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# Labour Migration and Labour Market Integration of Migrants in the Netherlands: Barriers and Opportunities

Annex D to “Dutch labour market shortages and potential labour supply  
from Africa and the Middle East” (SEO Report No. 2019-24)

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# 1 Labour Migration in the Netherlands: barriers and opportunities

## 1.1 Introduction<sup>1</sup>

Migration for economic reasons is a global phenomenon of all times. The world has seen migration of people in search for new grounds to herd their cattle, grow their crops, earn a decent living as a worker or expand ones business into new markets. Since we had borders and border controls, States attempt to ‘manage’ migration and most times strive to select the wanted from the unwanted migrants. This chapter focusses on the legal and some practical barriers in the process of selecting and welcoming economically wanted migrants, migrants who can contribute to lessen local labour market shortages through their work and studies. Economic migration is more than a labour market instrument in case of shortages. Economic migration aspires to the goals of internationalisation, innovation and development through exchange, skills attainment, remittances and building international networks.

Economic migrants are not readily available. The Terms of Reference (ToR) of the Dutch Ministry of Foreign Affairs for this research project state that “experiences show that often there is a mismatch between the labour supply of migrants from third countries and labour demand in Europe. Challenges include (lacking) qualifications and skills, differences between diplomas, language barriers, cultural differences, prejudices and legal and political barriers. Yet there might be unknown opportunities as well.”

This chapter addresses the following question passed in the ToR for this study:

*What are legal and practical barriers to economic migration, especially from countries such as Nigeria, Tunisia and Jordan, into the Netherlands, and what hidden opportunities to fill vacancies in shortage occupations can be uncovered, if any, by analysing existing policy instruments?*

Specific attention will be paid to legal and practical barriers and opportunities in four policy fields: labour migration, diploma recognition, language and integration requirements and labour market access of *other* migrants, like refugees. These policy fields do not explicitly include nor do they exclude labour migrants from countries such as Nigeria, Tunisia or Jordan. Nevertheless, potential labour migrants from these countries face more formal barriers such as visa requirements, that do not apply to western labour migrants. Also, their diplomas are not evaluated as equal to western diplomas making them less likely candidates for highly skilled jobs, nor are their diplomas listed as ‘wanted’ degrees: hence their educational attainments do not facilitate their labour migration.

Because migration policy affects many other policy areas and measures in other policy areas affect migration, cooperation is a necessity to effective (labour) migration policies. This

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intersectionality of policy fields is, according to the Dutch Advisory Committee for Migration Affairs (ACVZ) a prerequisite for successful migration management.<sup>2</sup> Also, in *Onwards to 2030. Migration: futures study* the ACVZ stressed the importance of proper cooperation at an international, intergovernmental and inter-departmental level.<sup>3</sup> Translated to our study at hand, we identify as barriers a lack of such institutional cooperation and of policy intersectionality and aim to identify the (lack of) cooperation and intersectionality when discussing the four specific policy fields.

The chapter is structured as follows. The description of law and policy in each of the four policy fields starts by outlining the relevant European Union legal framework.<sup>4</sup> Next, the national legal framework is described, followed by an analysis of key policy documents, reports and literature discussing the barriers and opportunities. For each policy field we will identify the (lack of) cooperation and intersectionality. The conclusion offers some summative points, to draw on in the final conclusions of the report.

## 1.2 EU legal Framework for Labour Migration

Two legal frameworks for labour migration into the EU will be described. The first framework is offered by EU labour migration Directives. These Directives do not target any specific country of origin but are more of a sectoral nature. Under these Directives, labour migrants from countries like Nigeria, Tunisia or Jordan face the same barriers and opportunities as other migrants, although, as mentioned, visa restrictions create an additional barrier. The second framework is offered by the EU migration partnerships, which include agreements with Tunisia and Jordan and a so called Common Agenda with Nigeria. These legal frameworks offer a basic structure for labour migration into the EU.

Further development of legal migration opportunities has been called for in recent EU policy documents, including the following:

- **The Valletta Declaration 2015**, which declared legal migration and mobility a priority: “We acknowledge that further efforts should be made to advance legal migration and mobility possibilities, including at bilateral level, by fostering well-managed mobility between and within the continents as well as encouraging policies that promote regular channels for migration, including labour migration and the mobility of entrepreneurs, students and researchers, including at regional level.”<sup>5</sup> In 2018 the Valletta partners agreed to promote legal migration and mobility, “further concerted efforts should be made [...], in particular for young people and women: entrepreneurs, students and researchers, moving within Africa and between Africa and Europe, taking into account national competences and labour market realities and paying attention to the integration of migrants in host societies as appropriate.”<sup>6</sup>

<sup>2</sup> ACVZ (2015), *Strategische landenbenadering*.

<sup>3</sup> ACVZ (2018), *Onwards to 2030, Migration: Futures Study*.

<sup>4</sup> International law plays a relatively minor role in these policy fields and will only be addressed occasionally.

<sup>5</sup> Valletta Summit, 11-12 November 2015 Political Declaration, p. 2, available at [https://www.consilium.europa.eu/media/21841/political\\_decl\\_en.pdf](https://www.consilium.europa.eu/media/21841/political_decl_en.pdf)

<sup>6</sup> Joint Valletta Action Plan 2018, Senior Officials’ Meeting (14-15 November 2018).

- **The European Commission’s 2017 *Communication on the Delivery of the European Agenda on Migration*.**<sup>7</sup> This included an initiative for pilot projects in the area of legal migration, for which the European Commission provides financial support to the EU Member States that offer specific legal and in particular labour migration opportunities to selected African countries through the European Development Fund and the EU Trust Fund. The Communication also reads: “The role of legal migration channels in our cooperation with third countries needs to become a more important component so that concrete results can be achieved, taking into account our present and future socio-economic needs. Legal migration is already an important component of migration flows to the EU.”<sup>8</sup>
- **The 2018 African Union-EU partnership.** This includes a special focus “to enhancing young people’s employability and mobility, and promoting technological innovation.”<sup>9</sup>

### 1.2.1 EU labour migration law

The Treaty on the Functioning of the EU (TFEU) provides the legal regime on migration of non-EU nationals, called third-country nationals, coming to the European Union (EU).<sup>10</sup> The EU shall develop a common policy on amongst others, visas asylum, standards concerning the conditions for the reception of applicants for asylum, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking of human beings. Member States remain free to set conditions where the EU has not done so and the Member States can set admission quotas for third-country nationals coming to their country to seek work.<sup>11</sup>

Based on these Treaty provisions, the EU has concluded five Directives with specific relevance to labour and study migration and two that bare relevance to the rights of labour migrants and their families (Table 1.1). According to the European Commissions’ 2019 *Fitness Check* the legal migration Directives discussed below are discussed ‘fit for purpose’. However, “the sharper political focus on addressing irregular migration has made it more and more difficult to develop an EU Policy on legal migration, particularly beyond the highly skilled migrants”.<sup>12</sup> As the discussion of the Directives will show, indeed, only the Seasonal Workers Directive provides for the opportunity of labour migration for law skilled work.

The Family reunification Directive (FDR) sets rules for family reunification of non-EU nationals and requires the member states to give family members equal access to their labour market as granted to the primary (labour) migrant. The Long-term Residence Directive (LTR) sets criteria

<sup>7</sup> Brussels, 27 September 2017 COM(2017) 558 final. <https://www.khartoumprocess.net/images/Post-Addis/Joint-Conclusions-JVAP-SOM-2018.PDF>.

<sup>8</sup> Brussels, 27 September 2017 COM(2017) 558 final, p. 19.

<sup>9</sup> Factsheet European Commission and African Union, *Commission step up their cooperation to support young people, jobs and peace*, 23 May 2018 available at: [http://europa.eu/rapid/press-release\\_MEMO-18-3890\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-3890_en.htm)

<sup>10</sup> Title V on the Area of freedom, security and justice.

<sup>11</sup> Article 79(5) TFEU.

<sup>12</sup> Commission Staff Working Document Fitness Check on EU Legislation on legal migration SWD(2019) 1055, p. 4, 105.

for obtaining a permanent residence permit after five years of lawful residence and, more important for our research, includes a regime for intra-EU mobility in the EU for long-term residents as (self)employed, students or economically inactive migrant.

Of the five more specific labour migration Directives first, and overarching is the Single Permit Directive 2011/98/EU (SPD), which provides a general framework of efficient entry procedures. A ‘single permit’ is a permit combining a work permit and a residence permit, meant to increase efficiency in the application procedures. It does not set criteria for admission. Both migrants admitted for reasons of work, and working though admitted for other reasons (such as family migration and asylum), fall within the scope of the SPD and are entitled to equal treatment with nationals.<sup>13</sup>

The Seasonal Workers Directive 2014/36/EU (SWD) sets standards for temporary migration into seasonal jobs. It sets entry conditions, sanctions for employers who do not abide by the rules, and an equal treatment right for the workers, but grants no right to family reunification.<sup>14</sup> This is the only Directive regulating the entry of migrants for unskilled work. This directive is widely used by Poland (mostly Ukrainian migrants).<sup>15</sup>

In contrast, the other three labour migration Directives cover highly skilled labour migration, highlighting not so much a sectoral approach by the EU, but a skills related approach.<sup>16</sup> The third Directive regulates the admission of researchers and students 2016/801/EU (S&RD). It allows researchers to work as teachers as long as research remains their primary task.<sup>17</sup> Students have to be permitted to work at least 15 hours a week. Admission under the S&RD Directive requires applicants to provide evidence of sufficient resources, which may derive from a binding job offer.<sup>18</sup> The S&RD also offers an additional migration framework for training, voluntary service, pupil exchange schemes, educational projects and au pairing, which member states may adopt. Fourthly, the European Blue Card Directive 2009/50/EU is for highly qualified and highly remunerated labour migrants.<sup>19</sup> This directive, which is currently under review, is widely used in Germany only. Fifthly and finally the Intra Corporate Transfer Directive 2014/66/EU (ICT)

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<sup>13</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, *Official Journal* L 343. See: A. Beduschi (2015), ‘An empty shell? The Protection of Social Rights of Third Country Workers in the EU after the Single Permit Directive’, in P. Minderhoud and T. Strik (eds.), *The Single Permit Directive: Central Themes and Problem Issues*, Oisterwijk: WLP; B. Friðriksdóttir (2016), *What Happened to Equality? The Construction of the Right to Equal Treatment of Third-Country Nationals in European Union Law on Labour Migration*.

<sup>14</sup> M. Zoetewij (2018), ‘The Seasonal Workers Directive. Another Vicious Circle?’ in: C. Rijken & T. de Lange, *Towards a Decent Labour Market for Low-Waged Migrant Workers*, AUP, p. 129-148;

<sup>15</sup> A. Lazarowicz, (2014), *A success story for the EU and seasonal workers’ rights without reinventing the wheel*, EPC Policy Brief.

<sup>16</sup> A.A. Caviedes (2010), *Prying open Fortress Europe. The turn to Sectoral Labour Migration*, Lexington Books.

<sup>17</sup> Directive 2016/801/EU of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes, or educational projects and au pairing (recast), *Official Journal* L 132/21.

<sup>18</sup> Article 7(1) sub e) S&RD.

<sup>19</sup> Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, *Official Journal* L 155/17.

regulates admission in the event of intra-group transfers of managers, specialists, or interns.<sup>20</sup> The legal status of migrant workers and their family members transferred under the ICT Directive is not equal to the position of nationals as it is under the other labour migration Directives. The ICTs are treated very similar to, often low skilled, seconded workers under the Posting of Workers Directive.<sup>21</sup> This Posting of Workers Directive is mainly used for intra-EU mobility and hence not discussed any further here.

Temporariness and unequal treatment of labour migrants is to address the perceived risk that labour migrants will impose a future burden to the national welfare state in case the jobs they come to perform disappear and their return is not guaranteed. Inequality of treatment can hence be perceived as creating an opportunity for labour migration, but it is also a barrier. It is a barrier from a rights-based perspective and because people might not want to migrate once they know that they will be performing a ‘similar job for less pay’ than nationals.<sup>22</sup>

In the literature, the ‘rights versus numbers narrative’ claims that highly skilled migrants receive more rights, such as equal pay, access to welfare arrangements and permanent settlement rights, while low skilled migrants are not invited to such privileges.<sup>23</sup> While this is true for the Seasonal Workers Directive, the ICT Directive counters this narrative, as it regulates the migration of highly skilled staff but only allows for temporary labour migration. Both Directives actually challenge the movement regulated here should be called ‘migration’: the Seasonal Workers Directive defines a seasonal worker as “a third-country national who *retains his or her principal place of residence in a third country* and stays legally and temporarily in the territory of a Member State to carry out an activity”.<sup>24</sup> The ICT Directive speaks of a temporary secondment to an undertaking established in the EU.<sup>25</sup> In the ICT literature, migrants are often not even called migrants, but ‘expats’ or ‘internationals’. While the temporariness is a legal barrier to the workers involved, the language of temporariness can pose an opportunity useful to promote economic migration or ‘mobility’.

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<sup>20</sup> Directive 2014/66/EU of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, *Official Journal* L 157/1. On this Directive see P. Minderhoud & T. de Lange (2018) *The Intra Corporate Transferee Directive. Central Themes, Problem Issues and Implementation in Selected Member States*, WLP.

<sup>21</sup> See on this specific position of posted workers M. Houwerzijl & A. Schrauwen (2018), ‘From Competing to Aligned Narratives on Posted and Other Mobile Workers within the EU?’, in: C. Rijken & T. de Lange *Towards a Decent Labour Market for Low-Waged Migrant Workers*, AUP p. 81-108.

<sup>22</sup> While researchers, students and blue card holders are facilitated with obtaining permanent residence in the EU, the migration schemes presented in the ICT and the Seasonal Workers Directive exclude migrants from permanent residence. See: C. Costello and M. Freedland (2016), ‘Seasonal Workers and Intra-corporate Transferees in EU Law: Capital’s Handmaidens?’ in J. Howe and R. Owens (eds.), *Temporary Labour Migration in the Global Era. The Regulatory Challenges*, Hart Publishing. Also see T. de Lange and S. van Walsum (2014), ‘Institutionalizing temporary labour migration in Europe; creating an “in-between” Migration Status’, in L.F. Vosko, V. Preston, and R. Latham (eds.), *Liberating Temporariness? Migration, Work, and Citizenship in an Age of Insecurity*, McGill-Queens University Press.

