



# **Legal Migration Fitness Check**

Evidence base for practical  
implementation

Member State summary

**The Netherlands**

*Annex 2 NL*

Written by ICF Consulting Services  
Limited

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## **LEGAL NOTICE**

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## Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **the Netherlands**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant<sup>1</sup> for the following Directives:

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Researchers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme	No	Yes - 'verblijfsvergunning voor onbepaalde tijd' (residence permit of indefinite duration/permanent residence permit) § Article 20 and 21 of the Aliens Act	No -The Dutch general system for residence permits for students under article 14 Aliens Act jo Article 3.41 Aliens Decree was already in conformity with the Directive. No special implementation was therefore necessary	No	Yes – - The Dutch Kennismigrantenregeling (Highly Skilled Migrants Scheme) § 2004,481 by adding Article 1d of the Executing Decree of the Labour Act on Aliens  - the Highly Educated Migrants Scheme  § Staatscourant 2008, no. 2595	No
Options implemented?						

<sup>1</sup> . See ref document (EU summary) Under each phase, the following aspects are examined : :  
**Legal transposition of the EU legal migration acquis:** including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these non-compliance issues affect the practical application of the Directive;  
**Practical application of the EU legal migration acquis:** overview of the main application issues/problems arising in the MS per each of the migration phases;  
**Differences between national statuses and the EU legal migration acquis:** substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

## **Main differences between EU statuses and the respective national parallel schemes**

### **1. Equivalent national status to LTR:**

- The residence permit of indefinite duration/ permanent residence permit is regulated under Article 20 and 21 of the Aliens Act.
- The main difference regarding the residence permit of indefinite duration is that it does not grant intra-EU mobility rights to TCNs. These rights are only granted to TCNs with an EU long-term residence permit as laid down in Chapter 5 of the Aliens Act.

### **2. Equivalent national status to BCD:**

- HSM Scheme is adopted in 2004 in Stb, 2004,481 by adding Article 1d of the Executing Decree of the Labour Act on Aliens, which says that highly skilled workers are exempt from the requirement to have a work permit
- HEMS is adopted in 2009. (Staatscourant 2008, no. 2595). TCN who are high educated and who have obtained at least one Masters degree, can obtain a residence permit for the duration of at most one year to find a job in the Netherlands or to start an innovative company
- The Dutch HSM scheme has a lower salary criterion and no education requirement. The HSM scheme only requires a contract or binding offer for three months (instead of 1 year required by the BCD). Maximum duration HSM scheme is 5 years (instead of 4 years)

## **1 Pre-application phase**

### **1.1 Legal transposition of the EU legal migration acquis**

The compliance with the legal transposition of the EU legal migration acquis in the pre-application phase is satisfactory.

### **1.2 Practical application of the EU legal migration acquis**

#### *Obtaining information from the authorities upon request*

There are no application issues in the Netherlands in the pre-application phase. The only problem found in this phase was related to requesting information from the Dutch authorities through phone and the online contact form. Contact with the Immigration and Naturalisation Service (IND) could not be established by phone on 29 June 2017 and no response was received to the e-mail sent via the IND contact form. Three weeks later, on 19 July 2017 the IND made contact through phone to ask whether an answer was already found to my question. It cannot be said whether or not the delayed response is incidental or occurs on a regular basis.

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
Language	National language					

	(s)					
	English					
	French (if not national)					
	Spanish (if not national)					
	Russian					
	Arabic					
	Turkish					
	Other					
The informati on is easy to find*	2	2	2	2	2	2

\* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4: Disagree; 5: Strongly disagree

Information can be found on the following aspects of the application procedure:

Applicati on procedu re	Conditio ns for admissi on	Entry requirem ents (e.g. visa etc.)	Cost of applica tion	Applica ble deadlin es	Rights upon admiss ion	Any differences between the Directives
Yes	Yes	Yes	Yes	Yes	Yes	

### Information upon request

The following entities provide information upon request:

- i. Diplomatic missions in third countries answer to consular queries via the contact form: <https://www.netherlandsandyou.nl/contact/contact-form>. Questions are received by the Foreign Affairs Centre (24/7 BZ Contact Centre). A response is given within 48 hours. In the last dropdown box in this form TCNs can select the location of the diplomatic mission.
- ii. The **IND** answers to general queries via the hotline, e-mail and Twitter. Questions about the status of an application can only be answered via the IND hotline. TCNs can visit an IND information desk by appointment for information about residence in the Netherlands.
- iii. Anyone can visit the local offices of the **Dutch Council for Refugees** and request any information about migration law and policy or civic integration in the Netherlands.
- iv. The **Education Executive Agency** (DUO) answers to queries about civic integration in the Netherlands via telephone and the contact form: <https://inburgeren.nl/en/footer/contact-with-duo.jsp>.
- v. The **Dutch government** responds to queries on the civic integration exam abroad (how to sign up for the exam and how to pay and other questions on civic integration abroad) via telephone and the contact form. A response is given

within 2 working days. See <https://www.naarnederland.nl/category/contact> and <https://www.rijksoverheid.nl/contact/contactformulier> (government website in Dutch) or <https://www.government.nl/contact> (government website in English). This contact form can also be used for any other questions about Dutch law and policy. The government also responds to questions via the Twitter page and telephone. See <https://www.government.nl/contact>.

