the admission of knowledge migrants, after which the knowledge migrant scheme came into effect on 1 October 2004¹¹.

Definition of the term 'knowledge migrant'

To define what constitutes a knowledge migrant, a single criterion was selected: the salary criterion. The salary criterion for knowledge migrants is revised every calendar year effective from 1 January, using the percentage-based changes of the most recent index figure for CAO (Collective Labour Agreement) salaries, published by Statistics Netherlands. The 2006 salary criterion for knowledge migrants aged 30 and over was € 45,495 and for 2007 it has been set at €46,541. The salary criterion for knowledge migrants under the age of 30 was €33,363 in 2006 and for 2007 it has been set at € 34,130. Chapter 4 will examine this in greater depth¹².

It should be mentioned that the Dutch definition of a knowledge migrant is not similar to the definition that was established in the specifications for this study. A labour migrant is defined as a knowledge migrant if he meets the salary criterion in particular, while in the specifications the ISCO classification was chosen at which a migrant worker is considered a highly-skilled migrant if he can be categorised into the first three major groups of the ISCO-88 classification¹³ – leaving the level of income aside.

⁷ Ministry of Justice, Government Position on Knowledge Migrants, 25 May 2004.

⁸ Ministry of Social Affairs and Employment, Press release Council of Ministers, 26 April 2002, No. 02/013

⁹ Ministry of Justice, Government Position on Knowledge Migrants, 25 May 2004.

¹⁰ The Balkenende II Cabinet established the Innovation Platform for the duration of this Cabinet and instructed it to develop proposals for increasing the innovative ability of The Netherlands.

¹¹ Bulletin of Acts and Decrees of the Kingdom of The Netherlands, 2004 series, no. 481, 30 September 2004.

¹² VC 2000, part B/15.3, supplement February 2006

¹³ The ISCO Major Groups 1-3 are: 1) Legislators, senior officials and managers; 2) Professionals; 3) Technicians and associate professionals.

In the knowledge migrant scheme, the Dutch government opted for the salary criterion because the salary of an employee reflects his value in the Dutch employment market. In part this value is determined by the employment migrant's education. However, the government has refrained from imposing the condition that the knowledge migrant must have a certain level of education, because it feels that educational level as such is not a determining factor for the productivity and innovative ability of the employment migrant¹⁴.

Advantageous taxation arrangement

In addition to relaxing the admission policy for knowledge migrants, the Tax and Customs Administration has its so-called 30% rule for employment migrants, which include knowledge migrants. This rule relates to 30% of the salary from the current employment, including the reimbursement itself, that can be paid to cover extra-territorial costs. The assessment of whether a knowledge migrant meets the requirements to be eligible for this rule is made by the Tax and Customs Administration. Chapter 6 will examine this in greater depth.

Dutch standpoint on an EU-wide regulation¹⁵

The Netherlands supports the European Commission's starting point that a common employment migration policy can contribute to improved control of the migration flows. After all, a common employment migration policy would have the objective of contributing to the sensible management of the migration issue. This not only means a sufficiently restrictive, demand-driven approach at a European level, but also sufficient room for national member states to regulate the admission of employment migrants, in line with developments in their national economy and employment market. The Netherlands supports the Commission in its general starting point that an EU policy may be welcomed that would maximise the positive effects of employment migration for the EU as a whole, counteract the negative spill-over effects between member states and jointly combat illegal immigration or illegal employment.

Nonetheless, migration must not be a starting point for remedying the problem of the ageing of the population. A Community policy would have to focus on temporary employment migration. The Netherlands is of the opinion that, certainly for lower-educated employment migrants, it is advisable for the emphasis to remain on national powers. After all, considerable regional differences also exist with regard to the employment market situation and economic requirements. A demand-driven policy is the main guideline.

The EU is in a position to create separate frameworks for specific categories of employment migrants, whereby an emphasis on highly-skilled migrants would be desirable.

Proposed changes to the admission policy

The memorandum entitled 'Towards a modern migration policy'¹⁶ sketches the main outlines of a new regular admission policy. The new admission model offers a set of tools that make it possible to quickly make and implement flexible choices relating to the admission of, among others, employment migrants. The further practical implementation of this model will take place once a political consideration has been made, based upon a problem and risk analysis and upon an understanding of the (financial) consequences.

After having discussed the memorandum with the Lower House¹⁷, the government will work closely with the relevant authorities to 'translate' these outlines into legislation and regulations and into new entry procedures.

¹⁴ Publication in the Bulletin of Acts and Decrees of the Kingdom of The Netherlands, 2004 series, no. 481, 30 September 2004, explanatory memorandum.

¹⁵ Ministry of Justice, Groenboek over het beheer van de economische integratie, een EU-aanpak (Green paper on the management of the economic integration, an EU approach), 8 April 2005, p. 6

¹⁶ Ministry of Justice, Naar een modern migratiebeleid (Towards a modern migration policy), 2006, p. 14

¹⁷ This discussion has taken place in the fall of 2006.

As part of the general policy for highly-qualified employment migrants, the cabinet will look at the possibilities to enable the residence of talented migrants in The Netherlands other than highly-skilled migrants, such as migrants who will develop cultural activities. Chapter 5 will enter into a more in-depth examination of the cabinet's plan for revisions.

Code of conduct in recruitment activities

The existing regulations do not contain an explicit code of conduct for attracting highly-skilled migrants¹⁸. Employers who want to participate in the knowledge migrant scheme do not undergo a comprehensive pre-evaluation, on the basis of which they may be selected or excluded. It will be necessary to examine ways in which the reliability of employers can be evaluated more effectively, before they are admitted to the knowledge migrant scheme.

¹⁸ This applies for the period until at least 1 January 2007.

3. Methodology

Definition of a highly-skilled migrant

To define what constitutes a highly-skilled migrant the EMN has looked to the ISCO-88 professional classification. As a starting point it was decided to include the 'Major Groups 1 - 3', namely the group of 'legislators, senior officials and managers; professionals; technicians and associate professionals'. However, to define 'knowledge migrant', The Netherlands has chosen to use the salary criterion. This definition thus does not correspond with the ISCO-88 classification of occupational sectors.

Sources

Firstly, to obtain the required material, the existing legislation and regulations in the area of knowledge migrants were used as a primary source. Secondly, public government documents, such as parliamentary documents and answers to questions from Members of Parliament were also included. In this context, the Dutch green paper on the management of the economic integration, in which the possibilities for an EU-wide approach are explored, was also used¹⁹. In addition, the report "Monitor Kennismigranten (Knowledge Migrants)" of the Immigration and Naturalisation Service Information and Analysis Centre was referred to for a description of particularly the cumulative experience with the knowledge migrant scheme.

Thirdly, the Internet in particular was used to reflect opinions of organisations (VSNU (Association of Universities in The Netherlands), VNO-NCW (Confederation of Dutch Industry and Employers) and AWWN (Association of Businesses and Trade Organisations)) about the knowledge migrant scheme in a social context. The online trade journals of these organisations in which, among other issues, companies talk about this scheme, were also consulted.

Because the nature of the subject matter is not particularly politically sensitive, no dilemmas occurred in the selection of the sources when collecting and selecting information.

Information providers

For the completion of this small scale study the majority of the information used was provided by the Immigration and Naturalisation Service (IND) of the Ministry of Justice, particularly by the IND Office for labour and highly-skilled migrants that is responsible for the execution of the knowledge migrant scheme and the Policy Implementation Department which has the policy matters in its portfolio. Input was also provided by the Directorate for Aliens Policy of the Ministry of Justice in respect of specifically EU-related matters. Finally, upon request Statistics Netherlands made the figures on outstanding vacancies available.