<sup>23</sup> M. Ruhs (2013), *The Price of Rights. Regulating International Labour Migration*, Princeton University Press.

<sup>24</sup> Article 3(b) SWD.

<sup>25</sup> Article 3(b) ICTD.

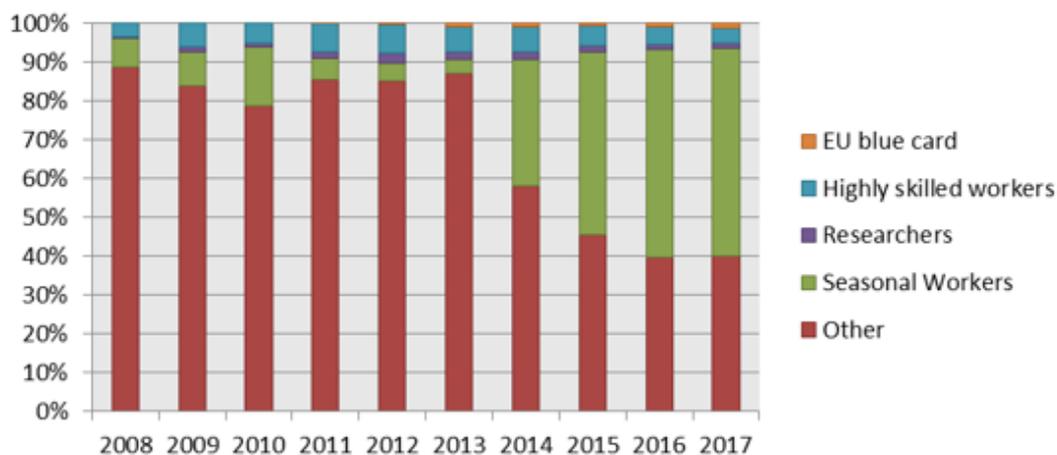
Table 1.1 Regular Migration Directives<sup>26</sup>

		EU regular migration directives							
		FRD	LTR	S&RD	BCD	SWD	ICT	SPD	
								Single procedure & treatment	Permit equal treatment
Scope		Family migration	Long term residents	Students & Researchers	High educated and paid	Seasonal workers	Intra-Corporate Transfers		
Admission Conditions*		Sufficient resources; Integration requirement (optional)	Sufficient resources; Integration requirement (optional)	Sufficient admission; return covered	Resources; costs of threshold	Contract, job offer, salary threshold	Contract, job offer, no risk overstaying	Contract, salary threshold according to national standards	Procedural rules only admission criteria are national rules
Labour market test		Access is linked to sponsor's right to employment	Optional in case of intra-EU Mobile LTR	Optional (for work)	Optional	Optional		None, but linked to specific labour	
Adequate housing/ address		Optional adequate Accommodation	Address MS	Address MS	Address MS	Adequate Accommodation	Address MS		
Who and where to submit		Sponsor or TCN in/out MS	TCN in MS	TCN/3d, in/out MS	TCN/3d, in/out MS	TCN/3d, outside MS	TCN/3d, outside MS	TCN/3d, national law	
Processing time		9 months	6 months	90 days, faster and simplified	90 days	90 days	90 days, fast recognised	4 months	
Length of Stay		First permit at least 1 year	permanent	Duration of studies/training	of 4 years	9 months	3 years		
Fees		National prudence	Juris- EU Juris-prudence	not excessive	not excessive	not excessive	not excessive	not excessive	not excessive
Equal treatment			++	+	+	+	+-	+	
Family re-unification		Standard	See FRD + intra EU mobility in 2nd MS	Researcher: positive derogation FRD Student: No	positive derogation FRD	FRD	positive derogation FRD	See FRD/national law	
Family labour access	member market -		Same TCN in 2 <sup>nd</sup> MS	researcher in 2 <sup>nd</sup> MS	TCN in 2 <sup>nd</sup> MS	n.a.	Yes, in case of long term ICT	National law	

<sup>26</sup> **FRD** (Family Reunification Directive 2003/86/EC), **LTR** (Long Term Residence Directive 2003/109/EC), **S&RD** (Students and Researchers Directive (EU) 2016/801) into effect from May 2018, **BCD** (Blue Card Directive 2009/50/EC), **SWD** (Seasonal Workers Directive 2014/36/EU), **ICT** (Intra Corporate Transfers Directive 2014/66/EU), **SPD** (Single Permit Directive 2011/98/EU), **TCN** (Third Country National, **3d** (employer and third entity can submit an application for a permit), **MS** (Member State). \* All directives require a valid travel document, health insurance and no public order/ security risk.

The Seasonal Workers Directive is used most frequently in the EU as illustrated by Figure 1.1. Especially Poland receives many seasonal workers from Ukraine. Highly skilled migration is only a small percentage of labour migration into the EU. The category ‘other’ concerns national labour migration schemes, which can include many skill levels. Clearly, EU law has a growing impact on labour migration into the EU, hence, addressing legal barriers is likely to include at least some coordination within the EU context.

**Figure 1.1** Percentage of granted residence permits for labour according to type of labour in the EU+, 2008-2016



Source: Eurostat, October 2018

Although the Netherlands does not receive third country national seasonal workers (as illustrated in Figure 1.2), the Seasonal Workers Directive, as a legal instrument, does call our attention for three other reasons.<sup>27</sup> First, it has no definition of *seasonal* work. This means the member states can use the Directive for a wide range of activities, as long as the seasonal work is limited to a maximum of nine months.<sup>28</sup> Secondly, the member states may stimulate *circular mobility*: as an incentive to enforce the temporary nature of the stay it allows the Member States to facilitate the re-entry of third-country nationals who were previously admitted to *that* Member State “as seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays.”<sup>29</sup> Third, a typical barrier to labour migration is the application of a labour market test.<sup>30</sup> If priority work force is available to perform the job, work permits for seasonal migrant workers will be denied. This appears to be a common rule in all EU countries. However, as seasonal work offers little job security and often provides low wages, priority work force is seldom interested in the seasonal jobs, especially in agricultural sectors. Hence, as shortages in these sectors increase, a labour market test can, possibly, no longer function as a barrier. If, and this is optional, member

<sup>27</sup> The Netherlands does receive seasonal migrant workers from *within* the European Union, especially from the Middle and Eastern European member states.

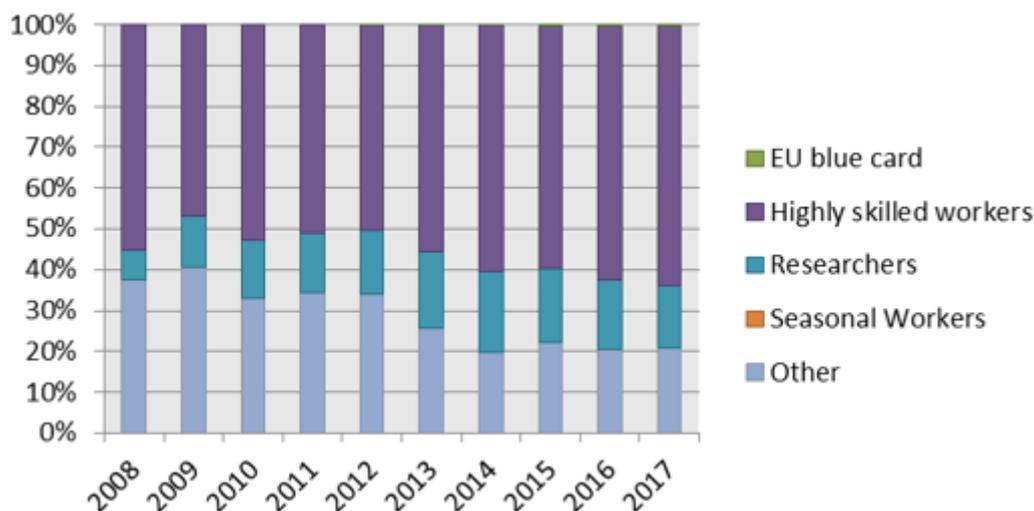
<sup>28</sup> See for a further discussion M. Zoetewij (2018), ‘The Seasonal Workers Directive. Another Vicious Circle?’ in C. Rijken & T. de Lange, *Towards a Decent Labour Market for Low-Waged Migrant Workers*, AUP, p. 129-148.

<sup>29</sup> Article 16(1) SWD.

<sup>30</sup> See the next paragraph for a more extensive discussion of this policy tool as applied in the Netherlands.

states implement quota, this causes an obvious barrier.<sup>31</sup> However, allowing for a small number of migrant workers to enter in seasonal shortage occupations under a strict quatum can also be considered a policy opportunity.

**Figure 1.2** Percentage of granted residence permits for labour according to type of labour in the Netherlands, 2008-2017



Source: Eurostat, October 2018

Some issues, possibly also of relevance to potential labour migration from countries such as Nigeria, Tunisia and Jordan, remain unaddressed at the EU level.<sup>32</sup> These are low and medium skilled economic migrants, self-employed migrants, entrepreneurs and start-ups, investors, service providers and highly mobile migrants, such as transport workers (road, air, inland waterways) and touring artists. Their status may be, and in the Dutch case is, regulated at the Member State level.

**To conclude**, five EU labour migration Directives regulate selective labour and study migration into specific job types or sectors using skills and income levels as selection criteria. The directives on labour migration admission conditions and criteria present a fragmented framework. The Family Reunification Directive and the Long-term Residents Directive set more general criteria for migration which are also relevant for labour migrants. Barriers can be the unequal treatment and temporariness with, thus, limited access to permanent residence. Labour market tests as barriers *may* apply in case of Blue Cards, S&RD when considered to be workers, mobile long-term residents (optional)<sup>33</sup> and *must* apply in case of seasonal workers. Quota may be applied in all cases. All barriers can also function as opportunities: the Dutch history of labour migration shows quota, temporariness and limited access to welfare arrangements can be used to gain

<sup>31</sup> The Netherlands opted for a nil-quatum for seasonal workers from outside the EU, arguing that the enlarged EU labour market has enough priority workforce available to do the job, but this quatum has not (yet) been implemented formally.

<sup>32</sup> <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=35667&no=4>

<sup>33</sup> The mobility of long-term residents and the labour market test will be discussed further in section D of this chapter.

political will to allow for labour migration, it only being temporary, without easy access to the welfare arrangements and in limited numbers.<sup>34</sup>

## 1.2.2 EU Migration Partnership Agreements

In 2016, after the EU was confronted with a high influx of migrants and refugees, the European Union introduced the Migration Partnership Framework.<sup>35</sup> This Framework is intended to 'guide EU and Member State engagement with third countries and embed migration objectives within broader foreign and development policy domains'.<sup>36</sup> This framework allows for a more 'holistic approach' to migration, meaning migration is not to be treated as a single issue but can be interlinked with other policy fields, such as education, labour market needs, development or trade.<sup>37</sup> The agreements can thus also be used for enhancing legal pathways into the EU member states for third-country nationals.

The agreements fall within the framework of the Global Approach to Migration and Mobility (GAMM).<sup>38</sup> In 2015 the Netherlands participated in EU-mobility partnerships with Cape Verde, Georgia and Armenia. Since, it also joined the partnerships with Moldavia, Belarus, Tunisia and Jordan.<sup>39</sup> The Netherlands has taken a positive stance towards this framework but is reluctant to give up its prerogative regarding labour market access.<sup>40</sup> The EU has two so called Common Agenda's, with Ethiopia and Nigeria.<sup>41</sup> As was expressed in the State of the Union by Juncker, the EU has a strong focus on Africa, announcing the 'Africa-Europe Alliance for Sustainable Investment and Jobs', but also the African-Union-EU summit (Abidjan November 2017), which held the theme 'Investing in youth for a sustainable future', the EU-Africa top (Valletta October 2015), the EU Trust Fund for Africa (EUTF) and five new focus countries, Nigeria, Egypt, Libya, Morocco and Tunisia, two of which are also central to this report. However, with, for instance, the EU Trust Fund, it is 'unclear how funds should be distributed between migration and development funding priorities'.<sup>42</sup>

According to the Migration Policy Institute, in order for the Partnership Framework to be an effective and sustainable migration policy 'the deals made under its auspices need to reflect the

<sup>34</sup> T. de Lange (2007), *Staat, Markt & Migrant*

<sup>35</sup> COM(2016) 385.