### **1.3 Differences between national statuses and the EU legal migration acquis**

There are no differences or similarities in the pre-application phases since most of the relevant Dutch legislation is found in the general administrative law act.

## **2 Preparation phase**

### **2.1 Legal transposition of the EU legal migration acquis**

The compliance with the EU legal migration acquis in the preparation phase is partial, due to several issues of concern with the FRD and the LTR.

#### **FRD:**

**Article 5(5)** of the Directive may give rise to concerns due to the fact that the protection of rights of minor children (including Article 24 Charter) is not a principle that is laid down in legislation, nor generally duly applied during the examination of requests for family reunification. Only with regard to the one-year waiting period, the Alien Decree prescribes that the interests of the child must be taken in due account.

**Article 7 (1) (c)** is of concern given that as a result of Chakroun and Khachab, an individual assessment takes place and the sustainability criterion has been weakened.<sup>2</sup> Amendments of the Alien Decree still have to be made. However now the new policy rules exclude periods in which there is a disability or unemployment benefit received.

**Article 9(2)** of the Directive is partially conform due to the required existence of a so-called 'effective family bond' between parents and children, which entails additional conditions to biological or legal family ties.

**Article 10 paragraph 3 and Article 2 (f)** is partially conform due to the date of reference for the right to family reunification for unaccompanied minors, as this is set on the date of granting a residence status instead of the date of entry in the Netherlands. The District court of The Hague has asked preliminary questions to the CJEU (case no. C-550/16, A.& S.).

**Article 11(2)** of the Directive is partially conform due to the requirements of documentary evidence that specific categories of family members of refugees have to submit.

**Article 15 (1) jo (4)** may not be applied correctly, as the issuance of an autonomous residence permit is subject to a proof of knowledge of the Dutch language and Dutch society (level B1). It is questionable if such a condition falls under the scope of paragraph 4, as the integration requirement may undermine (the purpose of) the right to an autonomous residence permit after five years of dependent residence. The Council of State has therefore asked for a preliminary ruling on this requirement (case no. C-257/17, C and A).

#### **LTR:**

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<sup>2</sup> *Parliamentary Documents II* 2016/17, 32 175, no. 63, available at: <https://zoek.officielebekendmakingen.nl/kst-32175-63.html>.

**Article 5(1)(c) LTR** is partially conform due to the strict criteria on sustainability of the income, entailing sufficient resources during the last three years, if the applicant cannot proof sufficient income for the next year. Regarding family reunification, this 'look back' period has been reduced from three to one year in case that a 1-year employment contract is lacking, as a result of the CJEU *Khachab* judgement. On 19 July 2017 the IND clarified to the researchers on request that no amendments have been made (or are foreseen) to the sustainability criterion of the income requirement for the FRD-status. It is not yet clear if the policy would also apply to the LTR-status. In case that it would not apply to the LTR-status this would be at odds with the reasoning of the CJEU in *Chakroun* and *Khachab*, which is also applicable to the right to an LTR-status.

**Article 4(3), third subparagraph, LTR** is partially conform due to the fact that the provision does not indicate that periods of secondment shall be taken into account with the calculation of the total period of absence.

*Issues affecting the practical application: Proof of sufficient, sustainable resources*

**FRD and LTR:** Despite the amendments of the sustainability criterion of the income requirement through new policy rules on family reunification, the application forms for family reunification or for long-term residence EU have not been changed. It cannot be said whether or not the IND would decide in favour of these applicants once an application has been lodged. It should however be noted that potential applicants reading the application forms will refrain themselves from submitting the application due to a lack of documentary evidence of the past 3 years. This may give rise to concerns for both FRD and LTR.

## 2.2 Practical application of the EU legal migration acquis

*Pre-integration requirements*

**FRD:** In response to the *K. and A.* judgement the hardship clause for the pre-entry integration requirement has been amended and the costs for the exam and the preparation kit have been lowered, but it remains of concern that spouses rely on the private market to find and attend a language course and that a high amount of costs are involved in preparing for and taking the examination abroad – courses, fees, costs for travelling to courses and the embassy (sometimes in another country). This is even more compelling now the state requires that applicants show that they have made an effort, which can only be proven with the attendance of a course. Furthermore, the IND does not give an indication of the timeframe during which TCNs will receive a notification of the exam results, according to a migration lawyer. The lawyer mentioned that in case that embassies are dealing with a high workload, TCNs must sometimes wait about two months for the exam results. As an example, the lawyer mentioned the embassy in Morocco.