Obstacles

The first discrepancy between the specifications and the Dutch information lies in the definition of what constitutes a highly-skilled migrant. Due to the fact that The Netherlands uses an income-related criterion only, it is not (yet) possible to determine in advance from the IND statistical data in what professional sector this target group is employed. However, Statistics Netherlands does generate lists by ISCO-88 classification, but these lists are not classified into migrants, non-migrants and migrants by country of origin. This means that the requested statistical information as stipulated in the specifications cannot be supplied.

However, statistical data is provided on to the knowledge migrant scheme which show the country of origin of the knowledge migrants and the occupational sector in which they are active.

¹⁹ Ministry of Justice, *Reactie op het Groenboek over het beheer van de economische integratie, een EU-aanpak* (Reaction on the Green paper on the management of the economic integration, an EU approach), Ministry of Justice, The Hague, 8 April 2005

4. Entry and residence conditions for knowledge migrants in The Netherlands

In The Netherlands, the entry and residence conditions for foreign nationals are laid down in the Aliens Act 2000 (Vw 2000). The Aliens Act is further defined in lower level legislation and regulations such as the Aliens Decree 2000 (Vb 2000), the Aliens Act implementation guidelines 2000 (Vc 2000), and the Regulations on Aliens 2000. In addition to the general conditions for the granting of a temporary residence permit a number of special conditions are attached to the granting of a residence permit with the restriction 'residence as a knowledge migrant', such as the submission of an employer's declaration and meeting the salary criterion.

This chapter further clarifies the national legislation and regulations in respect of the admission and residence of labour migrants in general and knowledge migrants in particular. The knowledge migrant scheme and the procedural aspects involved in being eligible to use this scheme are also described.

4.1 Regular labour migration

The decision on the granting of a residence permit is made on the basis of the Vw 2000 and the resulting lower-level legislation and regulations. A residence permit is granted pursuant to Article 14 of the Vw 2000, subject to restrictions that relate to the purpose for which the residence is granted. These residence purposes are listed in the Aliens Decree 2000. The main employment-related residence purposes, other than residence as a knowledge migrant, are 'self-employment' and 'work as an employee'.

Self-employment

Migrants who wish to establish themselves in The Netherlands as an independent entrepreneur can apply to the IND for a residence permit with a 'self-employment' restriction. No work permit is needed for self-employment²⁰.

In addition to a number of more general conditions with which the foreign national must comply, such as being in possession of a valid border-crossing document and having sufficient financial means of support, a foreign national who wants to establish himself in The Netherlands as an independent entrepreneur must meet the following specific criteria:

1. The migrant must comply with the requirements that apply to those practising the profession in question. If there are special competency requirements for the profession the foreign national wants to practise as an independent entrepreneur, the foreign national must be able to demonstrate that he meets these competency requirements.
2. The business activity must serve a material Dutch interest. In order to determine whether the business activity serves a material Dutch interest, the opinion of the Ministry of Economic Affairs is usually sought. Conditions that generally must be met in this context are that:
 - the business activity must have a clear innovative value, in other words, it must add something positive to the Dutch economy;
 - the business activity must not disrupt competition in the sense that healthy market competition is negatively affected.

Work as an employee

Migrants who come to The Netherlands with the objective of working for an employer can apply for a residence permit with a 'work as an employee' restriction. To obtain a residence permit subject to this restriction the foreign national must have access to the labour market in accordance with the stipulations of the Wav, either because his employer has been granted a work permit or because he/she is exempt from having to have a work permit.

²⁰ Article 3 of the Foreign Nationals (Employment) Act (Wav)

In addition, the applicant must meet a number of general conditions, such as being in possession of a valid border-crossing document and having sufficient financial means of support. A residence permit with a 'work as an employee' restriction is granted for a maximum of 3 years and can be renewed annually after this.

4.2 The Dutch knowledge migrant scheme

*Knowledge migrants*²¹

As explained earlier, a salary criterion is used in order to define what constitutes a knowledge migrant. The salary criterion for knowledge migrants is revised every calendar year, with effect from 1 January, using the percentage-based changes of the most recent index figure for CAO (Collective Labour Agreement) salaries, published by Statistics Netherlands²². The index figure for 2006 is 1.1%. The 2006 salary criterion for knowledge migrants aged 30 and over was € 45,495 and for 2007 it has been set at €46,541. The salary criterion for knowledge migrants under the age of 30 was € 33,363 in 2006 and will be €34,130 for 2007.

After age 30, a foreign national who belongs to last mentioned category can still be classed as a knowledge migrant, as long as the knowledge migrant is employed by the same employer and earns a gross annual salary that is at least equal to the applicable salary criterion for knowledge migrants under the age of 30.

Formerly, candidates - irrespective of their age - who were studying for a doctorate and were employed by educational research institutes, as well as university lecturers and those in a post-doctoral programme under the age of 30 were classed as knowledge migrants without having to meet the salary criterion²³.

Foreign nationals who meet the salary criterion or who are eligible because they are doctoral candidates, are university lecturers or are in a post-doctoral programme and are under the age of 30 may be granted residence as a knowledge migrant, provided the employer they will be working for on the basis of a signed declaration, has been admitted to the knowledge migrant scheme²⁴.

This category has now been broadened; foreign nationals employed in The Netherlands in the context of conducting academic research²⁵ are now classed as knowledge migrants. Physicians training to be specialists have also been added to the group of knowledge migrants who do not have to meet the salary criterion.

Apart from the general conditions²⁶ and the salary criterion, the knowledge migrant scheme does not impose any other specific criteria. For instance, there are no requirements relating to knowledge and mastery of the Dutch language.

Nor is the scheme subject to any quotas. The demand-driven character of the knowledge migrant scheme does not impose a ceiling on the numbers of highly-skilled migrants that can be attracted to come to The Netherlands. The scheme does therefore not have advance selection procedures in place that give priority to a certain professional sector.

Neither does the knowledge migrant scheme incorporate a selection procedure in which, for instance, employers would have a say in the selection of and preference for certain groups of highly-skilled migrants from specific sectors.

²¹ Vc 2000, part B/15.3, supplement Feb. 2006

²² in accordance with the stipulations in Article 1d, third paragraph, of the Foreign Nationals (Employment) Act Implementation Decree

²³ as laid down in Directive 2005/71/EG of the Council of 12 October 2005, regarding a specific procedure for the admission of subjects of third countries with a view to scientific research.

²⁴ Vc2000, part B15/4.1, supplement Feb. 2006

²⁵ Ministry of Justice, Verruiming kennismigrantenregeling (Broadening of the knowledge migrant arrangement), press release 4 December 2006.

²⁶ such as possessing a valid border-crossing document and not having a criminal past

Contrary to labour migrants working as employees, knowledge migrants are permitted to work without having a work permit²⁷.

EU nationals and the knowledge migrant scheme

The knowledge migrant scheme operates by means of a demand-driven system whereby, in this context, no preference is given to subjects from EU member states. However, EU nationals derive their residence entitlement directly from the EC Treaty and the resulting Directives and Regulations. The residence entitlement of a Community subject is created and terminated by operation of law.

4.3 The procedural aspects of the knowledge migrant scheme²⁸

Applications for entry and residence

Based on their nationality foreign nationals and therefore also knowledge migrants may be classified into a category that must have a Authorisation for Temporary Stay (MVV)²⁹ when submitting an application for a residence permit or into a category that is exempt from the MVV requirement³⁰.

The first category must apply for the MVV at the Dutch diplomatic or consular representation abroad. After entering The Netherlands with this MVV, the knowledge migrant can apply for a residence permit within 3 months.