<sup>36</sup> E. Collett and A. Ahad (2017), *EU Migration Partnerships: A Work in Progress*, Migration Policy Institute available online <https://www.migrationpolicy.org/research/eu-migration-partnerships-work-progress>

<sup>37</sup> Libe report (2016) "The situation in the Mediterranean and a holistic approach to migration", available online <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2016-0066&language=EN>

<sup>38</sup> European Commission (2011), *The Global Approach to Migration and Mobility* COM/2011/0743, available at [https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en)

<sup>39</sup> BRON

<sup>40</sup> ACVZ (2015), *The strategic country approach to migration. Between ambition and reality*, voorstudie (Dutch language only) p. 18, <https://acvz.org/wp-content/uploads/2015/06/Voorstudie19-web.pdf>. More information on 'Mobility Partnerships' the 'Common Agenda's', Association Agreements and regional dialogues, which all offer opportunities to develop legal migration channels, is available in ACVZ (2015), *The strategic country approach to migration. Between ambition and reality*, p. 60 a.o., [https://acvz.org/wp-content/uploads/2015/07/Report\\_42-web-versie-Engels.pdf](https://acvz.org/wp-content/uploads/2015/07/Report_42-web-versie-Engels.pdf)

<sup>41</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en)

<sup>42</sup> E. Collett and A. Ahad (2017), *EU Migration Partnerships: A Work in Progress*, Migration Policy Institute, p. 31.

contexts and priorities of partner countries.<sup>43</sup> The MPI also stresses the need of intersecting policy domains and to engage with civil society and not just with state and subnational actors. So far, however, the European agenda of return and readmission is dominant. The MPI concludes ‘If the European Union is to maintain partnerships in the long term, it will have to find a way of ensuring that its Member States deliver on all of their commitments – not just those that are seen as convenient’.<sup>44</sup>

EU member states have used bilateral agreements to allow for labour migration, like Spain for instance. They signed an agreement that Senegal received work permits for 4,000 Senegalese to work temporarily in Spain and funding for job training in Senegal, and in return had to accept Frontex patrols in its territorial waters and the return of 4,000 irregular Senegalese migrants by Spain.<sup>45</sup> Switzerland (non-EU) has also individually entered into migration partnerships and agreements with countries of origin to deal with all, or certain aspects, of wanted and unwanted economic migration.<sup>46</sup>

A holistic approach is propagated by the Migration Policy Institute, the Dutch Advisory Committee on Migration Affairs<sup>47</sup> and scholars. According to Bisong (2015), these partnerships can be ‘successful’ instruments to ‘manage’ migration if at least four conditions are met. Firstly, collaboration between the partnership countries must be aimed at increasing regular migration. Secondly it must encourage return (readmission) of those who migrated irregularly. Thirdly, private sector involvement is a must and fourthly and finally, training and education to the benefit of the migrant and the countries of origin, transit or onward migration should be part of the partnership. Bisong adds to these conditions the need to show political will to make the partnership mutually beneficial and stop seeing the issue as a unilateral ‘problem’ and ‘reframe migration issues as a shared issue requiring the cooperation of all the parties’.<sup>48</sup> Switzerland, as a small country entered such an agreement with Nigeria.

Only a holistic approach, including other policy fields besides migration, such as development and economic growth, can make a partnership successful given the differences between these two countries, according to Bisong.<sup>49</sup> Tittel-Mosser shows how such partnerships can positively ‘influence the development of the legal and policy frameworks of third countries in ways that go beyond what is foreseen at the time of the negotiation of the instruments’.<sup>50</sup> Her research of Sub-Saharan migrants in Morocco and Cape Verde shows how these migrants directly benefit from the legal and policy changes in those countries through the Mobility Partnership.

<sup>43</sup> E. Collett & A. Ahad (2017), *EU Migration Partnerships: A Work in Progress*, Migration Policy Institute, p. 30.

<sup>44</sup> *Ibid.* p. 38.

<sup>45</sup> N. Reslow (2012), ‘The Role of Third Countries in EU Migration Policy: The Mobility Partnerships’, *European Journal of Migration and Law* 14, p. 393–415 with reference to M. Panizzon (2008), *Labour Mobility: A win-win-win model for trade and development. The case of Senegal*, Bern: NCCR.

<sup>46</sup> A. Bisong (2015), ‘Migration Partnerships and the Role of Public-Private Partnerships: The Nigeria – Switzerland Migration Partnership’, in: *The Palgrave handbook of international labour migration*, eds. Marion Panizzon, Gottfried Zürcher & Elisa Fornalé, pp 463 – 503.

<sup>47</sup> ACVZ (2015), *The strategic country approach to migration. Between ambition and reality*.

<sup>48</sup> *Ibid.* p. 477.

<sup>49</sup> *Ibid.* p.479.

<sup>50</sup> F. Tittel-Mosser (2018), The Unintended Legal and Policy Relevance of EU Mobility Partnerships. A Comparative Implementation. Analysis of Morocco and Cape Verde, *European Journal of Migration and Law* 20, p. 314–337.

It is impossible to do justice to the complexity of the different partnerships and the opportunities they could foster if following the guidelines of already existing programs outside the Netherlands. However, as the rest of this chapter will show, there is to date no link between these EU partnerships and the Dutch regulation of economic migration, for (self)employment or studies. The partnerships are not used to create legal pathways into the Netherlands.

To conclude, the framework of the labour migration directives offers opportunities for migrants offered a specific (highly skilled) job. The Directives lack policy intersectionality, for instance with diploma and skills recognition. The partnership agreements on the other hand, offer a framework that allows for policy intersection and a wide range of activities, possibly project based, and small scale, to facilitate (temporary) labour migration (and training) schemes, also for people from countries such as Nigeria, Tunisia and Jordan.

### 1.3 Labour migration policies in the Netherlands

Labour migration law and regulations in the Netherlands are *selective* depending on skills, educational attainments, income levels, nationality etc. Labour migration policy is restrictive when it comes to low skilled work. These policies categorize people according to the activity they will do, the kind of employer they will have, the sector they work in. This categorization defines migrant worker rights, the involvement of private actors such as employers, or labour unions in case of policy design.

The Dutch labour migration law and regulations do not pose a specific barrier to labour migration, temporary mobility for work or assignments from African and Middle-Eastern countries. The selective policies described below apply equally to all, but for the policy for Asian Chefs Businessmen and women traveling from African and Middle-Eastern countries do however require a visa to enter the Schengen area for a stay of no more than three months or a entry clearance visa (*machtiging tot voorlopig verblijf*) for a stay longer than three months.<sup>51</sup>

It is safe to say that for whatever reason one migrates, difficulty with accessing information, lack of transparency, costly, slow and cumbersome procedures all add to a negative experience and may give reason not to migrate at all. For instance, even if family migration is permitted, uncertainty over the partners' career chances in the country of destination, and the opportunities for children to study and remain, are commonly mentioned barriers. An obvious barrier for migrants from African and Middle-Eastern Countries are visa requirements. While Migrant workers from the EU, but also from other 'western' countries such as the USA, Canada, Japan or South Korea, can travel to the Netherlands for work without a temporary visa or without an entry-clearance visa, migrants from countries in Africa and the Middle-East, such as Nigeria, Tunisia and Jordan, require a visa. They cannot easily physically obtain information, do interviews, search for housing etc. prior to being granted formal access as a labour migrant.

The Dutch authorities in charge of immigration, the Immigration and Naturalisation Service (IND), became aware of the limited accessibility of relevant information through, amongst

<sup>51</sup> Nationals from the following countries are exempted from the entry clearance visa: EU/EEA and Australia, Canada, Japan, Monaco, New-Zealand, Vatican City, USA and South-Korea.

others, the City Deal ‘Warm Welkom Talent’. This interdepartmental advice has led to, according to the authors own observations, improved accessibility of information on economic migration opportunities in the Netherlands. Research into the services of the IND shows awareness of its’ role not just as a gate keeper, but also as a service provider to labour migrants.<sup>52</sup>

Also, for international students, migrant entrepreneurs and business travellers, different Dutch institutions have designed ‘orange carpet’ policies to promote and facilitate migration and travel into the Netherlands. For instance, frequent business travellers who require a short-stay Schengen visa each time they travel to the Netherlands, can apply for an ‘Orange Carpet Visa Facility’ for themselves and their employees with the local Dutch Embassy.<sup>53</sup> These facilities are not aimed specifically to migrants from Nigeria, Tunisia or Jordan.

Most labour migration schemes discussed below, fall under the responsibility of the Minister of Social Affairs and Employment, who has delegated the actual admission process to the UWV. In the meantime, many exceptions have been designed to facilitate the movement of temporary labour migrants for internationalisation, trade and education. The information on these exemptions is less accessible and not explicitly promoted anywhere.

In the remaining part of this chapter we will first discuss in some more detail the labour market test which is applied in case of a work permit application or a single permit for residence and work application. Next, a long list of exceptions to the labour market test will be discussed, showing the reasons for lifting the ‘barrier’ of the labour market test.

### 1.3.1 Work permit and labour market test

The Netherlands has a work permit system, based on the Dutch Act on the Employment of Migrants (Wet Arbeid Vreemdelingen, hereafter referred to as the WAV). Article 2 WAV forbids employers to employ a migrant without the possession of a work permit or without an EU single permit for the purpose of residence and work (single permit).<sup>54</sup> Although the procedures to obtain a work permit or a single permit differ, materially the same test is applied.<sup>55</sup> A work permit will be necessary for e.g. temporary *kennismigranten* (less than three months), students and trainees.

<sup>52</sup> See the WODC Report into the attractiveness of the Netherlands as potential country of destination for studies and careers of knowledge migrants and how to service this group best (<https://www.wodc.nl/onderzoeksdatabase/2877-aantrekkelijkheid-van-nederland-als-potentieel-vestigings-studie-en-carriereland-voor-kennismigranten-en-hoe-deze-groep-goed-te-bediene.aspx>, last visited 18 February 2019).

<sup>53</sup> See for instance <https://www.netherlandsandyou.nl/travel-and-residence/visas-for-the-netherlands/orange-carpet-visa/nigeria>, not containing any country specific information though. The Canadian website automatically links to a form to apply for the orange carpet, see <https://www.netherlandsandyou.nl/travel-and-residence/visas-for-the-netherlands/orange-carpet-visa/canada>, both websites last visited on 24 September 2018.

<sup>54</sup> See section 1.2.1.

<sup>55</sup> Migrant workers require a single permit for work and residence if they fall within the scope of the SPD (EU) 2011/98, otherwise the employer requires a work permit and the migrant requires a residence permit if they are to remain for more than three months. If there is no work permit or single permit when required the employer risks an administrative fine of € 8.000 per ‘illegally’ employed migrant worker and exclusion from future migrant work recruitment. See on employer sanctions L. Berntsen & T.de Lange (2018), ‘Employer Sanctions. Instrument of Labour Market Regulation, Migration Control, and Worker Protection?’ in: C. Rijken & T. de Lange, *Towards a Decent Labour Market for Low-Waged Migrant Workers*, AUP, p. 207-230.

An EU single permit is required for all other labour migrants.. Both work permits and single permits are difficult to obtain for lower skilled jobs if a labour market test is applied. Table 1.2 shows that the percentage of granted permits (and positive advices) after a limited labour market test is 90%. When the full labour market test is applied the percentage of granted permits (and positive advices) drops.

The labour market test must result in a negative decision on a work permit application when there is priority work force *present* in the Netherlands or in the EU.<sup>56</sup> If priority work force is not *available*, the employer must try harder to mobilize present workers. This is an obvious barrier to the recruitment of low and medium skilled labour migrants, because priority work force can be deemed present in the EU, although this is possibly not the case for all medium-skilled jobs. The burden of proof of the absence of priority work force is on the employer. It requires of employers to present general labour market information as well as a well-documented and time consuming recruitment processes prior to filing the application.<sup>57</sup> As long as priority work force is deemed present, the UWV has little discretion to grant a work permit (or single permit).

However, as shortages on the labour market are on the rise, it is likely to become more difficult for the UWV to deny well documented applications on solid reasoning. Although overall number of applications for separate work permits (often for short term assignments only) and single permits for work and residence is on the rise as is the overall number of granted permits and positive advices, there is no increase in the number of positive decisions *after* a full labour market test (see Table 1.2). On the contrary, the percentage of positive advices for a single permit after a full labour market test fell to 41% in 2017 from 76% in previous years.

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<sup>56</sup> Priority work force constitutes of nationals, EU nationals with free access to the labour market as well as third-country nationals residing legally in the Netherlands with free access to the labour market, such as refugees with a status, the third-country national spouses of Dutch nationals or long term residents.

<sup>57</sup> Article 8 and 9 of the WAV list the grounds for refusal and to avoid application of those refusal grounds, they require an employer to prove, amongst others that a vacancy was reported to the UWV at least five weeks prior to the application and that he has conducted a recruitment search on the national and the European Economic Area (EEA) labour market. Reporting the vacancy to EURES, the network designed to facilitate the free movement of workers within the EEA is not enough, potential candidates must be interviewed and if refused this must be reasoned.

**Table 1.2** Number of applied for and granted work permits / positive advice on single permits 2015-2017

Intesity labour market test	2015		2016		2017	
	Applied	Granted	Applied	Granted	Applied	Granted
WP limited test	4,758	4,266 (90%)	5,036	4,515 (90%)	5,749	5,167 (90%)
WP full test	580	298 (51%)	729	690 (95%)	850	538 (63%)
WP test unknown	9		8	2	16	3
subtotal WP	5,347	4,564	5,773	5,207	6,615	5,708
advice limited test	739	662 (90%)	1,582	1,240 (78%)	3,200	2,869 (90%)
advice full test	2,270	1,725 (76%)	1,610	1,230 (76%)	660	274 (41%)
advice test unknown		1	2		2	1
subtotal advices	3,009	2,388	3,194	2,470	3,862	3,144
<b>TOTAL</b>	<b>8,356</b>	<b>6,952</b>	<b>8,967</b>	<b>7,677</b>	<b>10,477</b>	<b>8,852</b>

Source: Authors' compilation, based on UWV (2018).<sup>58</sup>

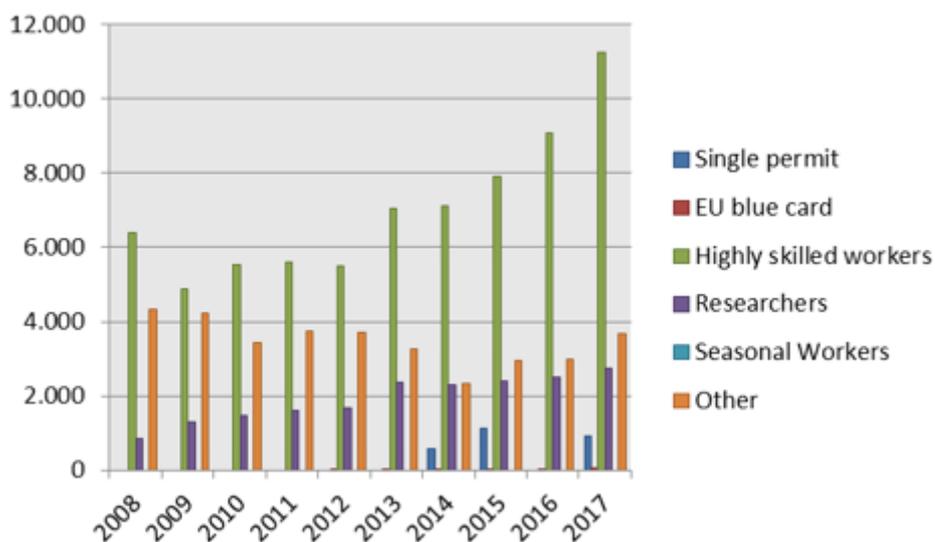
Indeed, the applications for work permits and single permits to which a limited labour market test applies were students (2,204 in 2017) and trainees (485 in in 2017). The number of international students coming to the Netherlands is on the rise, as is the number of working students.<sup>59</sup> Migrant workers from Nigeria, Tunisia or Jordan are not in the top 15 nationalities reported, so it is unknown how many, if any, migrant workers do arrive from these countries.