If the costs involved in meeting the integration requirement become an obstacle for applying for family reunification, the application would undermine the right to family reunification and the goal of the directive, and violate the principle of proportionality (see judgment *K. and A.*, but also the judgment on fees for an LTR-permit, Commission against the Netherlands, C 508/10).

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
The information that applicants need to complete is not	3	2	1	1	1	2



extensive						
The application form is user-friendly	1	1	1	1	1	1

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C				
Continuous legal residence					
Sufficient resources	Yes, T, R	Yes, T, R	N/A	Yes, T, C, R	
Accommodation/Address in territory	No	Yes, R			No
Sickness insurance	No	No	No	No	No
Work contract (for RD host agreement)				Yes, R	Yes, T, R
Minimum salary threshold					
Professional qualifications				Yes, T, C, R	
(Pre-) Integration measures	Yes, T, C, R	Yes, C, R			
Pre-departure conditions					
Proof no threat to public	Yes, R	Yes, R	Yes, R	Yes, R	Yes, R
Medical examination certificate	Yes, R		Yes, R	Yes, R	Yes, R
Valid travel document			Yes, R	Yes, R	Yes, R
Entry visa					No
Other	Yes, T, R	No	Yes, T, C, R	No	Yes, T, C, R

*Note: T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.*

### **2.3 Differences between national statuses and the EU legal migration acquis**

*Applications for BCD residence permit and highly skilled migrants residence permit*

Dutch policy rules provide similar rules regarding the type of proof that needs to be submitted for the **BCD** status and the highly skilled migrants status: a copy of the employment contract or appointment decision.<sup>3</sup> The application however differs in

<sup>3</sup> Paragraph B6/4.3 and 4.6 Aliens Circular.

practice. The application form for the BCD status<sup>4</sup> that is meant for sponsors who are not recognized is the only application form that states that such a copy must be submitted. The other application forms do not require such means of evidence.

The national 'highly skilled migrants' status offers more favourable conditions (lower income level required and less conditions), but the BCD permit gives TCNs better possibilities for working in other Member States after residing in the Netherlands for 18 months as an EU Blue Card Holder. A benefit of the BCD permit is that it can also be requested by sponsors who are not recognized, as opposed to the highly skilled migrants permit which can only be requested by recognized sponsors. Regarding sponsors who are not recognized an application for the BCD permit must always be supported with the following documents: a copy of the employment contract, an employer's declaration, the appendix 'Declaration by sponsor (employment)', copy of salary slips over the past 3 months (if possible), certified copy of Dutch diploma (if applicable) and copy of foreign diploma joined with the original credential evaluation from the Nuffic (if applicable).<sup>5</sup> Recognized sponsors submitting the request for the BCD permit and recognized sponsors submitting a request for the national 'highly skilled migrants' status are not required to provide these documents. The conditions for residence as an EU Blue Card holder are thus less favourable in case that the sponsor is not recognized in comparisons to the conditions for residence as a highly skilled migrant.

#### *Applications for long-term residence EU and permanent residence permit*

The requirement for the **LTR** permit of sufficient, independent and sustainable resources (**Article 5**) does in principle not offer any exceptions, while the national permanent residence permit can also be granted without fulfilling the income requirement after ten years of legal residence. The **LTR** excludes TCNs with legal residence for temporary purposes (**Article 3**), where the national legislation only requires five years of continuous legal residence, without making a difference between the purpose of stay. The conditions for the national permanent status are therefore more favourable.

### **3 Application phase**

#### **3.1 Legal transposition of the EU legal migration acquis**

The compliance with the EU legal migration acquis in the application phase is partial, due to some concerns with the FRD, BCD and SPD

##### **FRD:**

**Article 5(2), first subparagraph of the Directive**, Dutch measures make the acceptance of the application dependent on the submission of official documents.

**Article 5(4), third subparagraph of the Directive**, the Dutch measures do not foresee any specific consequences for the refusal or acceptance of the application of family reunification.

##### **BCD:**

**Article 1(b)**: Dutch legislation did not transpose the requirement to submit an application for an EU Blue Card within one month of arrival in the second Member State.

**Article 3(2)(i)**: The limitations to the scope of the Directive were transposed in Article 3.30b (2) of Aliens Decree 2000, with the exception of Article 3(2)(i) of the Directive, which does not seem to have been explicitly transposed.