Knowledge migrants who are exempt from the MVV requirement can enter The Netherlands without having an MVV and can apply to the IND for a residence permit with a 'residence as a knowledge migrant' restriction immediately after their arrival.

These migrants do have the option of voluntarily applying for an MVV at the Dutch diplomatic representation abroad in order to have their residence entitlement assessed in advance³¹. The employer in The Netherlands can also voluntarily ask the IND for a recommendation in respect of the issue of an MVV³² prior to submitting an MVV application.

For knowledge migrants who must have an MVV the rule applies that the employer must request a recommendation from the IND prior to submitting the MVV application, in respect of the knowledge migrant's intention to apply for an MVV abroad.

The foreign national must submit the application for the granting of a residence permit as a knowledge migrant in person or in writing, with or without the intervention of the employer, to the IND Office for labour and highly-skilled migrants³³. The necessary forms for the request for a recommendation and the application for a residence permit can be obtained from the IND website³⁴.

Accelerated procedure

The admission procedure relating to knowledge migrants incorporates an accelerated procedure contrary to other admission procedures. This means that the IND will usually make a decision in respect of a request for a recommendation or an application for a residence permit within two weeks of receipt of the request or application. Pre-conditions for the accelerated procedure are the request or application

²⁷ Vc 2000, part B/15.2, supplement Feb. 2006

²⁸ Vc 2000, part B/15.4, supplement Feb. 2006

²⁹ MVV is a visa a foreign national can use to travel to The Netherlands to apply for a residence permit in this country. Before the MVV is issued it is assessed whether the foreign national meets all the conditions of the purpose for which he wants to reside in The Netherlands

³⁰ art 17 of the Vw2000. Those exempt from the MVV requirements are nationals from the countries of the EU, Australia, Canada, Japan, Liechtenstein, Monaco, New Zealand, Norway, Vatican City, the United States, Iceland, Sweden and Switzerland.

³¹ Vc 2000, part B1/1.2.1

³² Vc 2000, part B15/4.2

³³ art 3.33a of the Regulations on Aliens

³⁴ www.ind.nl

being submitted in the prescribed manner, the request or application being accompanied by all the required documentation³⁵, and no further investigation being needed. In cases in which the documentation is incomplete or further investigation is necessary, the two-week processing period does not apply.

*The employer's declaration*³⁶

Only employers based in The Netherlands can avail themselves of the knowledge migrant scheme. The scheme does not apply to employers based abroad, unless they also have a branch in The Netherlands. The declaration must always be signed by the employer based in The Netherlands.

In order to be eligible for the accelerated procedure for the admission of knowledge migrants the employer must submit a fully completed and signed declaration to the IND.

In this declaration the employer provides guarantees with respect to, among other things, the completeness of the request for a recommendation in relation to the issuance of an MVV or the application for a residence permit that is being submitted on behalf of the knowledge migrant, the compliance of the foreign national with the conditions for residence as a knowledge migrant, and the residence of knowledge migrants not being at the expense of the Dutch State.

In addition the employer undertakes to notify the IND as soon as the employee's situation changes. The fact that the employer fulfils a number of obligations makes it possible for the IND to process the applications for residence as a knowledge migrant by means of an accelerated procedure.

The declaration can be obtained from the IND website, under the knowledge migrant module.

The accelerated procedure cannot be used if the IND does not have all the necessary documents. If documents are provided after the initial application the IND will not apply the accelerated procedure at this later stage. The information that is supplied at a later stage will be included in the assessment of the residence application, but the application will be processed in line with the statutory decision periods. Neither can the accelerated procedure be used if the IND sees a need for further investigation, for instance verification by the Labour Inspectorate of the actual employment.

The IND will issue the employer with a negative recommendation or reject the application for a residence permit if it is unlikely that the employer will (be able to) comply with the obligations listed in the submitted declaration.

Once the IND Office for labour and highly-skilled migrants has received the fully completed and signed declaration together with the aforementioned documentation the office will send the employer a confirmation of receipt. If all or part of the required documentation is missing the employer will be informed that the missing documents in the context of the initial request for a recommendation relating to the issuance of an MVV or the initial application for a residence permit still have to be provided. With the confirmation of receipt the employer will receive an access code that will give him access on the IND website to the forms for a request for a recommendation for people with an MVV obligation and for an application for a residence permit for people who are exempt from the MVV requirement that are available.

³⁵ The required documentation includes in any case:

- proof of registration in the Commercial register, no older than thirty days and issued by the Chamber of Commerce, or proof that registration in the Commercial register is not required;
- (where applicable) proof that the institute is a funded or designated educational institute or a research institute that is directly or indirectly, fully or partially subsidised by the government;
- a declaration of payment history issued by the Dutch Tax and Customs Administration.

³⁶ art 3.25a of the Regulations on Aliens

*'Residence endorsement general' stamp*³⁷

The IND Office for labour and highly-skilled migrants is authorised to attach the 'residence endorsement general' stamp³⁸ in the travel document of the knowledge migrant(s) and any family members. This proves they are residing in The Netherlands lawfully, that they are permitted to work and that no work permit is required.

After this the foreign national must register in the municipal personal records database of the municipality where he lives. The municipality issues the actual residence permit after the IND has approved the application.

A single office

In implementing the knowledge migrant scheme, it was decided that knowledge migrants will be able to deal with a single office, from submitting their residence application through to the residence endorsement, being placed inside the knowledge migrant's passport, which allows him to operate freely within the Dutch employment market. The IND Office for labour and highly-skilled migrants is responsible for handling all procedures, from requests for a recommendation through to the issuance of MVV's and applications for residence permits. This office also processes all correspondence with the employers and organises information meetings about the knowledge migrant scheme for companies that have expressed an interest.

³⁷ Art 3.9 of the Regulations on Aliens

³⁸ appendix 7g of the Regulations on Aliens

5. The attractiveness of The Netherlands to highly-skilled migrants

In order to be able to attract talent, a conducive knowledge climate is desirable. Keeping obstructions in legislation and regulation to a minimum can have a positive influence on the knowledge climate. Other measures can also present a picture of the attractiveness of the knowledge climate in a country. In this chapter we will firstly examine if there are agreements to attract highly-skilled migrants. After this, we will look at a number of aspects in the Dutch regulations that already exist to attract potential talent. Finally, we will look ahead towards developments in the (near) future.

5.1 New opportunities?

The knowledge migrant scheme is primarily demand-driven. This implies that no preference can be given to specific countries. For this reason The Netherlands currently does not (yet) have agreements with third countries for attracting highly-skilled migrants. The associated subject of repatriation is therefore currently not an issue. Nor does The Netherlands have bilateral or a multilateral agreements with other EU member states for attracting highly-skilled migrants from specific third countries.

5.2 Priority for family members

For family members of knowledge migrants the rule applies - as it does for the knowledge migrants themselves - that their nationality determines whether or not they need an MVV.

*MVV applications*³⁹

The employer can apply for an MVV on behalf of the family members of a knowledge migrant if they intend to stay with the knowledge migrant in The Netherlands. In this case the employer must submit the request for a recommendation on behalf of the family members at the same time as the request for a recommendation on behalf of the principal migrant. The employer may only submit a request for a recommendation on behalf of the spouse or (registered) partner of the knowledge migrant, and on behalf of any minor children who are actual members of the family.

For family members who intend to stay with a knowledge migrant and for whom the MVV application has been submitted at the same time as the request for a recommendation on behalf of the principal migrant, the accelerated procedure with a maximum decision period of two weeks applies. These applications will also be processed by the IND Office for labour and highly-skilled migrants.