Because the UWV only reports cases that require work permits or labour market advices, it is useful to also consider the data reported to Eurostat, which concerns the number of residence permits granted. These include some but not all the data listed in Table 1.2, because those work permits might also have been granted for less than three months, when a residence permit is not required. Figure 1.3 includes the scheme for *kennismigranten* ('knowledge migrants', or highly skilled workers), which clearly is on the rise *and* surpasses the other categories by far. As will be discussed below, this can be understood from the ongoing efforts to take away barriers for highly skilled and well paid labour migrants coming to the Netherlands.

<sup>58</sup> Data provided by UWV.

<sup>59</sup> The number of work permits granted for working students was in 2016, and 1,219 in 2015.

Figure 1.3. Number of granted residence permits for labour in the Netherlands, by type of labour



Source: Eurostat, 3 October 2018.<sup>60</sup>

Before discussing the specifics of the *kennismigranten*-scheme, the standard work permit procedure is described. For any labour migrant not qualifying for the highly skilled scheme, is likely to have to mediate the barriers inherently part of the standard procedure. In principle, the maximum duration of the work permit is one year.<sup>61</sup> A consecutive new work permit, with again a full labour market test, can be applied for and may be granted if indeed the labour market still has a shortage. This annual renewal and full labour market test, which was introduced during the economic crisis in 2011, was acknowledged as a barrier to labour migration.<sup>62</sup> The work permit can however be granted for a maximum of three years, which is already less burdensome, in cases that fall under a labour market test waiver.<sup>63</sup>

After a total of five years of legal residence as an employee with a work or single permit, the migrant worker can obtain free access to the Dutch labour market and may be employed further without a work permit.<sup>64</sup> The migrant may, also after five years, apply for a permanent residence permit under the condition that he or she has passed integration requirements, to be discussed further in section III below. In case of temporary work, like seasonal labour, the work permit will only be granted for a maximum period of 24 weeks. Although the Seasonal Workers Directive permits the member states to allow seasonal workers to stay of up to nine months, the Netherlands used its' discretion to implement a shorter period of stay. In order to obtain such a temporary work permit the labour migrant must not have been holding a residence permit for work purposes in the Netherlands during 14 weeks prior to the application.<sup>65</sup> As a consequence,

<sup>60</sup> The registered number of single permits is low in the Netherlands (Figure 1.3) because the labour migrants coming in under the *kennismigranten*-scheme are not registered as single permits although they do receive a 'single permit', combining both work- and residence permits.

<sup>61</sup> Article 11(1) WAV.

<sup>62</sup> T. de Lange (2013), 'De Wet arbeid vreemdelingen herzien: arbeidsmarktregulering in tijden van crisis', *PS Documenta* 11/13.

<sup>63</sup> Article 11(3) WAV read in conjunction with Article 8(3) under b and c WAV.

<sup>64</sup> Article 4(2) sub b WAV.

<sup>65</sup> Article 11(2) WAV.

it is unlikely these temporary migrant workers will be able to obtain five years of consecutive legal residence, free labour market access or permanent residence and hence they will remain excluded from welfare arrangements.

### 1.3.2 Work permit exemptions

Although it is hard to obtain a work permit or single permit, the work permit market test requirement or labour market test is often waived. Hence, the arrival of many (highly skilled) labour migrants to the Netherlands is rather unproblematic. The authority to waive the work permit requirement is with the Minister of Social Affairs and Employment. The Minister can designate categories of migrants or work for which no work permit is required.<sup>66</sup>

#### *Temporary assignments*

There are already a number of exemptions that allow for working in the Netherlands for brief periods of time for specific activities. The most prominent exemptions are for temporary work for less than three months and for highly skilled migrants, such as the EU Blue Card and the knowledge workers, to be discussed in some more detail below. The kind of temporary work exempted is a long list of very specific activities.<sup>67</sup> It must concern activities that do not require the migrant to move, to change their habitual residence. Examples of such activities include the assembly or repair of tools, machines or equipment supplied by the non-resident employer; the installation and adaptation of software developed outside the Netherlands or the instruction in its use; conducting business meetings; preparing an exhibition stand for a client established outside the Netherlands; participating in sports games; or servicing as support staff of sportsmen. This list, drafted for the first time in the 1950s, is regularly adjusted to the realities of international mobility.<sup>68</sup> Obtaining a Schengen visa, if required (as is the case for Nigeria, Jordan and Tunisia) is the only formal obstacle to performing these very specific temporary tasks in the Netherlands.<sup>69</sup>

#### *The Knowledge Migration Scheme (Kennismigrantenregeling)*

For highly skilled work several exemptions to the work permit requirement and hence the labour market test apply. The most used national scheme for highly skilled migrant workers is the knowledge workers scheme (*Kennismigrantenregeling*). Figure 1.3 shows how the number of ‘highly skilled workers’, which includes the *kennismigranten*, is on the rise, with in 2017 over 11,000 residence permits. The actual length of stay of these migrants isn’t recorded by the authorities.<sup>70</sup> SEO Amsterdam Economics shows that, on average, about half of them leave within five years after arriving in the Netherlands.<sup>71</sup> It also showed that highly skilled migrants ‘with employed partners have a significantly higher probability of staying in the Netherlands than those with

<sup>66</sup> Article 3(1) sub c WAV.

<sup>67</sup> Decree applying the WAV (*Besluit uitvoering Wet arbeid vreemdelingen*)

<sup>68</sup> T. de Lange (2007) p. 52.

<sup>69</sup> See forthcoming IOB evaluation of visa procedures (*Evaluatie consulaire dienstverlening en regulering personenverkeer 2018*).

<sup>70</sup> The Immigration Authorities did conduct a one time quantitative and qualitative ‘monitor’ of the results of knowledge migration into the Netherlands between 2008-2011, in 2013.

<sup>71</sup> Berkhout, E., A. Heyma, M. Volkerink, S. van der Werff (2015), *Attracting and retaining highly skilled migrants in the Netherlands*, SEO-Rapport 2015-88, Amsterdam: SEO Economisch Onderzoek.

non-working partners'.<sup>72</sup> To our knowledge no specific policy efforts have been developed since to stimulate employability of partners.<sup>73</sup>

Admission under the *kennismigranten*-scheme first requires the employer to become a recognised sponsor. The application for recognised sponsorship is a separate procedure. A fee is levied for recognition (€ 3,861 or € 1,930 for start-ups and SME with less than 50 employees). These fees have been lowered after criticism. Employers that are not recognised as sponsor cannot use the *kennismigrantenregeling* and will have to turn to the work permit/single permit with a labour market test. A list of recognised sponsors is published online, so potential migrant workers can check if this facility is open to a potential employer.<sup>74</sup> This facility is not advertised widely while it is the migrant workers' own responsibility to check for continued compliance.<sup>75</sup> The status of a recognised sponsor is non-transferrable. If a recognised sponsor merges or in case of a name-change of the legal entity, this requires a new application for the status as a recognised sponsor (fee € 1,930).

Once the employer has the status of recognised sponsor, an application for a migrant worker residence permit can be filed. This is a demand driven scheme, without an employment offer of a recognised sponsor, the scheme cannot be used. An application is evaluated by the IND by the height of the monthly salary. The salary threshold is indexed annually. As of 1 January 2019, migrant workers up to the age of 30 need to earn at least € 3,299 a month, while those over 30 need to earn € 4,500 excluding holiday allowances.<sup>76</sup> Graduates eligible for a search year (discussed below) qualify with a monthly salary of at least € 2,364, again excluding holiday allowances. The income level must be in conformity with what is a common salary in the Netherlands for the job to be performed. This so called 'market conformity test' is performed by the UWV.<sup>77</sup>

A recent study by Rijsenbrij (2018) shows that, out of the thousands of *kennismigranten* applications, only a few are typically presented to the UWV for a market conformity test.<sup>78</sup> In 2015, the UWV was asked to advise in 66 cases, in 2017 this was 104. In 2015, the UWV issued 15 positive (23%), and 51 negative (77%) advices in the first instance, so before appeals procedures. A negative advice means that the income was found to be not in conformity with market prices. In 2017, the UWV gave 40 positive (38%), and 64 negative (62%) advices. Rijsenbrij (2018) found that "[i]n 2017 it was, as opposed to 2015, part of standard practice for the UWV to request an employer for extra information regarding, for instance, job specifics and (proof of) qualifications of the migrant."<sup>79</sup>

<sup>72</sup> *Ibid.*, p. 32.

<sup>73</sup> See also K. Sinha-Kerkhoff & K. Kirk (2018). 'Unemployed Female Skilled Migrants from India in the Netherlands: The Entrepreneurial Self Under Structural Dependency' in: A. Pande (ed.), *Women in the Indian Diaspora*, Springer Nature: Singapore, pp. 133-145.

<sup>74</sup> <https://ind.nl/Paginas/Openbaar-register-erkende-referenten.aspx>, last visited on 20 September 2018.

<sup>75</sup> Article 4.26 VV (Ministerial Migration Rules)

<sup>76</sup> The monthly salary required for an EU Blue Card residence permit is € 5,160 which explains the unpopularity of the EU scheme in the Netherlands.

<sup>77</sup> Article 3.30a Vb (Migration Decree)

<sup>78</sup> M. Rijsenbrij (2018), *Market Conformity in The Highly Skilled Migration Scheme: Gatekeeping or Headhunting?* Thesis UvA-PPLE, available with the author.

<sup>79</sup> *Ibid.* p. 22, referencing the, unpublished, UWV instructions *Werkinstructie behandelen adviesverzoeken marktconform loon* (UWV) 2017.

No specific income requirement is set for *kennismigranten* who are researchers, medical specialists in training and university and higher education guest lecturers, if the employer (the education or research institution) is indeed a recognised sponsor.<sup>80</sup> Obviously, the list of activities or the salary levels to qualify as *kennismigrant* could be expanded to include shortage occupations. Such expansion could possibly even be based on bilateral agreements with countries of origin or be part of a partnership under the EU framework discussed above.

The residence permit for a *kennismigrant* has the same validity as the employment contract with the recognised sponsor, with a minimum of three months and a maximum of five years.<sup>81</sup> This is a clear benefit in comparison to the annual renewal of a work permit. However, if employment circumstances change over time (job title, work location, salary) both the recognised sponsor *and* the migrant worker have the obligation to report such changes to the IND. If they fail to do so in time (preferably prior to the change, but at least within three months of the change) this may be a reason for a (temporary) withdrawal of the residence permit or a fine for the sponsor and/or possible exclusion from the scheme all together. This obligation to report is – to some extent – communicated to migrant workers. Again, case law shows not all migrant workers nor their advisors are aware of the implications.<sup>82</sup> WODC/Regioplan research is to show if improvement can be made of the IND services in providing information or time for repair.

#### *Orientation year / search year*

In order to attract more *kennismigranten* and to retain international students and researchers in the Netherlands, university graduates are granted a search year, which the INS calls an ‘orientation year’ to look for a job as *kennismigrant*, or, less likely but also possibly, find a job that requires a work permit but which is granted because of the absence of priority work force.<sup>83</sup> They may also use the search year to set up a business.

According to the EU Students & Researchers Directive preamble 53, such a search period is necessary as ‘part of the drive to ensure a well-qualified workforce for the future’. The students should have the possibility to remain on the territory of the Member State concerned for the period of time with the intention to identify work opportunities or to set up a business. While EU law allows for a labour market test in case the migrant works during the search year, in the Netherlands such a labour market test is waived during this year, allowing the migrants to sustain themselves with any job. Also, the Dutch search year does not have to be used right after

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<sup>80</sup> Article 1d(1) sub b-d Buwv (Migrant work Decree).

<sup>81</sup> If the knowledge worker comes for less than three months a work permit is required, which is tested on income levels, not on the situation on the labour market. In 2015 2,078 work permits were granted for such short assignments, in 2016 2,086 and in 2017 1,901.

<sup>82</sup> Council of State <http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2017:3294>; <http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2017:3608> and <http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2018:173>. In all three cases District Courts found the withdrawal of the residence permit a disproportionate measure but these judgements were overturned by the highest administrative court the Council of State.

<sup>83</sup> The IND publishes a list of FAQ on the topic [https://ind.nl/en/Documents/FAQ\\_orientation\\_year\\_highly\\_educated\\_persons.pdf](https://ind.nl/en/Documents/FAQ_orientation_year_highly_educated_persons.pdf).

graduation, the student can use the right to a search year within three years after graduation.<sup>84</sup> A person can only get a search year once for a degree, but if one obtains a new degree, again, one is eligible for a search year.

The search year applies to the following categories of former students as well as former labour migrants:<sup>85</sup>

- a. Students who graduated from a Dutch institution of higher education with a bachelor or master degree;
- b. Researchers admitted under EU Directive 2005/71 and *kennismigranten*;
- c. Postdoc students after a minimum 12 months program in the Netherlands;
- d. Students who obtained a degree through a study under the scope of the *Wet op het specifieke cultuurbeleid* (cultural policy) or through education in the framework of development cooperation under responsibility of the Ministry of Foreign Affairs or through an Erasmus Mundus Master Course;
- e. Students who hold a master degree or postdoc from a foreign university, which is on a list of top-200 foreign top universities in a course that lasted at least 12 months, or holds a PhD and complies with criteria regarding knowledge of the English and/or Dutch language;
- f. Students who hold a degree from other universities listed by our Minister of Justice and Security.<sup>86</sup>

The restriction to the top 200 foreign top universities mentioned under (e) could be constituted a barrier to migration (or a missed opportunity) for students from Africa and the Middle East. It opens the search year to foreign graduates from universities in countries that already have easy access to the Netherlands, such as the USA, Canada and the other EU Countries. It does facilitate graduates from some Asian countries of origin, like China, India and South Korea but not from Africa or the Middle East. The top 200 universities under (e) are defined as those ranked in the top 200 of either one of the following three rankings.