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<sup>4</sup> Application form 'European blue card' (sponsor), available at: <https://ind.nl/en/Forms/7517.pdf>, p.3.

<sup>5</sup> Application form 'European blue card' (sponsor), available at: <https://ind.nl/en/Forms/7517.pdf>, p.3.

**Article 11(1)1st:** Since the time limit of 90 days is only included in the implementing guidelines of the Dutch Aliens Act, and not in the Aliens Act itself, partial conformity was concluded. A new Article 2(m) of the Aliens Act 2000 will however introduce the correct time limit in the Aliens Act soon, though it is unclear when this will happen.

**Article 15(4):** In accordance with Dutch law, decisions have to be given within 6 months, however lengthening of this time limit is possible - for up to a further six months - if the Minister for Justice deems advice from third parties or the public prosecutor necessary.

**SPD:**

**Article 5(2)(3)** is lacking provisions foreseeing consequences on refusal or acceptance of the application of long-term residence, apart from the economic compensation.

**Article 6(1), 6(2), 7(1) and 7(2)** are lacking provisions explicitly designating the use of the uniform format.

**Article 8(2)** is lacking provisions on ensuring that redress or appeal procedures are guaranteed for the refusal or withdrawal of the temporary residence permits.

Some of these issues have also led to practical application issues, as described below.

### **3.2 Practical application of the EU legal migration acquis**

#### *Time period for processing applications FRD*

The legal maximum period for the IND to process applications for family reunification is 180 days. In 2016 however, the average time period for processing applications for reunification with a family member who is a beneficiary of international protection was 232 days. In the period between January until the end of April 2017, the average decision period for applications submitted by family members of beneficiaries of international protection was 331 days.<sup>6</sup>

The average processing period for applications for family reunification with beneficiaries of international protection (331 days) is longer than 9 months and therefore an infringement of the **FRD (Article 5(4) FRD)**. An average decision period of 232 days is shorter than the 9 months allowed under the FRD (Article 5(4) FRD). The Dutch legislative proposal to extend the 180-day decision period to 9 months has however not yet been adopted. The FRD's provision that applications must be processed as soon as possible may leave room for the interpretation that any decision period that is shorter than 9 months is allowed under the FRD.

#### *Information on redress and appeal procedures*

The IND does not proactively inform TCNs on redress and appeal procedures in case that the authority is late with its decision-making or rejects an application. When TCNs have submitted an application, the IND sends a letter stating the decision period, but does not inform them on the possibility of legal challenges in case that the IND exceeds this period. The only way for TCNs to inform themselves on possible redress procedures is by browsing through the IND website.<sup>7</sup> Regarding appeal procedures, the letter stating a rejection for an application briefly states that it is possible to object the decision. Information on the necessary steps for making an objection can only be found by browsing through the IND website.<sup>8</sup> The information on redress and appeal

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<sup>6</sup> Response from the State Secretary of Security and Justice to Parliamentary Questions, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/05/31/antwoorden-kamervragen-inzake-de-behandeling-van-verzoeken-tot-gezinshereniging-door-de-ind>.

<sup>7</sup> See <https://ind.nl/en/Documents/9001.pdf>.

<sup>8</sup> See <https://ind.nl/en/Pages/objection-and-appeal.aspx>.

procedures is sufficient, yet finding information on these procedures and factually using any of these procedures largely depends on the initiative of TCNs.

*Fees for application disproportionate high*

An issue which is recently dealt with in some lower court cases is the question whether the fees for the Single Permit application (€ 897 at the moment) are disproportionately high and therefore possibly in breach with **Article 10 SPD**. According to the immigration authorities the fees are covering the costs they have to make. The courts so far have found the fees disproportionate (District Court The Hague 17 July 2015, ECLI:NL:RBDHA:2015:9595 and District Court The Hague 6 April 2017, ECLI:NL:RBDHA:2017:930). As from May 2018, the fees will be lowered substantially to 285 euro.

The Single Permit fee issue could therefore be seen as an infringement of **Article 10 SPD**.

*Submission of the application - visa*

TCNs who are required to have a long-stay visa ('MVV') for travelling to the Netherlands, can submit the application for the visa and the residence permit at once by filling in a single application form. An application form can be **downloaded** from the IND website which has to be **printed** and sent to the IND **via post**. The IND website lists all the application forms at: [https://ind.nl/en/Pages/forms-and-brochures.aspx?pk\\_campaign=funnel-home&pk\\_kwd=forms-brochures](https://ind.nl/en/Pages/forms-and-brochures.aspx?pk_campaign=funnel-home&pk_kwd=forms-brochures). The (recognised) sponsor can submit this application to the IND via post or the TCN can submit the application to the diplomatic post **in person**. TCNs must first make an appointment with the diplomatic post in order to submit their application. The diplomatic post will then forward the application to the IND. For a list of cities see the document available at:

<https://www.rijksoverheid.nl/onderwerpen/immigratie/documenten/publicaties/2016/09/21/overzicht-landen-en-steden-voor-verkrijgen-mvv-en-afleggen-inburgeringsexamens>

TCNs from Australia, Canada, Japan, New-Zeeland, the United States (US), South Korea, Monaco and Vatican City do not need a visa and can apply directly in the Netherlands for a residence permit with the IND.