The two-week decision period does not apply to requests for a recommendation on behalf of family members wishing to live with a knowledge migrant, that have not been submitted at the same time as the request for a recommendation on behalf of the principal migrant. These requests will not be processed by the IND Office for labour and highly-skilled migrants but by the regular offices, and do not form part of the accelerated procedure.

*Residence permit applications*⁴⁰

The employer of a foreign national who intends to apply for residence as a knowledge migrant can submit a residence application for the spouse, (registered) partner and/or minor children who travel to The Netherlands with the knowledge migrant in conjunction with the form used to apply for a residence permit for the knowledge migrant.

³⁹ Vc2000, B15/4.2, supplement Feb. 2006

⁴⁰ Vc2000, B15/4.3, supplement Feb. 2006

The applications for a residence permit for family members will only be processed by the IND Office for labour and highly-skilled migrants if they have been submitted at the same time as the principal migrant's application for a residence permit. If the applications are submitted simultaneously and all the required documentation is complete, the accelerated procedure will be applied.

If the knowledge migrant already has a residence permit and his family members submit applications for a residence permit at a later time, the family members must submit their applications to the municipality in which they live. After the municipality has forwarded the applications they will be processed by the IND. The applications can be submitted directly to the IND as from the middle of 2007.

Not all applications of family members that have been submitted at the same time as the principal migrant's application can be processed within two weeks. This may be because, among other things, procedures that do not come under the IND's responsibilities, such as registration of the marriage in the municipal personal records database, must be completed before the IND can make a decision in respect of the application.

5.3 Taxation arrangements

The Tax and Customs Administration refers to employees who come to work in The Netherlands from another country as extra-territorial employees. These employees can avail themselves of a special cost reimbursement arrangement, the 30% rule⁴¹. This rule relates to a tax-free reimbursement of 30% of the salary from the current employment, including the reimbursement itself. The reimbursement can be provided to cover extra-territorial costs⁴².

In order to be eligible for the 30% rule, the employee entering the country must have a specific expertise that is not available in the Dutch market or that is very scarce. The assessment as to whether this is the case lies with the Tax and Customs Administration. The Tax and Customs Administration takes the following factors into account:

- the employee's level of education;
- the employee's relevant experience;
- the remuneration level of the function in The Netherlands in relation to the remuneration level in the employee's country of origin.

If an employee is sent to The Netherlands by an international corporation this may be classed as a case of scarce, specific expertise, without an assessment of the aforementioned factors being required. However, the employee must meet the following three requirements:

- The employee was sent to The Netherlands in the context of a rotation within an international corporation;
- Within this corporation the employee holds a middle or senior management position;
- The employee has at least 2½ years of experience in the corporation in question.

To be able to apply the 30% rule to employees who have newly entered The Netherlands, the employer and employee must submit a written request to this effect to the Tax and Customs Administration within four months after the commencement of the employee's employment. The maximum duration of the 30% rule for employees from other countries is ten years. If the request is submitted after the four-month deadline, the maximum ten-year duration will be shortened with the period by which the aforementioned four months was exceeded.

The 30% rule does not relate to nationality. Both nationals from EU member states and employment migrants from third countries can make use this rule, provided they meet the criteria. This also means that there are no separate stipulations for EU nationals wanting to use this rule.

⁴¹ The 30% rule also applies to employees who are sent from The Netherlands to another country.

⁴² extra-territorial costs may include: extra costs for living expenses because the prices in the country in which the migrant works are higher than those in the country of origin, the cost of an exploratory trip to the country the migrant will be working in, costs associated with medical examinations and vaccinations, etc.

5.4 Additional criteria

On 15 March 2006, the new Integration (Abroad) Act (WIB) came into effect. The integration requirement applies to foreign nationals aged 16 - 65 who are required to have an MVV before they come to The Netherlands and are coming to The Netherlands with a permanent residence objective⁴³. For members of this target group, this means that they must in any case have complied with the integration requirement before they will be issued an MVV. The integration requirement consists of having a basic knowledge of the Dutch language and Dutch society. This knowledge is tested in the foreign national's country of origin or in the country where the foreign national permanently resides.

Some categories of foreign nationals are exempt from the integration requirement. These include foreign nationals who will work as an employee or who will be self-employed. Knowledge migrants are also an exempt category. The additional criteria do not apply to them. This also applies to the family members of foreign nationals who come under the aforementioned residence objectives.

5.5 Students from third countries in The Netherlands

In order to entice foreign students to stay in The Netherlands after they have successfully completed their higher vocational or university studies in The Netherlands, the knowledge migrant scheme incorporates a provision that gives them three months after the completion of their studies to look for a position as a knowledge migrant⁴⁴. If they are offered an employment contract at the required income level they can, within two weeks, be granted a residence permit for a maximum period of five years. Including this option in the knowledge migrant scheme has meant that students with an MVV obligation who qualify for this option do not first have to return to their country of origin to apply for an MVV there.

5.6 Towards a modern migration policy

In setting up the knowledge migrant scheme in 2004, the government took an important step toward simplifying the entry of highly-qualified workers from third countries. However, high quality employment migration does cover a broader spectrum. For instance, high quality migration is not limited to knowledge migrants who work as employees. High quality employment migration can also occur for the purpose of performing service activities in The Netherlands in the context of a work order, starting a company in The Netherlands or residing in The Netherlands for the purpose of academic research or the development of cultural activities.

Migrants who are engaged in this type of work frequently do not have an employment relationship with a company or institution in The Netherlands, but have their own means of support or are in receipt of a grant. The contribution these migrants can make to the Dutch economy and Dutch society is not really obvious from the employment contract and the level of the salary. Other factors, such as the nature of the work, the employer in the country of origin, or the education and professional experience of the migrant are more important when it comes to this category of migrants.

As part of the general policy for highly-qualified labour migrants the government introduces - in addition to the existing knowledge migrant scheme - the option to be admitted to The Netherlands on the basis of personal talents⁴⁵. This so called talented individuals scheme introduces a limited option for migrants to offer their services where the demand driven system does not meet all the needs. After all, certain groups of migrants, such as independent entrepreneurs or researchers who are in possession of a foreign grant or who have their own means of support, cannot be expected to have a sponsor in The Netherlands, because they have no association with a company or institution. The talented individuals scheme is

⁴³ Permanent residence objectives are: working as a spiritual leader or minister of religion, family reunification or family formation and residence for the purpose of adoption or as a foster child – insofar as this relates to children aged 16 or older.

⁴⁴ They must submit the residence application to the municipality where they live.

⁴⁵ Ministry of Justice, Memorandum 'Toward a modern migration policy', The Hague, June 2006

therefore not intended for migrants looking for work as an employee, but for those who can demonstrate that they can support themselves independently.

The selection of potentially talented migrants may be made on the basis of criteria such as age, education, work experience etc. The government plans to implement the talented individuals scheme gradually, when problem and risk analyses shows that this is desirable.

In the first instance, the existing admission arrangements for independent entrepreneurs will be incorporated in the talented individuals scheme. The scheme is intended for independent entrepreneurs who can contribute to the innovative ability of The Netherlands and the knowledge economy, and who can create employment.

In the second instance, the talented individuals scheme may be opened up to other employment migrants who do not work as an employee, such as independent researchers or creative top talents.

In preparation of the implementation of the talented individuals scheme, research is currently being conducted into countries that have experience with a supply-driven system, such as the United Kingdom, Canada and Australia. The starting point of the talented individuals scheme is the use of clear, unambiguous criteria that are easy to verify in practice.