- Firstly, the *Times Higher Education World University Rankings* top 200. This ranking includes only one Middle Eastern or African university: the University of Cape Town, ranked at number 171.<sup>87</sup>
- Secondly, *QS World University Rankings*. This ranking does not include any African or Middle-Eastern university, except for the Saudi Arabian King Fahd University of Petroleum & Minerals, ranked 189. It does include four Malaysian and Indian universities (two for each

<sup>84</sup> The Netherlands used to have a separate scheme for highly educated third-country nationals who obtained their degrees outside the EU. The scheme was ineffective, INDIAC (2011), *Evaluatie regeling Hoogopgeleiden De kenniseconomie versterkt?* Available online [https://ind.nl/Documents/Evaluatie\\_hoogopgeleiden.pdf](https://ind.nl/Documents/Evaluatie_hoogopgeleiden.pdf). Since it has been integrated and simplified <https://zoek.officielebekendmakingen.nl/stb-2016-86.html>.

<sup>85</sup> Art. 3.42 Immigration Decree.

<sup>86</sup> Further information is available online in a FAQ document updated by the Immigration and Naturalisation Service [https://ind.nl/Documents/FAQ\\_zoekjaar\\_hoogopgeleiden.pdf](https://ind.nl/Documents/FAQ_zoekjaar_hoogopgeleiden.pdf), visited on 1 September 2018. The legal status of the document is 'information' and, according to the Immigration and Naturalisation Service, it is not legally binding.

<sup>87</sup> [https://www.timeshighereducation.com/world-university-rankings/2018/world-ranking#!/page/8/length/25/sort\\_by/rank/sort\\_order/asc/cols/stats](https://www.timeshighereducation.com/world-university-rankings/2018/world-ranking#!/page/8/length/25/sort_by/rank/sort_order/asc/cols/stats), last visited on 1 September 2018. The University of Ibadan, Nigeria, Ranks 801. Two Tunisian Universities rank top 1001 and Jordan University of Science and Technology ranks 404 on the World List.

country) that are not on the Times list.<sup>88</sup> Like the Times list, most universities ranked in the top 200 are in the USA, EU, Canada and to a lesser extent in China, Japan or South-Korea.

- Thirdly and finally, the *Academic Ranking of World Universities*, also known as the Shanghai Index,<sup>89</sup> This index lists two Saudi universities in the top 200, an Iranian university in the top 500 but again no universities in countries such as Nigeria, Tunisia or Jordan.<sup>90</sup>

The search year is also open to graduates of education in the framework of development cooperation under responsibility of the Ministry of Foreign Affairs, but this is not promoted.<sup>91</sup> For instance, a scholarship program is available under the *Orange Knowledge Programme*, which is, amongst others, open to applicants from Nigeria, Tunisia and Jordan. This scholarship ‘aims to advance the development of the capacity, knowledge and quality of both individuals as well as organisations both in the field of higher and vocational education and in other fields related to the priority themes in the programme countries.’<sup>92</sup> It can be a scholarship for a one year master program. Although, strictly speaking, the search year *is* open to recipients of this scholarship provided they obtain a degree, it is not promoted because of the capacity building intent of the scholarship.<sup>93</sup> This aim would be lost if the migrants would stay on in the Netherlands.

The possibility of such a list could offer an opportunity for cooperation with educational institutions outside the top-200 rankings for development reasons in for instance Nigeria, Tunisia or Jordan.<sup>94</sup> However, even if these graduates would enter the Netherlands for a search year, the next step is to obtain a job as *kennismigrant* or find an employer willing to try to apply for a work permit, which are likely barriers too high to pass. Likely, extending the search year for reasons of development cooperation would, for instance, have to go hand in hand with policy measures to allow for easier access to the *kennismigranten* scheme and/or work permits in shortage occupations. That would typically require interdepartmental cooperation and policy intersection.

### *Entrepreneurship*

Migrant entrepreneurs who hold a residence permit for that purpose are also exempted from the work permit.<sup>95</sup> Two developments call for our attention in this respect, the hybridization of work and entrepreneurship and the enhancement of entrepreneurship migration for innovation. On the first development, to facilitate migrant workers to work solo self-employed on the side or to start a start-up so they can eventually switch into the status of migrant entrepreneur, highly skilled labour migrants have been awarded with the right to work self-employed without

<sup>88</sup> Especially in India, the Netherlands has a wide alumni network that could be used for promoting the search year as a venue to find work in the Netherlands. The Indian section of the Nuffic alumni networks has 1304 members, <https://www.hollandalumni.nl/> visited 1 September 2018.

<sup>89</sup> <http://www.shanghairanking.com/>, last visited 1 September 2018.

<sup>90</sup> However, the Jordan University of Science and Technology is considered a top 200 university on a different ranking, not used for the search year: it ranks 101 on the Times Young Universities list.

<sup>91</sup> Article 3.42 section 2 sub d) Immigration Decree. For scholarships under development cooperation see <https://www.studyinholland.nl/scholarships/highlighted-scholarships/orange-tulip-scholarship-programme>.

<sup>92</sup> <https://www.studyinholland.nl/scholarships/highlighted-scholarships/orange-knowledge-programme>, last visited on 1 October 2018.

<sup>93</sup> Email correspondence with Ministry of Foreign Affairs, Nuffic and the author, 1 and 3 October 2018.

<sup>94</sup> The list could, for instance, refer to universities with which Dutch institutions have partnerships that are established under the Orange Knowledge Programme 2018–2022.

<sup>95</sup> Article 3(1) sub b WAV.

jeopardizing their residence permit as migrant worker.<sup>96</sup> They can perform the self-employed activities under their residence permit as labour migrant, without requiring any further registration or permission, just as long as the job for which they are admitted into the Netherlands remains their core activity.

If the migrant worker intends to switch to a status as migrant entrepreneur he or she has to meet requirements set in a points based system.<sup>97</sup> This is one of the few supply driven policy instruments operated in the Netherlands. Entrepreneurs from African and Middle-Eastern countries can make use of the scheme like any other foreign entrepreneur although a 2016 evaluation of the scheme showed that, amongst others, the high burden of proof and bureaucratic procedures were a barrier to use the scheme in general and possibly even more so for African and Middle-Eastern applicants.<sup>98</sup> Another route into entrepreneurship is the innovative start-up policy, which requires a business to be selected by a recognizes private incubator.<sup>99</sup>

Several advisory bodies have expressed that, in order to meet the Dutch innovation goals, migrant entrepreneurship must be stimulated.<sup>100</sup> Although in their reports they hardly use the word ‘immigration’, they express the need for ‘top talent’ or ‘international talent’. The political sensitivity of the topic of migration might explain their cautious wording.<sup>101</sup> Foreign investment into the Netherlands, which includes the opening of subsidiaries and relocating key-personnel, has been facilitated for quite some time by the Netherlands Foreign Investment Agency (NFIA).<sup>102</sup> The focus is on businesses moving with more than five people. The lack of available talented workers is a bottleneck for foreign investment, according to the NFIA.<sup>103</sup> As of 2018, the *Rijksdienst voor Ondernemend Nederland* (RVO.nl, Netherlands Enterprise Agency) offers similar assistance to small businesses and solo entrepreneurs in migrating to the Netherlands.<sup>104</sup> Previously, the lack of guidance, and information on procedures was signalled as an important barrier for small migrant entrepreneurs to come to the Netherlands. With new organisational structures such barriers are being lifted; evaluations of the success of these measures are not yet foreseen.

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<sup>96</sup> *Government Gazette* 2017 nr. 134.

<sup>97</sup> T. de Lange, (2016), *Wezenlijk Nederlands Belang. De toelating tot Nederland van ondernemers van buiten de EU* [Essential Dutch interest. The admission into the Netherlands of entrepreneurs from outside the European Union], Nijmegen: Wolf Legal Publishers.

<sup>98</sup> *Ibid.* p. 61, 65.

<sup>99</sup> See on the admission policies for of migrant entrepreneurs in the EU Ecorys (2016) *Design study on a scheme to attract non-EU resident highly skilled entrepreneurial innovators*.

<sup>100</sup> Reports from: City Deal Warm Welcome Talent; Netherlands Foreign Investment Agency; Dutch Trade & Investment Board; Regional Economic Development Strategy; Adviesraad voor Wetenschap, Technologie en Informatie, all 2017.

<sup>101</sup> T. de Lange (2019), ‘Intersecting Policies of Innovation and Entrepreneurship Migration in the EU and the Netherlands’, in: S. Carrera, L. den Hertog, D. Kostakopoulou and M. Panizzon (eds.) *The EU External Policies on Migration, Borders and Asylum in an Era of Large Flows: Policy Transfers or Intersecting Policy Universes?* BRILL Leiden, p. 224-243.

<sup>102</sup> <https://investinholland.com/nfia40/>

<sup>103</sup> NFIA 2017, p. 4.

<sup>104</sup> Personal communication with RVO.

Finally, the Dutch government also stimulates, to some limited extent, migrant entrepreneurship in Africa (e.g., via the Orange Corners program). This may lead to increased mobility or migration of more entrepreneurs to the Netherlands or the EU.<sup>105</sup>

**To conclude**, the broadly formulated authority to waive the work permit requirement invests the Minister of Social Affairs and Employment to adjust the labour migration policy to, amongst others, the national economic needs. A barrier can also be conceived in the Immigration Act, which states that admission policies should serve international obligations, humanitarian reasons or the national interest.<sup>106</sup> The knowledge migrants scheme is a typical scheme designed to serve the national interest.<sup>107</sup> All adjustments to the scheme since its coming into force can be traced back to this national (economic) interest. The search year for a variety of highly educated people from Dutch, EU and mainly western universities is also geared to the national interest, but does allow for a link to education and development. Alternative rankings of universities or, as suggested by the AWTI in its 2017 report, scholarships to attend Dutch or the ranked universities could develop the potential ‘talent’ sought for in the Netherlands. One of the latest adjustments, the hybridisation of work as employee while also working as self-employed person shifts the policy focus to retaining the highly skilled migrants for the Dutch economy in a wider sense, not just as workers. It allows them to invest in a future career in the Netherlands as entrepreneur and shows the highly skilled migration schemes are not just providing highly skilled workers for the labour market. It is an example of institutional cooperation (Ministries of Economic Affairs, Social Affairs and Employment and Justice and Security) and it is an example of intersection of innovation and migration policy, stimulating start-ups and possibly innovation by migrant workers.<sup>108</sup>

### 1.3.3 Waiving the labour market test for reasons of international trade, education and cultural exchange

Even when the work permit is required, the barrier of the extensive labour market test can be lifted partially by the Minister of Social Affairs and Employment in exceptional circumstances. This was discussed above and in Table 1.2 above the distinction between a full labour market test and a limited test was also made. Such a limited labour market test can occur e.g. in order to improve international trade relations, for reasons of training, study, international exchange and international cultural exchanges.<sup>109</sup> Also, applications that do require a vacancy reporting, which entails submitting the vacancy to the UWV to enable them to suggest priority workforce to fill the vacancy *may* be fast tracked in case the UWV has established there is a shortage.<sup>110</sup> The UWV may make a list of shortage occupations for which the obligation to report a vacancy five weeks prior to filing the application is waived because priority work force is not foreseen to be available

<sup>105</sup> <http://www.orangecorners.com/>, last visited on 17 September 2018.

<sup>106</sup> Article 13 Immigration Act (*Vreemdelingenwet*)

<sup>107</sup> T. de Lange 2007, p. 331-346 on the establishing of the scheme.

<sup>108</sup> For a further analysis of this type of policy intersection see T. de Lange (2019), ‘Intersecting Policies of Innovation and Entrepreneurship Migration in the EU and the Netherlands’, in: S. Carrera, L. den Hertog, D. Kostakopoulou and M. Panizzon (eds.) *The EU External Policies on Migration, Borders and Asylum in an Era of Large Flows: Policy Transfers or Intersecting Policy Universes?* BRILL, Leiden, p. 224-243, DOI:10.1163/9789004354234\_011.

<sup>109</sup> Article 8(3) WAV.

<sup>110</sup> Article 8(3) sub d WAV.

during the following year.<sup>111</sup> Such a list would require annual updating. Although the UWV has a list of shortage occupations in the Netherlands, this list is not used by the UWV work permit unit for the purpose of decreasing barriers in work permit procedures.<sup>112</sup> In 2000, ICT related shortage occupations were listed, thus no longer requiring vacancy reporting. The ICT branch at the time was however not satisfied with the exemption, because the whole migration procedure, including visa and residence permit applications, was still too time consuming.<sup>113</sup> For most of the occupations listed then, employers today will use the *kennismigranten*-scheme. The EU Single Permit and the combined visa and residence permit procedure allow for faster procedures, hence, today an exemption from the vacancy reporting could provide a more relevant time gain in labour migration procedures. At the time of writing however, although labour market shortages are increasing, no employer organisation or sectoral representative body has requested for listing of their shortage occupations for the purpose of fast tracking labour migration procedures.<sup>114</sup> Possibly, employers are not aware of the opportunity to request this facility as it is not widely communicated.

Specific policies have been designed for labour migration from specific regions, countries of origin or jobs for reasons of training, pre-accession to the EU or development. These are the recruitment of nurses between 2000-2004<sup>115</sup>, the recruitment of sailors for inland vessels,<sup>116</sup> the Blue Bird Pilot for recruitment from Indonesia and South Africa and finally the, currently still operative, Sectoral scheme for Asian Chefs. Except for the latter, the other schemes resulted in few, if any, labour migrants coming to the Netherlands. Training partnerships also run the risk of being (mis)interpreted as abuse of working students as ‘migrant workers’ by the Labour Inspectorate.<sup>117</sup> Nevertheless, the labour market test is waived under strict conditions for a variety of trainees and working students.<sup>118</sup>

#### *Blue Bird Pilot*

What makes discussion of the Blue Bird Pilot interesting is its extensive evaluation and the lessons to be drawn from its failure.<sup>119</sup> The Pilot was called a *circular* migration pilot, albeit it did not institute a circular migration scheme, but just a temporary migration scheme for a maximum

<sup>111</sup> Paragraph 18 Ministerial Guidelines WAV (Regeling Uitvoering WAV).