Applications for the national equivalent status of the Blue Card Directive, the 'highly skilled migrant' status can be submitted **online** via the recognized sponsor portal: <https://portal.ind.nl/en/web/guest/home>.

Only the IND (which falls under the Ministry of Security and Justice) is involved in the processing of lodged applications and for issuing the permit(s). When TCNs submit an application at a diplomatic post, the IND is still the authority that will receive and process the application.

Directive	General	FRD	LTR	SD	RD	BCD	SPD
Application from third country (Q3a)	Yes / No	Add if different					
Permit received in third country	No						
Number of authorities involved in the application	1						

Number of authorities involved in the issuance of the residence permit	2						
Application modalities	Online submission In person						
Existence of a standard application form for all statuses	No						
Language of the application form	National language(s) English						
Fees charged	237 €	159 €	317 €	317 €	926 €	897 €	
Other fees charged?	No	No	No	No	Yes	No	
Fees charged for permit issuance	No	No	No	No	No	No	
Fees charged for renewal / replacement of the permit	€ 396 € 237 or € 159 (for adult child) or € 51 (for minor child)	€ 51 or € 29 (for minor child)	€ 159	€ 317	€ 396	€ 396	

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law)	90 days	180 days	60 days	60 days	90 days	90 days
Processing time (in practice)	104-232 days					49 days

### **3.3 Differences between national statuses and the EU legal migration acquis**

There are no substantial differences at the level of legislation in this phase.

*Submitting applications for 'highly skilled migrants' residence permit*

Applications for the national 'highly skilled migrant' status can be submitted online via the recognized sponsor portal as opposed to the procedure for the EU Blue Card.<sup>9</sup> This makes the conditions for the highly skilled migrants status easier and therefore more favourable.

## **4 Entry and travel phase**

### **4.1 Legal transposition of the EU legal migration acquis**

The compliance with the EU legal migration acquis is satisfactory in the entry and travel phase. A minor issue of concern found regarding **Article 17(2) BCD** because the implementing guidelines of the migration legislation do not specify that long-term residents who are former EU Blue card holders will receive the notification that they are 'former EU Blue card holders' in their residence permits.

### **4.2 Practical application of the EU legal migration acquis**

There are no application issues or any other problems in the Netherlands in the entry and travel phase.

As the third-country national is not yet in the possession of a residence permit, the Member State issues a visa and has put a specific timeframe for issuing the latter.

The employer is the main applicant and needs to request the visa together with third-country national.

The Member State allows country nationals who hold a valid permit and valid travel document to enter and re-enter their national territory only on the basis of the permit.

The third-country national is allowed to travel to other Schengen Member States only on the basis of the permit and valid travel document.

The Member State does not impose specific entry requirements to third-country nationals of a visa free country.

Third-country nationals do not encounter any obstacles in practice to leave the third country, transit and/or enter the Member State.

### **4.3 Differences between national statuses and the EU legal migration acquis**

#### *Maximum decision period for long stay visa applications*

The decision period for long stay visa applications required for EU Blue Cards or the national highly skilled migrants permits is 90 days. The difference is that for the national permits this decision period can be extended with another 90 days whilst the decision period for a long stay visa application necessary for an EU Blue Card cannot be extended. The EU Blue Card thus offers more favourable conditions and rights.

## **5 Post-application phase**

### **5.1 Legal transposition of the EU legal migration acquis**

The compliance the EU legal migration acquis in the post-application phase is satisfactory.

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<sup>9</sup> <https://portal.ind.nl/en/web/guest/home>.

## 5.2 Practical application of the EU legal migration acquis

There are no application issues or any other problems in the Netherlands in the post-application phase.

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	Same as duration of family member's permit	NA	The duration of study + 3 months	3 months	The duration of the work contract + 3 months	3 months
Maximum validity of first permit	60 months	60 months	60 months	60 months	48 months	12 months
Minimum validity of permit renewal						3 months
Maximum validity of permit renewal (Q6b(i))	60 months	60 months	60 months	60 months	48 months	12 months

The Member State has a set timeframe to deliver the permit following the notification of the decision.

The employer is the main applicant but is not involved in the delivery of the permit.