6. Rights and obligations of highly-skilled migrants

The previous chapters have mostly discussed the rights of highly-skilled migrants: newly acquired rights that have resulted from making the existing legislation and regulations more flexible, extra focus in the policy and implementation through to procedural advantages the family members of knowledge migrants can use. This chapter looks at the other rights of knowledge migrants, but also the obligations they must fulfil to be able, for instance, to continue their residence in The Netherlands. In addition to the rights and obligations, the consequences and options if the conditions of the knowledge migrant scheme are no longer met are also clarified.

6.1 Converting the temporary residence to permanent residence

Knowledge migrants

As a rule a residence permit is granted for a period of one year in the case of labour migration, after which it can be renewed on an annual basis⁴⁶. There is an exception for residence permits for residence as a knowledge migrant, which are granted for the duration of the employment contract, up to a maximum of five years⁴⁷.

A knowledge migrant can be granted a five -year residence permit if he is able to submit a permanent employment contract. If the knowledge migrant has a temporary employment contract his residence permit will be issued for no more than the duration of his employment contract.

A foreign national who has been granted a residence permit as a knowledge migrant does not need to apply for a change of restriction if he changes employer, provided he still meets the conditions for residence as a knowledge migrant.

Family members

Spouses and partners of knowledge migrants will, in principle, be given a residence permit for one year⁴⁸. After this first year the residence permit can be renewed for a period that relates to the duration of the knowledge migrant's employment contract. The residence permit can be renewed for a period of five years if the employment contract is permanent⁴⁹. For minor children of knowledge migrants the rule applies that the permitted residence duration is linked to that of the knowledge migrant.

6.2 Repatriation and 'brain circulation'

Currently, The Netherlands does not have a policy that is aimed specifically at the repatriation of highly-skilled migrants in the context of 'brain circulation'. For the moment the responsibility lies entirely with the knowledge migrant. However, the general view in the political arena is that it is necessary to give some thought to the measures that can be taken to simplify the repatriation of temporary employees at the end of their contract and to reintegrate them into society in their own country⁵⁰. Possible measures that could encourage win-win situations and/or compensate for potential adverse situations are: providing up-to-date information about the conditions for admission to and residence in the EU, establishing recruitment and training centres in the countries of residence that teach skills needed in the EU and provide cultural and language training, setting up data banks of potential migrants per

⁴⁶ Article 3.57 of the Vb2000

⁴⁷ Art 3.59a of the Aliens Decree

⁴⁸ Article 3.57 of the Aliens Decree

⁴⁹ Article 3:67, first paragraph, under a, of the Aliens Decree

⁵⁰ Ministry of Justice, *Reactie op het Groenboek over het beheer van de economische integratie, een EU-aanpak* (Reaction on the Green paper on the management of the economic integration, an EU approach), 8 April 2005

skill/profession/sector (qualification portfolios), simplifying the process of transferring money, compensating third countries for the education costs of persons who emigrate to the EU.

The Netherlands aims to prevent 'brain drain' from poor countries, among other means by promoting the temporary character of employment migration, by taking this aspect into consideration in special facilities such as covenants and by means of targeted development activities in developing countries to combat 'brain drain'.

6.3 Consequences of changing the conditions of residence⁵¹

Change of employer

If the knowledge migrant changes employer he will still need to meet the conditions for residence as a knowledge migrant. The new employer is obliged to notify the IND Office for labour and highly-skilled migrants of the fact that he has employed the knowledge migrant in question, and to submit the relevant documentation⁵².

If the knowledge migrant changes employer and earns a gross salary that is below the salary criterion for knowledge migrants, or if the knowledge migrant wants to work in a position other than that of an academic researcher or physician training to be a specialist and/or if he starts working for an employer who has not submitted a declaration in the context of the knowledge migrant policy to the IND, his residence permit will be revoked or the application for renewal of the residence permit will be rejected. If the foreign national still wants to stay in The Netherlands for the purpose of working as an employee, he can request a change to the 'work as an employee' restriction.

Job search period

If the employer terminates the knowledge migrant's employment contract early during the term of the knowledge migrant's residence permit, without this being attributable to knowledge migrant, the knowledge migrant will be allowed a three-month job search period. The employer will notify the IND Office for labour and highly-skilled migrants in writing of the termination of the employment. A three-month period for the foreign national to find a new function as a knowledge migrant applies from the date on which the employment contract is terminated. If the foreign national succeeds in finding a new function as a knowledge migrant, the (new) employer will notify the IND Office for labour and highly-skilled migrants of this fact in writing and will submit the necessary documentation. If the knowledge migrant does find a new employer, this employer must have been admitted to the knowledge migrant scheme on the basis of a signed declaration, and the foreign national must meet the salary criterion or take a function as an academic researcher or physician training to be a specialist. If the foreign national is unable to find such a function within the three-month period his residence permit will be revoked.

If the three-month job search period extends beyond the validity of the knowledge migrant's residence permit the knowledge migrant must apply for renewal of his residence permit as a knowledge migrant. In the processing of this application the (remaining) job search period the foreign national has been allowed to find a position will be taken into account. The regular processing period of two weeks does not apply to this renewal application. If the foreign national is successful in finding a new position as a knowledge migrant he or his (new) employer must notify the IND Office for labour and highly-skilled migrants of this fact in writing and submit the necessary documentation. If the knowledge migrant finds a new employer who has been admitted to the knowledge migrant scheme on the basis of a signed declaration and the foreign national meets the salary criterion or takes a function as an academic researcher or a physician training to be a specialist, the residence permit for residence as a knowledge migrant can be renewed. If the foreign national is unable to find a position as a knowledge migrant the application for renewal will be rejected.

⁵¹ Vc 2000, B15/8, supplement Feb. 2006

⁵² as referred to in Vc 2000, B15/5.1.2

If a foreign national applies for a residence permit as a knowledge migrant on the basis that he is a physician training to be a specialist, this permit will be granted for the duration of the training. After the foreign national has completed his training his residence permit for residence as a knowledge migrant can only be renewed if the physician training to be a specialist takes up another position as a knowledge migrant. In such a case he must apply for renewal of his permit for residence as a knowledge migrant.

Obligation to register and de-register

Foreign nationals, and therefore also knowledge migrants, are obliged to immediately notify the chief of police in the municipality in which they reside if they no longer meet the conditions for maintaining their residence permit.

Employers of knowledge migrants are obliged to notify the IND in writing of the fact that they no longer employ the knowledge migrant in question, or that the knowledge migrant no longer meets the salary criterion or no longer works as an academic researcher or physician training to be a specialist. Failure to comply with this obligation can have negative consequences for future applications or requests for a recommendation.

The residence permit with the 'residence as a knowledge migrant' restriction may be revoked if the person in question no longer meets the conditions of the 'residence as a knowledge migrant' restriction.

Unemployment

Unemployment affects the residence entitlement position of knowledge migrants who have a temporary residence permit for residence as a knowledge migrant⁵³.

The residence permit for residence as a knowledge migrant will be revoked if the foreign national is no longer employed as a knowledge migrant; in other words, if he is no longer employed by an employer who has signed a declaration in the context of the knowledge migrant policy and/or no longer meets the salary criterion applicable to a knowledge migrant or no longer holds a position as an academic researcher or physician training to be a specialist. This is not the case if a three-month job search period has been allowed because of non-attributable unemployment.

During the job search period the knowledge migrant will support himself. If he applies for public benefits during this job search period his residence permit may be revoked. If the knowledge migrant finds work, but not as a knowledge migrant, he must submit an application for a change of his residence permit to a 'Work as an employee' restriction. His eligibility for this restriction will be verified on the conditions of aforementioned restriction.