<sup>112</sup> See for the shortage occupations list ‘krapteberoepen’ available at [https://www.werk.nl/werk\\_nl/arbeidsmarktinformatie/sector-beroep/kansrijke-beroepen/krapteberoepen](https://www.werk.nl/werk_nl/arbeidsmarktinformatie/sector-beroep/kansrijke-beroepen/krapteberoepen).

<sup>113</sup> De Lange (2007), p. 321, 329.

<sup>114</sup> Interview UWV, 17 September 2018.

<sup>115</sup> T. de Lange & C. Pool (2004), ‘Vreemde handen aan het bed. De werving van Poolse verpleegkundigen in Nederland’, *Migrantenstudies*, (20) 3.

<sup>116</sup> Government Gazette 2007, nr. 36 implementing a paragraph 24 (later 22) in the Ministerial Guidelines WAV which read “For Serbian nationals doing an internship on Dutch inland vessels for their training, a work permit with a validity of more than one year can also be issued, if the conditions stated in the Memorandum of Understanding between the governments of the Netherlands and Serbia concerning the employment of Serbian trainees on Dutch inland vessels. For sailors in training, there is a maximum work placement period of two years and there is an additional maximum work placement period of two years for trainers in training.” This exemption was, according to interview UWV, 17 September 2018, never used and was abolished in 2014, Government Gazette (*Staatscourant*) 2014 nr. 8189.

<sup>117</sup> De Lange 2015.

<sup>118</sup> Paragraph 30, 30a, 31 and 32 Ministerial Guidelines WAV.

<sup>119</sup> J. van Wijk (2011), *Pilot Circular Migration. Towards Sensible Labour Migration Policies. Lessons Learned & Recommendations*, HIT Foundation available online at [http://hitfoundation.eu/docs/111110\\_Pilot%20Circular%20Migration\\_Lessons\\_and\\_recommendations.pdf](http://hitfoundation.eu/docs/111110_Pilot%20Circular%20Migration_Lessons_and_recommendations.pdf)

of two years. It resulted from an advice to the government by the Dutch Social Economic Council *Advies Arbeidsmigratiebeleid* 2007.<sup>120</sup> The scheme was built on the ideal of a ‘sensible’ migration scheme, departing from the premise that labour migration is a good development tool.<sup>121</sup> In 2009 the Dutch Ministry of Foreign Affairs issued a tender for a small-scale pilot on ‘circular’ (read temporary) labour migration. The aim was to preform ‘action-research’ and see if labour migration could contribute to the development goals of the Dutch government. A small NGO, HIT Foundation, with no specific labour migrant recruitment experience, was selected to execute the pilot. After some difficulty in engaging employers in the project, early 2011 some large employers and intermediaries had committed themselves to the pilot. A group of maximum 160 of semi-skilled labour migrants from Indonesia and South Africa would come to work in the Netherlands for a maximum of two years. They would only be employed in industries experiencing labour shortages. The work experience should enable them to improve their employment position upon their return and contribute to sustainable development in their country.

After a political turn, a new Ministry of Foreign Affairs decided to terminate the pilot in June 2011.<sup>122</sup> ‘At that moment only eight participating migrant workers had been granted a work permit. Around 30 migrants had already been selected and were prepared to come over. A further 80 migrants were in the pipeline of recruitment and selection.’<sup>123</sup>

In addition to the ten recommendations listed in Box 1.1, the evaluation also shows the necessity of an integral policy approach if such an experiment were to be repeated. At the time the Ministry of Economic Affairs, for example, saw ‘no role for itself in actively promoting the pilot.’ The Hit Foundation researchers were surprised, because ‘With a mission statement to promote sustainable economic growth in the Netherlands and a focus on ‘knowledge economy and innovation’, one would expect the Ministry of Economic Affairs to value and applaud the pilot initiative.’<sup>124</sup> The Ministry of Social Affairs and Employment, traditionally responsible for labour migration into the Netherlands was, according to Van Wijk, ‘reserved about the idea of setting up a pilot study’. This reluctance is understandable considering the little use made of the previous schemes for nurses and inland vessel sailors, mentioned above. Nevertheless, Social Affairs had created an exemption of the labour market test for the purpose of the pilot.<sup>125</sup> However, when the project wanted to engage South African -truck drivers, Social Affairs protested, as priority work force was presumed present at the time. The Ministry of Justice/Interior Affairs has from the early start mainly focused on the issues of illegality and return. Its main interest was that migrants would not overstay their visa and would return voluntarily.’

The recommendations drawn from the project do not articulate the benefit of temporary labour migration. The evaluation did show employers were not eager to participate in the project

<sup>120</sup> SER, *Advies Arbeidsmigratie* 2007; *Parliamentary Documents* 2006-2007, 29861 nr. 17.

<sup>121</sup> On this stance also see <https://www.volkskrant.nl/opinie/opinieblog-arbeidsmigratie-werkt-beter-dan-ontwikkelingshulp~a4494787/> referring to F. Ponsot, B. Vásquez, D. Terry, P. de Vasconcelos (2017) *Sending Money Home*, IFAD report.

<sup>122</sup> *Parliamentary Documents* 2010–2011, 30 573, nr. 70, p. 10. Government Gazette 2011, Nr. 12703.

<sup>123</sup> Van Wijk 2011, p. 13.

<sup>124</sup> *Ibid.* p. 14.

<sup>125</sup> Paragraph 19, sub g, Ministerial Regulation WAV 2011 (<http://wetten.overheid.nl/BWBR0007514/2010-08-01#Bijlage>).

because the workers could only come temporary, for a maximum of two years while procedures were time consuming.<sup>126</sup> The bureaucratic constraints at the time could be less today given the single permit and experience with fast tracking in other economic migration decisions. However, such a scheme, if developed again, should probably not aim for temporariness but, for instance, for good international employability of recruited migrant workers, so they have good opportunities elsewhere, either in the Netherlands or abroad, in case the employer they were recruited for no longer requires them.

#### Box 1.1 Recommendations from the Blue Bird Pilot

Ten recommendations for developing sensible labour migration policies derived from the Blue Bird Pilot evaluation:

1. Implement them in several EU-countries, preferably under more or less the same conditions;
2. Allow for recruitment in a broad range of non-EU countries;
3. Start with supply and demand on the labour market, and tailor labour migration to the needs of employers and employees;
4. Policies should be designed in conjunction with employers, intermediaries and labour unions;
5. Policies should be co-implemented by a limited number of intermediaries, who receive exclusive rights to the work permits, as they are the natural pioneers for new markets for recruitment;
6. Set a quota (of X thousand) for available work permits for labour migrants;
7. Grant the opportunity to work for one intermediary, but multiple employers on (more) flexible contracts;
8. Be inclusive to low and medium-skilled workers in all sectors;
9. Include extra control mechanisms to combat exploitation in order to create a level playing field;
10. Ensure sufficient monitoring and evaluation.

Source: J. van Wijk (2011), *Pilot Circular Migration. Towards Sensible Labour Migration Policies. Lessons Learned & Recommendations*, HIT Foundation, p. 9.

At the time, the ACVZ had also presented its advise *Temporary labour migration 2015 – 2035*.<sup>127</sup> The ACVZ proposed to set up a Labour Migration Planning Committee that would issue bi-annual advice on the number of shortage occupations in labour market sectors. The absence, still, of such lists in relation to applications for work permits and single permits, or a Committee to draft them is a possible barrier for the success of any future pilot project in this field.

#### *Sector Covenants: Asian Restaurant Sector*

Another instrument to discuss is the scheme for Asian chefs, currently still in use. This is a scheme that goes back quite some years, but is currently operated under a three year agreement with the Asian restaurant sector.<sup>128</sup> For non-EU migrant workers who temporarily work as a cook in an Asian restaurant, a work permit or a single permit can be granted without a labour market test. This exemption applies to the following cuisines: Chinese, Indian, Indonesian, Japanese, Korean, Malay, Thai, Tibetan and Vietnamese. This arrangement applies to qualified chefs in specific job levels as defined by the sector. The workers need to prove their qualifications through a certificate which must show that the cook has mastered the tasks as described within the specific function.

<sup>126</sup> *Ibid.* p. 16

<sup>127</sup> ACVZ (2009), *Tijdelijke arbeidsmigratie 2015 – 2035*, Advies NR 29-2009.

<sup>128</sup> Par. 19a. Temporary employment of chefs for the Asian catering industry, Ministerial Regulation WAV.

The scheme includes annual, albeit flexible, quota, which decreases over time from 1,800 in 2017 to 1,000 in 2019.<sup>129</sup> Employers are required to train national work force to be available to perform the jobs after three years.<sup>130</sup> As in the past, again, the sector does not seem to comply with the training requirement, but nevertheless the quota for 2018, the second year of the scheme, was recently raised from 1,400 with 150 permits to 1,550 to serve the labour market needs of this sector.<sup>131</sup> If indeed after 2019 this sector will no longer be facilitated with a tailor made labour migration scheme is to be seen. The scheme has never been evaluated, the lack of evaluations and cooperation with academia in this respect is mentioned by the OECD as a shortcoming of the Dutch labour migration approach.<sup>132</sup> It does raise questions as to whether, for instance, the chefs return, or remain under other legal migration schemes or possibly remain irregularly or move to other EU countries, such as Sweden and Germany, where such specific policies for Asian Chefs are operational as well.<sup>133</sup>

**To conclude**, the general framework of Dutch labour migration policy is demand driven with a high threshold labour market test and temporary residence permits for one year that require a full labour market tested extension procedure. The system has facilitated exemptions based on skills and income levels. Temporary labour migration for reasons of international trade and training are facilitated. Sectoral policies are less in use, with the exception of a policy for Asian Chefs while in the past such schemes have been in place for health care workers too. Country or origin specific policy is not operational although attempts for such policies based on Memoranda of Understanding have been made and could, of course, be retried, considering the lessons learned from previous projects. The EU framework for bilateral migration agreements would seem the most logic instrument to use for future experiments.

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<sup>129</sup> Art. 3a Decree WAV. The quota for 2019 was raised to 1,500, *Government Gazette* 2019, 4969 in lieu of labour market shortages in general and more specific in the hospitality sector.

<sup>130</sup> Par. 19a and 43 Ministerial Regulation WAV.

<sup>131</sup> MP's Ziengs and Van Weyenberg called for raising the quorum (Parliamentary Documents 29 544, nr. 734).

<sup>132</sup> OECD (2016), Recruiting Immigrant Workers: The Netherlands 2016, [https://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-the-netherlands-2016\\_9789264259249-en](https://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-the-netherlands-2016_9789264259249-en)

<sup>133</sup> See Axelsson, L., B. Malmberg, and Q. Zhang. 2015. "On Waiting, Work-time and Imagined Futures: Theorising Temporal Precariousness among Chinese Chefs in Sweden's Restaurant Industry." *Geoforum* 78: 169–178. doi: 10.1016/j.geoforum.2015.12.007

## 1.4 Diploma Evaluation & Recognition<sup>134</sup>

Before a qualification can be recognised as proof of a certain level of education, it must be evaluated. A poor evaluation and hence lack of recognition of foreign qualifications and attained skills creates an obvious barrier for education and labour market access for refugees and other non-EU individuals living in the EU, or wanting to come to the EU for studies or work. The legal framework for the recognition of foreign qualifications in the EU is twofold. Firstly, there is the Lisbon Recognition Convention for academic recognition and secondly the EU Directives for regulated professions.

The UN Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997, also known as the Lisbon Recognition Convention (LRC) is the applicable legal framework to the overall majority of recognition decisions in higher education. The LRC applies to all forms of academic recognitions including the recognition for the purpose of access to education or access to non-regulated professions. The LRC is binding to the 53 signatory countries that are mostly from the European region and other so called ‘western’ nationals such as Canada, USA, Australia, New Zealand. Nigeria, Tunisia nor Jordan are party to the LRC. They are however party to the UN Arab and African Regional Conventions which, by absence of enough signatory countries, have not yet entered into force. Apart from the regional conventions, the UN is also working towards the establishment of a Global Convention on the Recognition of Higher Education Qualifications, building on the same principles as laid down in the LRC. In light of the UN *Education 2030 Agenda* the Convention aims to, amongst others, improve academic and professional mobility.<sup>135</sup>

The LRC lays down general principles for fair recognition of qualifications. Although formally the LRC applies to qualifications from the signatory states only, according to the Dutch organisation National Recognition Information Centres of the European Union, Nuffic, the LRC norms are widely applied to qualifications from outside the treaty countries.<sup>136</sup> In the end, the outcome of an evaluation under this framework is either: recognition, partial recognition (and an advise on extra work to be done) or a denial of recognition.

Within the European Union a legal framework is established for the recognition of European qualifications, but only if required for access to *regulated professions*.<sup>137</sup> The first Preamble of Directive 2013/55/EU reads: ‘Third-country nationals may also benefit from equal treatment with regard to recognition of diplomas, certificates and other professional qualifications, in accordance with the relevant national procedures, under specific Union legal acts such as those on long-term residence, refugees, ‘blue card holders’ and scientific researchers.’ Indeed, according to article 59 of the Directive, member states must verify that their national procedures on the

<sup>134</sup> The author is grateful to Katrien Bardoel and Jenneke Lokhoff (both Nuffic) for their valuable suggestions for this section.

<sup>135</sup> Directive 2013/55/EU Preliminary report concerning the preparation of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC a global convention on the recognition of professional higher education qualifications. Conference: UNESCO. General Conference, 2015, 38th [34998] Document code: 38 C/26, p.

<sup>136</sup> These organisations are the members of the ENIC-NARIC network.