## 5.3 Differences between national statuses and the EU legal migration acquis

### *Duration of EU Blue Card and national status*

There is a difference regarding the duration of the EU Blue Card and the national permit. The EU Blue Card has a maximum duration of 4 years, whilst the national Highly skilled migrants permit is issued for maximum period of 5 years. The minimum duration of these permits is the same as the duration of the employment contract or assignment, but EU Blue Card holders are granted an additional 3-month period. The national highly skilled scheme has been proven to be more favourable than the EU Blue Card, since only 11 Blue Cards have been issued in the Netherlands in the past years.

## 6 Residency phase

### 6.1 Legal transposition of the EU legal migration acquis

The compliance with the EU legal migration acquis in the residency phase is partial due to some concerns with the FRD, LTR and SPD.

**FRD:** Partial conformity of **Article 15 paragraph 1 and 4**, as an autonomous residence permit is only granted after five years of residence after the fulfilment of the integration requirements. The Council of State has requested a preliminary ruling to the CJEU on this issue.

On 26 April 2017, the Council of State annulled article 16(1)(i) AA (rejection due to fraudulent information) because of non-conformity with **Article 16 (2) FRD**, as the directive does not allow to apply this rejection ground in a subsequent application (*Chakroun* judgment, strict interpretation provisions). According to art. 3.77(7) Aliens Decree, a new application can only be lodged after the spouse has stayed abroad for five years after the former withdrawal or non-renewal. This provision was also annulled as being not in conformity with the FRD.

**LTR: Article 11(1)(a) LTR** is partially conform due to lacking provisions indicating that third-country nationals with long-term residence permits who have access to employment and self-employment activities are specifically excepted from the exercise of positions of public authority.

**SPD:**

**Article 12(1)(d):** national provisions lay down that the Minister may extend recognition of professional qualifications obtained by a TCN as a discretionary power, and where TCNs with other permits are only explicitly covered by recognition when they are EU-LTRs. Once qualifications are recognised however, the same rules apply to TCNs following the principle of equivalency.

**Article 12(1)(e):** It is not clear whether the Dutch legislation covers third country nationals temporarily residing in the Netherlands with regard to the right of access to social security benefits.

None of the issues above have been found to affect the practical application of the Directives.

## **6.2 Practical application of the EU legal migration acquis**

There are no major application issues in the Netherlands in the residency phase. Below is an incident that was mentioned by a migration lawyer.

### **a. Use of the permit:**

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a constitutive value. It gives third-country nationals to right to move freely on the Member State's territory.

The Netherlands allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

The permit is required as a legal document for the following other administrative procedures:

<b>Access to education</b>	<b>Access to healthcare</b>	<b>Registration with PES</b>	<b>Fixed telephone subscription</b>	<b>Utility subscription</b>	<b>Open a bank account</b>	<b>Social security registration</b>
X	X	X	X	X	X	X

### **b. Renewals of the permit:**

National or EU law imposes a direct or indirect requirement to renew a valid residence document.



The renewal process follows a single procedure, involving one authority. The same authority is involved as in the first application procedure.

*Renewal of students' residence permits*

A lawyer interviewed for this study mentioned an incident in which a student was late with submitting his renewal due to the educational institution not forwarding the request for paying the fees. The educational institution told the student to return to his country of origin for requesting the long stay visa. The educational institution was not aware of the rule of the two-year period during which the IND still accepts an application for renewal instead of treating the renewal as a first application. When the student was about to take a flight back to his country of origin he called the lawyer to verify the educational institution's statement. If it was not for the lawyer telling the student that returning is not necessary, the student would have already taken a flight back to his country of origin. This shows that educational institutions do not always acknowledge their role as sponsor and the responsibility that comes with this role, according to the migration lawyer.

**c. Change of status and naturalisation**

Status changes are possible for most categories. The procedures and conditions are for the most part the same as those applicable to first time applicants, but certain conditions may not apply depending on the type of status change. For instance, status changes are possible without the requirement of lodging an application for a long-stay visa abroad. Regarding the three status changes mentioned below TCNs are exempted from the long stay visa requirement as opposed to first time applicants. In case of changes from family reunification-based permits to autonomous permits TCNs must provide proof of knowledge of the Dutch language and Dutch society (level B1). The civic integration requirement may not apply when this requirement has already been met during the first residence period) as opposed to first time applicants.

**d. Employment rights on the basis of the permit**

In general, a work-related permit is linked to a certain employer. When changing employer, the third-country national needs to request a change to the permit.

**e. Equal treatment**

No restrictions to equal treatment in practice.

**f. Integration:**

Specific integration procedures and conditions apply to third-country nationals once established on the territory of the Member State. There are consequences if the third-country national does not participate in these or fails the integration measure.