Sickness and occupational disability

Sickness and occupational disability also affect the residence entitlement position of knowledge migrants⁵⁴. In the event of illness the knowledge migrant continues to meet the conditions as long as he is employed by an employer who has signed a declaration in the context of the knowledge migrant policy and the knowledge migrant continues to meet the salary criterion, either because of the salary he receives, because of benefits he receives, or because of a combination of both.

If a knowledge migrant is declared occupationally disabled after a period of illness, the following applies. A knowledge migrant who is occupationally disabled is defined as a foreign national who has a residence permit as a knowledge migrant and receives benefits pursuant to the Work and Income According to Work Capacity Act (WIA). In the case of full occupational disability the knowledge migrant's residence permit will be revoked. In the case of partial occupational disability (percentage below 80 percent) whereby the knowledge migrant continues to be employed by the employer he must continue to meet the salary criterion that applies to residence as a knowledge migrant on the basis of the benefits he receives pursuant to the WIA and the income he receives from his employment with the employer. If the knowledge migrant is partially occupationally disabled and his employment with the employer has been terminated without this being attributable to the knowledge migrant he is entitled to the three-month

⁵³ Vc 2000, B15/9, supplement Feb. 2006

⁵⁴ Vc 2000, B15/9, supplement Feb. 2006

job search period commencing on the date on which the employment was (prematurely) terminated. If the foreign national in question is unable to find work that will allow him to meet the conditions for residence as a knowledge migrant within this three-month period, the residence permit for residence as a knowledge migrant will be revoked. In the assessment as to whether the partially occupationally disabled foreign national meets the salary criterion that applies to residence as a knowledge migrant, any benefits the foreign national receives pursuant to the WIA will be considered part of the gross salary.

If an employee changes jobs, the Tax and Customs Administration 30% rule can be continued unchanged⁵⁵. A joint request to this effect, made by the employee and his new employer, is required. In this context the time between the old and new employment must not exceed three months. Together with the request the new employer must substantiate the fact that the employee still meets the condition of scarce, specific expertise. See also chapter 5.

⁵⁵ www.belastingdienst.nl

7. Experience with third country highly-skilled workers

With the knowledge migrant scheme the government has taken an important step toward simplifying the admission of highly-qualified workers from third countries. At the same time it has become clear that there are still obstacles in this scheme. This chapter highlights what these obstacles are and what aspects of the knowledge migrant scheme may be improved, so that the factors that have provided positive added value in increasing the attractiveness of The Netherlands for the purpose of recruiting knowledge migrants can be inventoried.

7.1 Effectiveness of the knowledge migrant scheme

After the knowledge migrant scheme came into effect on 1 October 2004 an exploratory evaluation was performed that covered the period from the start date to 1 July 2005⁵⁶. The objective of this instrument was to maintain insight into the development, implementation and effects of the knowledge migrant scheme. The question as to whether the current knowledge migrant scheme is instrumental in allowing the Dutch knowledge economy to grow and whether it is attracting the desired highly-skilled migrants to The Netherlands remains to be answered, as there were not enough figures to evaluate this at that time. An analysis as to whether, for instance, there is a shift from employment migrant to knowledge migrant is not available at this time. Based on the response from companies and institutions that participated in the Internet survey it has become clear that they use the scheme specifically to bring international managers, researchers and ICT staff to The Netherlands⁵⁷. The prevailing view among the respondents employed in governmental organisations responsible for the execution of the knowledge migrant scheme is that this scheme is bringing about an improvement in the climate for settlement in The Netherlands.

7.2 Success factors and obstacles in attracting highly-skilled migrants

Accelerated procedure

The underlying principle of the knowledge migrant scheme is the fact that residence applications are processed within a two-week period. In practice this proves not always to be the case. It has become clear that employers often submit applications in an incomplete state, which means the IND must give the employer the opportunity to provide additional information. In these cases the accelerated procedure is not applied and statutory periods are used to process the applications. The figures show that, on average, a decision in respect of an application takes three to four weeks⁵⁸.

Co-operating organisations

The second aspect with regard to the implementation of the scheme is good collaboration within the co-operation organisations⁵⁹. Applications for residence permits are processed by the IND, whilst the municipality is responsible for issuing the permits. Collaboration between the various organisations involved is not yet fully streamlined, however. The obstacles are found in the area of the issuance of the

⁵⁶ IND Information and Analysis Centre, Rapport monitor Kennismigranten (Report monitor Knowledge Migrants), December 2005

⁵⁷ IND Information and Analysis Centre, Rapport monitor Kennismigranten (Report monitor Knowledge Migrants), December 2005

⁵⁸ IND Information and Analysis Centre, Rapport monitor Kennismigranten (Report monitor Knowledge Migrants), December 2005, p. 11: 62% of applications without an MVV are processed within 28 days. 69% of applications with an MVV are processed within 28 days. It must be noted, however, that the time spent in requesting additional information has not yet been deducted from the aforementioned decision periods.

⁵⁹ IND Information and Analysis Centre, Rapport monitor Kennismigranten (Report monitor Knowledge Migrants), December 2005, p.29

residence permits and the registration of the migrants' personal data in the GBA. Further delay can occur at the Tax and Customs Administration⁶⁰. If the Tax and Customs Administration is late in issuing a sofi number (tax and social security number) this affects, for instance, the purchase of a health insurance policy for which this sofi number is required. There is a clear need for information and clarification for interested parties throughout the entire chain. Because of (logistical) obstacles in various chain organisations, knowledge migrants tend to feel that The Netherlands is not customer-focused⁶¹.

On the other hand, knowledge migrants and family members who have travelled to The Netherlands together with the knowledge migrant on the basis of an MVV are permitted to work as soon as the 'residence endorsement general' stamp has been attached to their travel document⁶². The IND is trying to facilitate the start period in particular. For the knowledge migrant this means that he can start work even before the residence permit has been issued.

Target group

Although companies that use the knowledge migrant scheme find the level of the salary criterion acceptable⁶³, not all target groups are reached. Under the current scheme, migrants who do not meet the salary criterion, for instance, cannot settle in The Netherlands although they have the potential to contribute to the Dutch knowledge economy. Consider, in this context, migrants who have specific knowledge that is useful to a company based in The Netherlands. The current scheme also reaches migrants who are not, by definition, part of the intended target group.

The essence of recent case-law shows that an application for residence as a knowledge migrant can be rejected provided it has been sufficiently substantiated that it is unlikely that the annual salary stipulated in the employment contract will actually be paid to the foreign national. In this assessment aspects such as education and work experience can be taken into consideration⁶⁴.

Since the introduction of the knowledge migrant scheme in October 2004, until December 2006 5205 foreign nationals have been admitted to The Netherlands as knowledge migrants⁶⁵. Over 2,000 employers and institutions have since signed a declaration in the context of the scheme. The top three employment market sectors in which knowledge migrants have started work are the ICT sector, the industrial sector and academic education/research. The top three countries of origin for knowledge migrants are India, the United States of America and Japan.

Vulnerability to fraud

The knowledge migrant scheme includes aspects of preventive as well as retroactive company inspections. The preventive company inspection is now executed by means of the employer's declaration that the employer has to provide in order to be eligible for the knowledge migrant scheme and other documents that are needed with which a residence permit is applied for the knowledge migrant. At this moment, no preselections are made to assess companies for their reliability and, if necessary, block them from participating in the scheme.

Using information provided by the employer the IND Office for labour and highly-skilled migrants can compile risk profiles that can then serve as the basis for Labour Inspectorate to perform retroactive company inspections.

There is also a role for the Tax and Customs Administration in minimising the fraud sensitivity of the knowledge migrant scheme. For instance, the Tax and Customs Administration is entitled to perform checks of income and tax transfers. However, the results of the control system with regard to the knowledge migrant scheme of the Tax and Customs Administration and the Labour Inspectorate have not yet been clarified.