<sup>137</sup> Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications.

recognition of diplomas and qualifications ‘must be neither directly nor indirectly discriminatory on the basis of nationality or residence’.<sup>138</sup>

The EU has developed practical online tools such as the ‘EU Skills Profile Tool for Third Country Nationals’.<sup>139</sup> Also, a Commission Recommendation, which is non-binding, on the mutual recognition of foreign diplomas is part of the EU Skills Agenda.<sup>140</sup> According to its explanatory memorandum, the “objective of the proposed Council Recommendation is to ensure that any student, apprentice or pupil who has a learning experience abroad, whether for a qualification or learning mobility, has that experience automatically recognised for the purposes of further study. This shall not prejudice the right of an education and training institution to make decisions on admission.” The European Commission emphasises that this mutual recognition is a core element of the ambition to work towards a European Education Area by 2025. The Netherlands is positive on the recommendation in general but voiced some scepticism in so far as the European Commission proposes *automatic* recognition of certain diplomas as equal to Dutch diplomas by 2025.<sup>141</sup>

In order to determine what a foreign education is ‘worth’ in the Netherlands, a foreign qualification can be evaluated via the IDW, or international credential evaluation structure. On behalf of the Ministry of Education, Culture and Science and the Ministry of Social Affairs and Employment, the Cooperation Organisation for Vocational Education, Training and the Labour Market (*Stichting Samenwerking Beroepsopleiding bedrijfsleven*, or SBB) and Nuffic (Netherlands Organization for International Cooperation in Higher Education) cooperate in the IDW-structure. The organisations compare foreign diplomas with the Dutch education system, resulting in an evaluation.<sup>142</sup> Such a diploma evaluation results in a written recommendation, or advice, that indicates the value in the Netherlands of the diploma or programme concerned. If more detailed advice is required, the admission officers at the education institutions can consult a specialist in the subject matter.

Diploma evaluation can be requested for access to education and non-regulated professions (academic recognition) by individuals, employers and education institutions. In case of access to an education programme, the educational institution *may* apply for the evaluation, but this is no obligation for admission. The actual recognition decision for admission to a programme is made by the education institution. The institution may be experienced with receiving students from

<sup>138</sup> An example of such discrimination was central to the case of a woman from Kosovo who had obtained a Masters in Pharmacy in Italy which was, at first, not accepted in the Netherlands because of her nationality, ECLI:NL:RVS:2018:1362. Apparently, for almost ten years, the Netherlands applied a nationality test in conflict with EU law.

<sup>139</sup> Available at <https://ec.europa.eu/migrantskills/#/>. So far this is the only instrument for third country nationals under the EU’s *A New Skills Agenda for Europe: Working together to strengthen human capital, employability and competitiveness* (COM(2016) 381).

<sup>140</sup> European Commission, Proposal for a Council Recommendation on promoting automatic mutual recognition of higher education and upper secondary education diplomas and the outcomes of learning periods abroad, 22 May 2018, COM(2018) 270 final, 2018/0126(NLE).

<sup>141</sup> BNC *Fiche Aanbeveling automatische wederzijdse erkenning van diploma’s*, Parliamentary Documents 2017-2018, 22 112 nr. 2611.

<sup>142</sup> Article 7.4.7, Adult and Vocational Education Act, provides the legal basis for secondary vocational education diploma evaluation procedures. The legal basis for higher education is found in article 7.28, paragraph 2 the Higher Education and Research Act.

certain countries or universities and thus may not require the recommendation from Nuffic, or, in case of a request from an practical learning institution, SBB.<sup>143</sup>

Nuffic can either give a brief advice or, upon request, an extensive advice. Much of the ground work for the diploma evaluation is available online, for example through the education system country profiles. For entry onto the labour market, migrants themselves can, in the IDW-structure, apply for an evaluation. In this case, the applicant pays the costs of the evaluation. SBB and Nuffic have an appeals procedure for applicants that wish to appeal against a decision. Higher vocational institutions ('HBO') consult Nuffic more often than universities (WO).

In the past two years, Nuffic received only a small number of requests for the evaluation of Tunisian, Jordan or Nigerian qualifications. As Table 1.3 shows, these numbers pale by the number of evaluation requests for Syrians, many of whom are remaining in the Netherlands as refugees and are obliged to take a civic integration exam.

**Table 1.3 Qualification evaluations by reason performed by Nuffic in 2017 and 2018.**<sup>144</sup>

	Dutch civic integration exam requirement		Through higher education		Directly through IDW	
	2017	2018	2017	2018	2017	2018
Tunisia	13	11	21	11	12	16
Syria	2,384	2,420	436	309	279	167
Nigeria	4	5	193	124	3	4
Jordan	16	28	24	27	7	1

Source: Nuffic

It is important to make a distinction between access to education and admission to education. While Nuffic provides a recommendation, it is ultimately up to the educational institution to recognise the diploma as being sufficient for admission to the chosen programme.<sup>145</sup> The educational institution may reject the application for enrolment, based on the diploma or on other grounds or it may decide to enrol a student although the diploma evaluation would advise against it.<sup>146</sup> The educational institution is allowed to base its decision on the evaluation of Nuffic, but it cannot merely refer to those evaluations.<sup>147</sup> The educational institution can also consult the online Nuffic country modules and not submit an evaluation request to Nuffic. Whichever it does, the educational institution must 'ascertain' the correctness of the recommendations and this must be evident from the reasoning behind the decision not to recognize the diploma as good enough for admission.<sup>148</sup> If the education institution denies

<sup>143</sup> Interview with Nuffic representatives, 17 October 2018.

<sup>144</sup> Counting in 2017 starts in February; the numbers for 2018 are up to 29 October.

<sup>145</sup> The Nuffic has designed the *European Area of Recognition Manual, Practical guidelines for fair recognition of qualifications*, available at: [http://www.eurorecognition.eu/Manual/EAR\\_manual\\_v\\_1.0.pdf](http://www.eurorecognition.eu/Manual/EAR_manual_v_1.0.pdf)

<sup>146</sup> Article 7.28, paragraph 2, read in conjunction with Article 7.24, Higher Education and Research Act (WHW).

<sup>147</sup> Article 3:9, General Administrative Law Act.

<sup>148</sup> Higher Education Appeals Tribunal (CBHO, *College van Beroep in het Hoger Onderwijs*), 22 March 2010, case no. 2009/055, <http://www.cbho.nl/sites/default/files/2009055.pdf>.

admission, the migrant may lodge an objection with the Executive Board of the educational institution against the rejection of the application for admission to the study programme, and, eventually, may ask judicial review before the High Education Appeals Tribunal.<sup>149</sup> If, however, a possible employer would decline a job application from a migrant because of the evaluation of his or her diplomas, there is no legal remedy available.

Hence, several barriers can be identified in the process of diploma evaluation and recognition, especially relevant to migrants from countries with, according to the Dutch standards, less developed educational institutions. A legal venue to challenge a diploma evaluation is not available and the objection procedure available to students after the negative admission decision is, likely, not a widely known procedure, although information on the procedure must be available on the institutions website.<sup>150</sup> Also, if a legal procedure over the recognition of the qualifications were to be entertained, it seems that it is almost impossible to enter second opinions in contradiction of the evaluation and recommendations of Nuffic although this is allowed.<sup>151</sup>

Although institutions may offer an advice on how to lessen learning deficiencies, or offer courses for that purpose, little is known of whether this is done and if so, what the results are. Stimulating preparatory educational programs in the home country or in the Netherlands, could take away the barrier to access higher education in the Netherlands. Some recent projects have been developed to offer (international) students a so called Massive Open Online Course (MOOC) to obtain certificates required for admission. An example of such a MOOC is offered by the Berlin based NGO KIRON, servicing on students from, amongst others, Jordan.<sup>152</sup> The lack of structural preparatory courses for education programs in, for instance, shortage occupations, could be seen as an important barrier to be addressed to improve labour migration *and* labour market integration of already present migrants and refugees.

To conclude, the international legal framework for academic recognition in the European region is the UN Lisbon Recognition Convention. While *de jure* the LRC does not cover non-treaty countries such as Jordan, Tunisia and Nigeria, *de facto* the principles of the LRC are applied to diplomas obtained worldwide, in case of an application for academic recognition. The EU legal framework has a focus on registered professions but does apply equally to third country nationals in case migration Directives prescribe this. Most challenges appear in the systematic appliance (implementation) of the LRC within the national context. The provision of information on the qualifications from the countries concerned and the applicable procedures can be considered as a barrier. The new UN Global Convention may further assist better information provision. Nuffic offers advice to competent authorities via its country modules and shares information on these

<sup>149</sup> Article 7.59a, WHW. See, e.g., CBHO 23 October 2014, case no. 2014/075 (<http://www.cbho.nl/zaken/2014075>) regarding a foreign diploma that was not deemed the equivalent of a Dutch VWO diploma. Critical of evaluation by Nuffic, Central Appeals Tribunal (for the public service and social security matters), 18 November 2015, ECLI:NL:CRVB:2015:4046.

<sup>150</sup> The Nuffic website and flyer on the topic says: ‘...you then still do not agree, you may file an official objection (appeal). According to law, Dutch HEI should have an appeal procedure and provide information about the possibility to appeal to applicants’, <https://www.studyinholland.nl/study-options/diploma-evaluation>.

<sup>151</sup> Administrative Jurisdiction Division of the Council of State, 27 September 2016, JV 2016/293, commentary T. de Lange ECLI:NL:RVS:2016:2659.

<sup>152</sup> See for more information <https://kiron.ngo/>, last visited 18 February 2019.

education systems. When the LRC principles are applied correctly based on full information of the programme, recognition decisions can result in full, partial or denial of recognition. Especially in cases of partial recognition, additional training in the form of preparatory courses or following MOOCs, may eventually result in full recognition and access to education.

## 1.5 Language and integration

This section deals with the question of language skills and lack of integration as barriers to come to or remain in the Netherlands. Again, EU law will be considered first, then zooming in on Dutch integration law. This section concludes that there is no legal barrier to learn the Dutch language and pass an integration test voluntarily for migrants from anywhere in the world, thus also from Nigeria, Jordan and Tunisia. However, because there is no government policy promoting learning of the language and doing an integration course in case of economic migration, including labour migrants, migrant entrepreneurs, as well as international students, they do not easily learn the Dutch language.

Practically, language, soft and cultural skills are probably important for staying in the Netherlands for (self)employment, if only to understand all government information and correspondence that is in Dutch. The importance of knowledge of the local language was stressed, for instance, in the 2016 Evaluation of the Code of Conduct for International Students.<sup>153</sup> It became apparent that foreign students, and this would obviously include those from Nigeria, Tunisia and Jordan, had little idea of their future opportunities in the Netherlands.<sup>154</sup>

The European Parliament and the Council may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories.<sup>155</sup> The EU may not regulate harmonisation in the field of integration. The labour migration Directives do not allow the member states to set language and integration *obligations* prior to arrival or afterwards. The EU Blue Card, ICT Directive and S&RD derogate from Directive 2003/86/EC on the right to family reunification by stating that family members (of blue cards, ICT's and researchers) may only be obliged to undergo integration measures referred to *after* the persons concerned have been granted family reunification.

If integration obligations were to apply beforehand, this might be a barrier to migrate to the EU for family members as well as for highly skilled and/or highly wanted labour migrants. The Seasonal Workers Directive is silent on integration and the S&RD talks of support for researchers reintegration into their countries of origin in partnership with the countries of origin and with a view to establishing a comprehensive migration policy.<sup>156</sup> The Directive is, however, silent on integration of the researcher in the EU and the EU member state he or she is working

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<sup>153</sup> Available at <https://www.internationalstudy.nl/?lang=en>.

<sup>154</sup> Language is an important topic in the 2018 EMN study on *Attracting and retaining international students in the EU*.

<sup>155</sup> Article 79(4) TFEU.

<sup>156</sup> Preamble 13 S&RD 2016/801/EU.

in. All in all, the silent presumption of these Directives seems to be that integration (and language acquisition) is not something that needs to be legislated for economic migrants.

When, after five years of legal residence, a labour migrant wants to apply for a long term residence permit, he or she may be *obliged* to pass an integration test.<sup>157</sup> Likely, but this has not been researched to our knowledge, the integration test is a barrier for applying for long term residence. If the test stops labour migrants from securing a stronger legal position in the EU, it also means they cannot access the right to intra-EU mobility as a third-country national. The proposal for a recast of the EU Blue Card means to allow Blue Card holders to apply for long term residence after three years, marking their importance for Europe. This is already practice in Germany, but not in the Netherlands. If labour migrants are not nudged or facilitated to pass integration measures, this fast track into permanent residence is likely to be of little use.

In the Dutch context, this is no different. All those third-country nationals admitted for reasons of (self)employment, training and study are exempted from the obligation to pass an integration exam.<sup>158</sup> Other migrants, such as refugees and family migrants, *have* to pass these exams within three years. If they fail to do so they may be fined. Insufficient knowledge of the Dutch language can also lead to cuts in received welfare benefits. Clearly, it would be creating a barrier if economic migrants were to be *obliged* to pass such exams, but the absence of any facilitation is a possible reason for third-country national students not finding a job in their search year.

The SER, as did the OECD, reported that lack of knowledge of the Dutch language is for instance a reason why international students are less likely to find a job in health care or education, or find employment at all.<sup>159</sup> The importance of knowledge of the local language was also stressed in the 2016 Evaluation of the Code of Conduct for International Students.<sup>160</sup> It became apparent that foreign students had little idea of their future opportunities in the Netherlands. Obviously this would also hurt possible students from Nigeria, Tunisia or Jordan. In general, the absolute number of remaining international students is on the rise, but percentage wise, their number is going down: 29.3% of those who graduated in 2006 remained while only 22.3% of those who graduated in 2012.<sup>161</sup> Clearly, there are barriers at play that could relate to language skills and other aspects of integration

In 2016 the OECD called on another aspect of ‘integration’. They propagate co-operation between educational institutions and local employers to offer international students some experience.<sup>162</sup> Likely, especially students from development countries, could benefit from such opportunities, which could be part of informal integration and buddy trajectories. To keep migrants ‘locked’ in legal categories because they are not stimulated to obtain the skills to switch,

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<sup>157</sup> Article 45b(2) sub g Immigration Act.