**6.3 Differences between national statuses and the EU legal migration acquis**

*Duration of renewals EU Blue Card and Highly skilled migrants status*

The renewal of an EU Blue Card has a maximum duration of 4 years, whilst the renewal of the national highly skilled migrants permit is issued for maximum period of 5 years. The national highly skilled migrants status thus offers more favourable rights.

## **7 Intra-EU mobility phase**

### **7.1 Legal transposition of the EU legal migration acquis**

The compliance with the EU legal migration acquis in the intra-EU mobility phase is satisfactory, except for some issues of non-compliance with the LTR and BCD.

#### **LTR:**

**Article 21(1) LTR** is partially conform due to equal access to employment and self-employment as referred to in Article 11(1)(a) being partially transposed as it is not explicitly indicated that third-country nationals are prohibited from the exercise of positions of public authority.

**Article 21(3) LTR** is partially conform due to the requirement for family members of long-term residents to receive a remark from the Minister that no employment restrictions apply, which long-term residents do not require.

#### **BCD:**

**Article 18(2) BCD:** Partial conformity: There is no provision obliging an EU Blue Card holder to apply for a European Blue Card in a second Member State within one month.

**Article 19(2) 1st subparagraph BCD:** The time limit imposed on the family members to submit an application for a residence permit as soon as possible and within one month after entering the territory of a Member State was not transposed.

**Article 19(5) BCD:** Partial conformity was concluded since not all provisions of Article 15 were transposed correctly. **Article 19(6) BCD:** Since Article 15 was not transposed in an entirely conform manner, partial conformity was concluded.

No evidence identified that the issues above have affected the practical application of the Directives.

### **7.2 Practical application of the EU legal migration acquis**

No specific application issues or any other problems have been identified in the Netherlands in the intra-EU mobility phase.

For short-term mobility, the Member State:

- Does not require the third-country national to notify
- Does not require the third-country national to ask for authorisation.

### **7.3 Differences between national statuses and the EU legal migration acquis**

#### *Intra-EU mobility*

The LTR permit offers more favourable rights because it grants the right to settle in another EU Member State, where the national permanent status does not include this right.

## **8 End of legal stay / leaving the EU phase**

### **8.1 Legal transposition of the EU legal migration acquis**

The compliance with the legal transposition of the EU legal migration acquis in the end of legal stay phase is satisfactory, except for some issues of partially non-compliance with the LTR.

#### *Withdrawal and expulsion*

**Article 9(1)(b) LTR** is partially conform due to 'may' wording conferring discretionary powers and where guarantees related to the expulsion under Article 12 of the Directive are only referred to with regard to the public order and not to public

security. **Article 9(1)(c) LTR** is partially conform due to 'may' wording conferring discretionary powers. **Article 9(4) LTR** is partially conform due to 'may' wording conferring discretionary powers. **Article 12(3)(a), (b), (c) and (d) LTR** are partially conform due to the national provisions not explicitly taking the requirements of **Article 12(3)** into account with regard to an expulsion decision.

Based on the available evidence the partial conformity does not seem to have led to a practical application issue.

## **8.2 Practical application of the EU legal migration acquis**

No application issues or other problems have been identified in this survey in the Netherlands in the end of legal stay phase.

There are specific procedures in place for third-country nationals who choose to leave the Member State. These include:

- De-registration from national / local registers
- Returning the residence permit
- Leaving responsible authorities with an address in the next country of residence

Information on the portability of social security benefits is easy to find and clear.

A third-country national residing in the Member State is allowed to be absent from the territory for a maximum of 180 days for FRD, 240 days for BCD and RD, 364 days for SD and LTR before s/he loses the residence permit and/or right to stay. The absence of third-country nationals is not monitored by the Member State.

The Member State does not have measures or a scheme in place to allow circular migration.

## **8.3 Differences between national statuses and the EU legal migration acquis**

### *Protection against withdrawal and expulsion LTR permit*

The **LTR** permit offers more protection against withdrawal and expulsion on the basis of **Article 9 and 12** of the Directive, because of the required actuality of the threat to the public order, and the special protection to expulsion offered by the *Ziebell* judgment of the CJEU, including the full scrutiny by the court. The LTR permit can only be withdrawn if false documents are handed over or information has been held behind on purpose, while for the national status the requirement of intentionality is not relevant.

### *Absence from the Netherlands*

In case of absence from the Netherlands, TCNs must continue to have their main residence in the Netherlands. TCNs staying in another EU country up to 6 years (or more than 6 years in case of study) will not lose their LTR permit. For a period of 12 consecutive months TCNs are allowed to reside outside the EU. TCNs will not lose their permit due to residing in a Schengen country for more than 12 months, unless they were absent from the Dutch territory for more than 6 years. The national permanent status only allows TCNs to reside outside the Netherlands for 6 years in a row or four months per year within a period of 3 years in a row. The LTR permit offers more favourable rights in case of absence from the Netherlands than the national permanent status.