⁶⁰ Forum (news publication of the VNO-NCW), 2 November 2006

⁶¹ Forum (news publication of the VNO-NCW VNO-NCW), 2 November 2006

⁶² is given the endorsement "Arbeid toegestaan, tewerkstellingsvergunning niet vereist" (Employment permitted, work permit not required).

⁶³ IND Information and Analysis Centre, Rapport monitor Kennismigranten (Report monitor Knowledge Migrants), December 2005, p. 26-29. This reflects the opinion of the respondents.

⁶⁴ Decision of the Administrative law department of the Council of State dated 7 November 2006, ref. 200605013/1.

⁶⁵ IND, Stafdirectie M&C (Staff Directorate Resources and Control), 2007

7.3 Improved accommodation of the needs of knowledge migrants

A single office

Bringing the implementation of the knowledge migrant scheme together in one office is intended to streamline the decision procedure for knowledge migrants as much as possible. Applications for both MVV's and residence permits, the issuing of access codes to companies and the attachment of the necessary residence stamp in the knowledge migrant's passport are all carried out by a single office. However, so far this office is only based in one place, namely Rijswijk. Companies that are not based in the (immediate) vicinity of Rijswijk have no option other than to (repeatedly) travel to Rijswijk.

Family members travelling to The Netherlands after the principal migrant

The accelerated procedure is not used for family members of knowledge migrants who do not submit their residence applications at the same time. Neither are these applications processed by the IND Office for labour and highly-skilled migrants. Family members travelling to The Netherlands after the principal migrant can therefore be faced with a longer period before a decision is made concerning their residence application. To make the scheme more attractive, it was decided to process the residence applications of family members travelling to The Netherlands after the principal migrant in the same way as residence applications that were submitted together. This addition to the implementation of the knowledge migrant scheme will apply from the middle of 2007.

Information provision

The IND Office for labour and highly-skilled migrants organises information meetings for companies and interested parties on a regular basis. In these meetings the office not only provides information about the regulations relating to the knowledge migrant scheme, but also about the route the employers must take to have processing of the residence applications progress as smoothly as possible. The information provided may range from the responsibilities of the employers through to the way in which the online forms are best completed.

For general and dossier-specific questions the IND can be contacted in writing and by telephone (via a general information line). Knowledge migrants and their employers also have the option to submit their questions to the IND by e-mail.

7.4 The knowledge migrant scheme versus alternative procedures

Residence applications with the residence objective of 'self-employment', 'work as an employee' and the category of the knowledge migrant scheme all come under labour migration. In the last two types of residence applications the employment migrant is tied to a specific employer and, for applications for 'work as an employee', a work permit is required.

It is not yet possible to give an unequivocal answer to the question whether the work permit procedure is being used as an alternative to the knowledge migrant scheme⁶⁶. The number of residence applications with the objective of 'work as an employee' has not declined since the introduction of the knowledge migrant scheme. The same applies to the number of work permit applications to the CWI for key personnel of international companies. In the case of academic researchers, a limited reduction in the number of work permit applications can be observed. It could be expected that the number of work permit applications for the group of knowledge migrants would decline after the knowledge migrant scheme came into effect. The fact that there has been no significant decline may indicate that:

- the number of foreign employees for whom a work permit is required to allow them to work in The Netherlands has increased;

⁶⁶ Ministry of Justice, DGIIV, Answers to Parliamentary questions from Members of Parliament Jonker, Bruls and Van Fessem about the procedure for the admission of knowledge migrants, 6 October 2005.

- the knowledge migrant scheme is attracting a new group of employment migrants who otherwise would not have come to The Netherlands.

Alternatively, it may be a combination of both factors.

7.5 Obstacles and solutions

Attempts are made to find suitable and workable solutions for the obstacles that have been observed, so that the threshold for attracting highly-skilled migrants can remain low. At present the attempts to balance obstacles and solutions can be seen in the area of the operations of the IND Office for labour and highly-skilled migrants and in the area of policy matters. This paragraph describes in which ways solutions are being sought for existing obstacles in these areas.

IND operations

For the knowledge migrant scheme an accelerated procedure with a maximum term of two weeks has been initiated. It has become clear, however, that in practice, the majority of the residence applications are not processed within this period. By means of the information meetings referred to in paragraph 7.3, an attempt is being made to remove the obstacles that cause these delays. The creation of a specific mailbox for interested parties aims to have the information provision progress in an optimal manner. The emphasis within the operations lies upon the most transparent arrangement possible at the front end of the application. It was therefore decided not to take measures in the current process, for instance to include applications in which additional documentation is requested in the prioritisation.

The application for a residence permit for family members (who did not travel to The Netherlands together with the principal knowledge migrant) is submitted via the municipality in which the knowledge migrant resides. In 2008 the IND will be taking over this process. For family members of knowledge migrants who travel to The Netherlands after the principal migrant the IND plans to have the applications submitted to the IND Office for labour and highly-skilled migrants from the middle of 2007.

Parliamentary questions by Members of Parliaments to the Minister responsible for the knowledge migrant scheme is a way to request clarification about the procedural aspects of the knowledge migrant scheme⁶⁷.

For instance, it has been shown that for residence applications for changes from one residence objective to the 'knowledge migrant' residence objective the statutory decision period is used as the processing period, which means that the application can be processed within a period of six months. The Minister commented that it is currently being investigated in which way these applications for a change of residence objective can be accelerated.

Policy matters

The Minister concerned is in a position to implement interim changes in the regulations for knowledge migrants.

For instance, the possibilities for coming to The Netherlands as a scientific researcher have recently been broadened. Previously the salary criterion did not apply to candidates studying for a doctorate, persons in a post-doctoral programme and university lecturers to the age of 30. The income criteria did not apply to them. This category has now been replaced by foreign nationals who will be employed in The Netherlands in the context of conducting academic research. In addition, physicians training to be specialists are added to the group of knowledge migrants who do not have to meet the salary criterion. They will therefore not need to apply for a separate work permit. This way, it is tried to meet the need in practice that exists among Dutch universities and research institutes to expand the possibilities of attracting highly-qualified workers from outside the European Economic Area⁶⁸.

⁶⁷ Ministry of Justice, Answers to Parliamentary questions from Members of Parliament Dijsselbloem & Meijer (PvdA) about the residence procedure for knowledge migrants, The Hague, 4 December 2006

⁶⁸ Ministry of Justice, Verruiming kennismigrantenregling (Broadening of the knowledge migrant scheme), press release 4 December 2006.

8. Knowledge migrants outlined

By means of providing numerical information on highly-skilled migrants in The Netherlands an insight can be given into inter alia the scope of their position on the labour market, which labour market sector attracts the most migrant and the country of origin of these migrants. In The Netherlands, statistical data on the labour force in ISCO-88 terminology is available, although no distinction is made between migrants and nationals. Therefore, a complete picture of the position of highly-skilled migrants in proportion to the different professions and to the Dutch labour force is not available. It is possible, however, to provide a more detailed quantitative information of the knowledge migrant scheme which is dealt with in previous chapters. This gives a picture of migrants who are in the possession of a residence permit as a knowledge migrant. In this chapter, the different professional sectors in which the knowledge migrants are working will be explained further after which the proportion to nationality will be dealt with.

8.1 Knowledge migrants on the labour market

The figures below relate to 2005 and 2006, after the knowledge migrant scheme came into force, with a break down by labour market sector and by gender. It should be mentioned that this break down by labour market sector does not correspond with that of ISCO-88 in which a break down is defined by professional sector.

Table 1: Knowledge migrants by labour market sector in 2005 en 2006.

<i>Labour market sector</i>	<i>2005</i>				<i>2006</i>				<i>Total 2005 - 2006</i>
	M	F	Total	%	M	F	Total	%	
IT and other business services	372	95	467	28.9	1161	280	1441	40.1	1908
Industry	210	74	284	17.6	246	67	313	8.7	597
Academic education	126	60	186	11.5	264	125	389	10.8	575
Financial services	83	53	136	8.4	235	161	396	11.0	532
Minerals	72	21	93	5.8	246	81	327	9.1	420
Trade	71	20	91	5.6	134	47	181	5.0	272
Tourism and other services	11	10	21	1.3	74	30	104	3.0	125
Transport and telecom	34	6	40	2.8	66	18	84	2.3	124
Education	21	16	37	2.3	32	31	63	1.8	100
Health services and welfare	17	9	26	1.6	35	18	53	1.5	79
Building industry	12	2	14	0.9	15	1	16	0.5	30
Public benefit	6	6	12	0.7	9	6	15	0.4	27
Agriculture and fishery	3	2	5	0.3	12	3	15	0.4	20
Catering industry	2		2	0.1	9		9	0.3	11
Catering industry	3	1	4	0.2	2	3	5	0.1	9
Public administration	13	61	195	12	135	46	181	5.0	376
Total	1177	436	1613	100	2675	917	3592	100	5205

Source: IND, Stafdirectie M&C (Immigration- and Naturalisation Service, Staff Directorate Resources and Control), 2007

These figures show the number of residence permits that were granted to migrants who applied for a residence permit as a knowledge migrant, but do not give the total of highly-skilled migrants in The Netherlands. As mentioned in chapter four, highly-skilled migrants also have the possibility to use other regulations to realize their residence in The Netherlands. For example, they can apply for a residence permit with the purpose 'work as an employee'. Migrants who are highly-skilled but who did not use the knowledge migrant scheme to realize their residence in The Netherlands, are thus not included in these figures.

The knowledge migrant scheme is being used by companies from various labour market sectors. The labour market sector 'IT and other business services' is in front with a total of 1908 knowledge migrants over 2005 and 2006, followed by the sectors 'Industry', 'Academic education' and 'Financial services'. 2006 shows an increase compared to the previous year in nearly all labour market sectors.

To measure the effectiveness of the attraction of highly-skilled migrants one could look into amongst others the connection between the number of highly-skilled migrants who reside in The Netherlands and the number of vacancies.

Research has been done on the vacancies divided into the ISCO-88 occupational sector from 2001 until 2003. There is no quantitative information available (yet) for the period after 2003. Therefore, conclusions on the effect of foreign highly-skilled migrants on the Dutch labour market remain forthcoming.

Table 2: vacancies by ISCO-88 Major Groups 1 - 3 at the end of the third quarter of each calendar year, rounded figures by hundreds.

<i>ISCO-88 Major Group</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
1. Legislators, senior officials and managers	6800	6200	6000
2. Professionals	26.600	19.300	15.900
3. Technicians and associate professionals	32.700	24.400	18.600

Source: Centraal Bureau voor de Statistiek (CBS), (Statistics Netherlands), 2006

8.2 Country of origin knowledge migrants

The top three countries where migrants who have used the knowledge migrant scheme are from, are India, the United States of America and Japan. It should be mentioned that Indian nationals have to be in the possession of a MVV, whereas nationals from the United States of America and Japan are exempted from this rule. The table below shows that the number of knowledge migrants from all mentioned countries has risen in 2006, at which India supplies for the greatest group of knowledge migrants.

Table 3: knowledge migrants in 2005 en 2006 by top 10 nationalities in 2006.

<i>Current nationality</i>	<i>2005</i>				<i>2006</i>				<i>Total 2005 - 2006</i>
	M	F	Total	%	M	F	Total	%	
Indian	250	30	280	17.4	834	100	934	26.0	1214
American	194	92	286	17.7	364	164	528	14.7	814
Japanese	80	8	88	5.5	172	17	189	5.3	277
Turkish	58	21	79	4.9	105	55	160	4.5	239
Chinese	37	32	69	4.3	91	51	142	4.0	211
Australian	60	16	76	4.7	93	38	131	3.6	207
Canadian	32	20	52	3.2	80	31	111	3.1	163
Polish	41	13	54	3.3	61	50	111	3.1	165
Russian	30	20	50	3.1	72	37	109	3.0	159
South African	24	13	37	2.3	73	25	98	2.7	135
Other	371	171	542	33.6	730	349	1079	30.0	1621
Total	1177	436	1613	100	2675	917	3592	100	5205

Source: IND, Stafdirectie M&C (Immigration- and Naturalisation Service, Staff Directorate Resources and Control), 2007

9. Conclusions

The objective of this study is to clarify the framework in which highly-skilled migrants move in the various EU member states. In The Netherlands the entry and residence conditions for highly-skilled migrants are laid down in the knowledge migrant scheme. Since this scheme came into effect on 1 October 2004, two interim evaluations have been carried out that have a qualitative character. A more recent evaluation is not available. Inquiries about data on the knowledge migrant scheme show that the ISCO-88 classification is not used. There has not been an elaborate analysis yet on the available information about the occupational sector in which the knowledge migrants are employed. Thus, the qualitative information in this report cannot be supported with statistical data as formulated in the specifications. Because of abovementioned factors the conclusions are regarded as preliminary.

In the coming years, the employment market will be characterised by the recovering economy. With regard to the growth in employment, it is expected that growth will be greater for those with a higher education than those with a lower level of education. It is also predicted that the number of jobs will ultimately increase more strongly than the size of the workforce due to the increasing ageing of the workforce. This expected shortage will impede development towards a knowledge economy. At the same time, the Dutch government has the ambition to be one of the front runners in the EU with regard to the knowledge economy.

With regard to the question of how to allow the knowledge economy to grow, there are a number of options for solutions. One of these options is to attract the required expertise - the knowledge migrants - to The Netherlands from other countries. The government is attempting to do this through the implementation of the knowledge migrant scheme.

The knowledge migrant scheme, which came into effect on 1 October 2004, intends to introduce a low-threshold scheme in which an accelerated procedure can be used for the processing of residence applications. The general tendency is that the requirements for using this procedure are defined clearly and concisely.

The advent of the knowledge migrant scheme could lead one to expect that the number of work permit applications for 'work as an employee' would decline. The fact that this does not (yet) appear to be the case could lead one to conclude that the number of applications for work permits continues to increase and/or that a new target group is being reached by means of the knowledge migrant scheme.

A number of obstacles still exist in the policy execution. For instance, in the majority of the applications the period stipulated for the accelerated procedure is not achieved. There is room for improvement in terms of the collaboration between the co-operating organisations and the vulnerability of the scheme could be reduced. Solutions for these obstacles are sought in the information provision, the operations and/or policy changes.

It is not possible to give an unequivocal answer to the question whether the knowledge migrant scheme is reaching the intended target group. The general view, however, is that the scheme can be used to recruit higher level management personnel. Because the definition of a knowledge migrant is directly related to the salary criterion, it is likely, however, that (employment) migrants who meet the salary requirement but do not contribute towards increasing the Dutch knowledge climate are also making use of this scheme. On the other hand, migrants who can contribute to the (economic) innovative ability, but are unable to meet the salary criterion, are excluded from using the knowledge migrant scheme.

It is clear that the current demand-driven system of the knowledge migrant scheme does not cover all target groups that could play a catalysing role in the optimisation of the knowledge climate. It has to be seen which possible alterations and/or supplementary regulations are needed to attract the category labour migrants that are now excluded from the knowledge migrant scheme.

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