## **9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State**

### *General*

For the most part, this study found that the practical implementation of the EU legal migration legislation in the Netherlands is satisfactory. No issues were found on the practical application of the RD and SD. Several minor problems were found with the application of the BCD and SPD. However, practical application of the legal migration Directives is mostly problematic with regard to the FRD and the LTR. The pre-application phase and the last four phases of the legal migration process are not problematic, except for minor application issues in phases 1 and 6, but further research would be necessary to determine whether these are indeed merely incidental. Information is available on all the procedures and when TCNs need to find information this should not be too difficult. The only phases in which issues with the practical implementation of the EU directives were found are the preparation and application phases (phases 2 and 3).

### *Pre-application phase*

In the pre-application phase, obtaining information upon request from the IND as part of the experiential questions was problematic since it took three weeks to obtain the required information. Further research may be required in order to determine whether this is merely incidental.

### *Preparation phase*

The main practical application issues found in the preparation phase concerns the pre-integration requirements. Pre-integration requirements have improved in response to CJEU case law. However, spouses must rely on the private market for language courses and there is a high amount of costs involved in preparing for and taking the civic examination abroad: courses, fees and costs for travelling to courses and embassies. Another issue with the application of pre-integration requirements is that the IND does not inform TCNs on the timeframe between taking the exam and receiving the results. Embassies that are busy can sometimes take about two months until the results of the exam are sent to TCNs.

### *Application phase*

The first practical application issue found in the application phase concerns the decision-making period for FRD applications regarding sponsors who are beneficiaries of international protection. In practice, the average decision period for applications was 232 days in 2016 and 331 days in the period between January until the end of April 2017. The first decision period falls within the nine months allowed under the FRD. However, the second decision period may be the result of the FRD's provision that applications must be processed as soon as possible leaving room for the interpretation that any decision period shorter than 9 months is allowed under the FRD which does not motivate the authorities to process FRD application expeditiously. This is furthermore illustrated by the Dutch legislative proposal to extend the maximum legal decision period from 6 to 9 months. The average decision period in the first four months of 2017 is longer than 9 months and thus an infringement of the FRD.

The second practical application issue found in the application phase concerns informing TCNs on redress and appeal procedures. This information is mainly available on the IND website and is considered to be sufficient, yet finding information on these procedures and factually using any of these procedures largely depends on the initiative of TCNs. The reasons for this is that the IND does not actively inform TCNs on redress and appeal procedures in case that the authority is late with its decision-making or rejects an application.

Finally, the high application fees were identified as an issue, but these will be substantially lowered as from May 2018.

*Residency phase*

In the residency phase there may be an incidental application issue with the renewal of students' residence permits. As described by a lawyer interviewed for this study, the educational institutions do not take on the responsibility that comes with their role of sponsors. The lawyer mentioned an incident in which the student's sponsor (educational institution) did not send through the fees payments form to the student in time. In case such incidents occur more often, this can lead to late renewals or other consequences that may impact the students position such as losing rights and facilities. Further research may be required in order to determine whether this is merely incidental.

## **Annex 1   References**

### **Web links**

<https://ind.nl/Documents/9001.pdf>

<https://ind.nl/en/contact/Pages/Decision-term-exceeded.aspx>

<https://ind.nl/en/Documents/9001.pdf>

<https://ind.nl/en/family/Pages/Spouse-or-partner.aspx>

<https://ind.nl/en/Pages/Costs.aspx>

<https://ind.nl/en/Pages/decision-periods.aspx>

[https://ind.nl/en/Pages/forms-and-brochures.aspx?pk\\_campaign=funnel-home&pk\\_kwd=forms-brochures](https://ind.nl/en/Pages/forms-and-brochures.aspx?pk_campaign=funnel-home&pk_kwd=forms-brochures)

<https://ind.nl/en/Pages/objection-and-appeal.aspx>

<https://ind.nl/en/Pages/objection-and-appeal.aspx>

<https://ind.nl/en/work/work-in-paid-employment/Pages/Paid-employment-single-permit.aspx>

<https://portal.ind.nl/en/web/guest/home>

<https://www.rijksoverheid.nl/documenten/kamerstukken/2017/05/31/antwoorden-kamervragen-inzake-de-behandeling-van-verzoeken-tot-gezinshereniging-door-de-ind>

<https://www.rijksoverheid.nl/onderwerpen/immigratie/documenten/publicaties/2016/09/21/overzicht-landen-en-steden-voor-verkrijgen-mvv-en-afleggen-inburgeringsexamens>

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