<sup>158</sup> Wet Inburgering; Belsuit inburgering

<sup>159</sup> SER (2013), *Make it in the Netherlands! Advies over binding van buitenlandse studenten aan Nederland*, p. 19 [https://www.ser.nl/~media/db\\_adviezen/2010\\_2019/2013/make-it-in-the-netherlands.ashx](https://www.ser.nl/~media/db_adviezen/2010_2019/2013/make-it-in-the-netherlands.ashx).

<sup>160</sup> Availabel at <https://www.internationalstudy.nl/?lang=en>.

<sup>161</sup> News item Nuffic 9 October 2018, see <https://www.nuffic.nl/en/news/more-international-talents-stay-netherlands/>

<sup>162</sup> OECD (2016), Recruiting Immigrant Workers: The Netherlands 2016, [https://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-the-netherlands-2016\\_9789264259249-en](https://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-the-netherlands-2016_9789264259249-en)

could well be a barrier easily mediated. Of course, there are individual initiatives by employers, research institutions or the like to stimulate their migrants to integrate and learn the language, but it remains an understudied but likely substantial barrier.

**In summary**, a lack of language skills and a lack of integration of labour and especially student migrants can be seen as barriers to come, and to remain in the Netherlands. There has been much policy attention addressing the issue of retaining foreign students, but the percentage of remaining students has not gone up. Both the SER and the OECD proposed to reduce barriers. We are not aware of a general program facilitating or stimulating educational institutions to undertake more action in order to break down such barriers and help their students remain.

## 1.6 Other migrant labour sources: asylum seekers, refugees, family migrants and long term residents

This final section briefly mentions the labour market potential of *other* migrants present in the EU, such as asylum seekers, those holding a status as refugees or as subsidiary protected (referred to here as refugees, *statushouders*) family migrants and holders of a permanent permit and long-term residents. Refugees and migrants holding a Dutch permanent residence permit, have free access to the Dutch labour market. Family migrants have too, *if* their sponsor has free access, for instance because they have the Dutch nationality, a *kennismigranten*-residence permit or permanent residence status. This labour market access for family migrants is in line with the relevant EU Directives. Two of these other potential migrant workers require some further discussion: asylum seekers awaiting the outcome of their procedure and long term residents coming from another member state: they do not have immediate access to the Dutch labour market while they could provide for a source of migrant labour in shortage occupations.

Firstly, asylum seekers awaiting the outcome of their asylum application face a legal barrier to be employed in the Netherlands.<sup>163</sup> Article 15 of the EU Reception Conditions Directive 2013/33/EU<sup>164</sup> stipulates that the EU member states shall ensure that asylum applicants have *effective access* to their labour market no later than 9 months from the date when the application for international protection was lodged. The Netherlands allows asylum seekers to work after six months, but only for a maximum of 24 weeks.

The Netherlands is the only country in the EU that limits the length of labour market access of asylum seekers. Apart from the practical barrier this poses, employers might not take the effort to legally employ an asylum seeker for such a short period of time. As argued elsewhere, ‘the Dutch 24-week rule might very well be a violation of article 15 paragraph 3 of the Reception Conditions Directive, which states that access to the labour market, once granted, shall not be withdrawn during (appeals) procedures.’<sup>165</sup> If asylum seekers were to work sooner, this might be beneficial

<sup>163</sup> T. de Lange (2018), ‘Asylum Seekers’ Limited Right to Work in the Netherlands’, in C. Rijken & T. de Lange

<sup>164</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180.

<sup>165</sup> See also: T. de Lange, E. Besselsen, S. Rahouti, and C. Rijken (2017), *Van azc naar een baan. De Nederlandse regelgeving over en praktijk van arbeidsmarktintegratie van vluchtelingen*, Universiteit van Amsterdam.

for them as well as for employers in need of low skilled workers. However, because they do not know the language yet, live in a reception centre *and* a work permit is required, although the labour market test is waived, the practical and administrative barriers to their employment in this stage are high. Over the past year on average 80 such work permits for the temporary employment of asylum seekers have been granted.<sup>166</sup>

Secondly, a group of potential migrant workers that must be mentioned, and which might surely include migrants from Nigeria, Tunisia and Jordan as well (eventually also Syrian refugees), are migrants holding a status as long term resident in other EU member states.<sup>167</sup> This means they must have been living in their first EU country for at least five years. While the right of EU citizens to be mobile within the EU common market is familiar, less well known is the right of the growing population of third-country nationals working and residing in Europe to become mobile too. So far, they seem to remain rather immobile. The Long-term residents Directive was intended to change this. It aims to facilitate intra-EU mobility for third-country nationals. However, many EU member states, like the Netherlands and Germany, also still use national permanent residence rights. These national permits do not allow for intra-EU mobility while the EU permit for permanent residence does. Long-term residents in other countries can move to another EU country, like the Netherlands, under the Directives mobility scheme and are thus a *potential* source of migrant workers in case of shortages.

The Netherlands is the only country in the EU that implemented the, optional, labour market test during the first year of mobility of a long-term resident. Hence, given the strict labour market test applied, long-term residents from other EU countries have little to no opportunity to move to the Netherlands for *employment*. The Directive also allows for self-employment, which venue is used to some extent. The Directive also allows for inactive movement, which is used too and in which case integration measures are obligatory, which is not the case for intra-EU movement of workers or self-employed. If the labour market test for long-term residents would be waived, this would take away an important barrier for long-term residents living elsewhere in the EU. While they have become part of the EU community they cannot access the Dutch labour market as labour migrants. For the Netherlands, data on the number of permits granted to long-term residents in the Netherlands or from other EU countries is not readily available.

**To conclude**, migrants who remain in the EU and the Netherlands for other reasons than work, might very well be sought after workers. Mobilising them, including family migrants who remain as the spouses of highly skilled workers, could be an important step forward. Legally, there are no barriers to their labour market participation but that does not mean they do not encounter practical barriers. Refugees definitely encounter practical barriers; a drastic improvement of the Dutch integration system is called for, and in preparation, to address their labour market participation. Asylum seekers are a less likely group of workers as they may not be allowed to remain, however, work is a better way to pass the time waiting. Finally, the long-term residents with intra-EU mobility rights offer a huge potential for the Dutch labour market, but they are not a target group of any policy nor are they, if they would arrive, visible in any Dutch statistics.

<sup>166</sup> UWV data provided 18 September 2018.

<sup>167</sup> On labour mobility within the EU of long-term residents, see L. Della Torre and T. de Lange (2017), 'The "importance of staying put": third country nationals' limited intra-EU mobility rights', *Journal of Ethnic and Migration Studies*, DOI: 10.1080/1369183X.2017.1401920.

## 1.7 Conclusions

**This chapter described law and policy on economic migration, especially from countries such as Nigeria, Tunisia and Jordan, into the Netherlands.** The description highlighted both the existing *barriers* to labour migration, such as the restrictive labour market test, and *opportunities* for labour migration, mainly for highly skilled migrants and for temporary assignments.

**With respect to *temporary* labour migration, the EU seasonal workers directive already allows for this in a wide range of activities, and offers some circular migration.** This means that there are existing opportunities to temporarily fill vacancies with migrant labour from countries such as Nigeria, Tunisia or Jordan, without changing the restrictiveness of the policy as its core point of departure. However, the Blue Bird Pilot failed as a temporary migration scheme for practical and political reasons.

**With respect to permanent labour migration, we have described the existing law and policies in this area.** The most used tool for permanent labour migration in the Netherlands is currently the *kennismigranten*-scheme for highly skilled migrants. This scheme is based on salary levels, which are waived or lowered for certain occupations and migrants. In addition, already available under EU law is the opportunity offered by long-term residents living in other EU countries.

**For foreign students, the Netherlands does not offer immediate access to the labour market.** The requirement of a ‘waiting year’, or ‘search year’, makes this a less attractive route for economic migration into the Netherlands. Moreover, access to the search year is restricted for graduates from outside the EU, and especially from MENA countries. Their universities are not listed as top 200 universities so they cannot access the search year. A wider definition of ‘top university’ could potentially grant some graduates from MENA countries a search year.

**Not many international students remain in the Netherlands after their graduation, although their absolute numbers are on the rise.** The low rate of ‘retained’ foreign students is likely to be no different for the few students present from MENA countries. Interviews with former students who were offered a search year suggest that little guidance is offered during the search year in terms of explicit assistance with job search, job applications, language training, or training in soft skills. If a political decision was made to increase retention rates for certain groups, a mix of instruments involving public and private actors would likely be needed. Earlier SEO research on this topic suggested that relevant work experience obtained during one’s studies was an important factor that increased retention rates.

**Another barrier that prevents students from Africa and elsewhere to study in the Netherlands is the fact that their qualifications are often not recognised as sufficient for accessing the Dutch educational system.** This issue was often mentioned during interviews. More research is needed on the extent of this barrier and how educational institutions could better advise students on entering into preparatory courses to overcome such educational deficiencies.

**The European Migration Partnerships offer a legal framework of policy intersection, as is advised in the literature discussed in this chapter.** Economic migration involves labour

market policy, migration policy, education policy as well as policies related to economic development, international relations and development cooperation.

**Finally, institutions in the countries of origin play a role as well, for which the European Migration Partnerships offer an existing framework.** Other EU countries have already experimented with this instrument. It allows for small scale and possibly temporary ‘pilots’ for labour migration, also from MENA countries such as Nigeria, Tunisia and Jordan. So far, these migration partnerships have mainly been used to stimulate return. They are however, also designed to facilitate legal migration.

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## 2 Labour Market Integration of Migrants: Barriers and Opportunities

*This chapter<sup>168</sup> presents the available information on the de facto labour market integration of migrants in the Netherlands, which is compared with information on labour market integration of migrants in Europe and in the United States. Employment gaps and income gaps between migrants and ‘natives’ are found to be larger and more persistent in the Netherlands and other European destination countries than they are in the United States. Given the significant cultural diversity of migrants in the United States, this suggests that ‘cultural differences’ or ‘lack of soft skills’ are not the key explanation for such gaps.*

**Integration is a complex concept.** In the context of migration, ‘integration’ could be broadly defined as “the adding of populations to existing social structures and the ‘quality’ of connectedness of these new populations to the existing system of socio-economic, legal and cultural relations”.<sup>169</sup> Three commonly recognised dimensions of integration are (1) legal-political, (2) socio-economic and (3) socio-cultural integration.<sup>170</sup>

**For the purpose of this study, we focus on socio-economic integration, and in particular, labour market integration.** The key indicators of labour market integration are ‘gaps’ between migrants<sup>171</sup> and ‘natives’ in labour force participation rates, employment rates, and income levels.<sup>172</sup> We focus in particular on ‘native-migrant employment gaps’, which are generally defined as the difference between the employment rate (or unemployment rate) of migrants versus those of ‘natives’ with similar characteristics. Different studies use different definitions of ‘employment gaps’, which are explained below.

### 2.1 Evidence on labour market integration of migrants in the Netherlands

**Numerous studies have reported strong evidence of limited labour market integration for first-generation and second-generation migrants in the Netherlands.** The general finding is that migrant-native employment gaps are large and do not appear to disappear over time, particularly for ‘non-Western’ migrants, including (the children of) former guest workers and inhabitants of former Dutch colonies, and refugees.

<sup>168</sup> This chapter was prepared by Nienke Oomes, Viera Spanikova, and Nathalie Gons..

<sup>169</sup> Heckmann (1997), as cited in European Commission (2005), “Study on Immigration, Integration and Social Cohesion.”, carried out by Focus Consultancy Ltd and Erasmus University Rotterdam: [http://ec.europa.eu/employment\\_social/social\\_situation/docs/vc04\\_171\\_immigration\\_report.pdf](http://ec.europa.eu/employment_social/social_situation/docs/vc04_171_immigration_report.pdf)

<sup>170</sup> See Penninx 2004, Entzinger & Biezeveld 2004, Heckmann 1999; as cited in the European Commission study referred to in the previous footnote. The last two references distinguish some additional dimensions of integration.

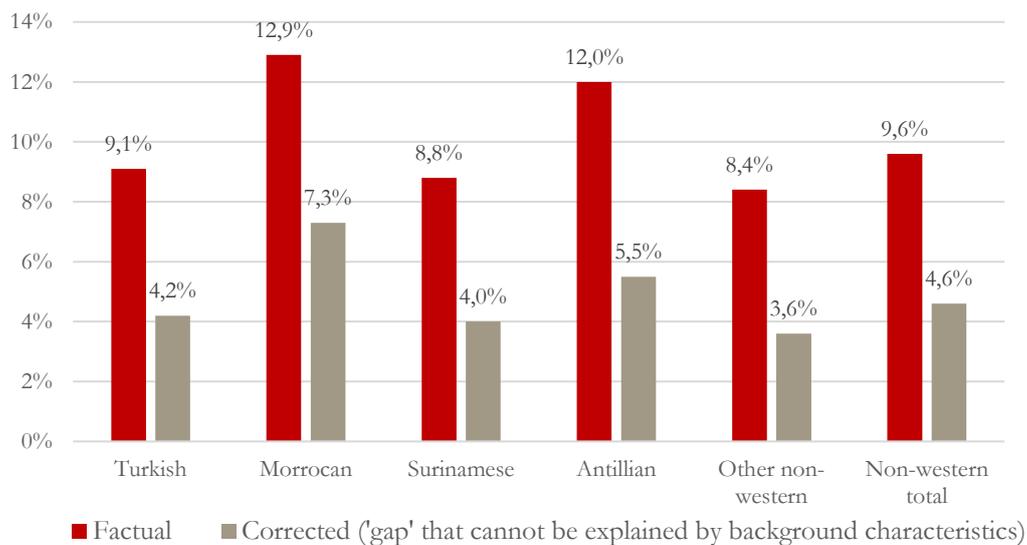
<sup>171</sup> The term ‘migrant’ is used here as a catch-all term for different legal categories of entry, including labour migrants, family migrants, refugees, and those with other humanitarian reasons. Their rights and obligations with respect to labour market participation may vary.

<sup>172</sup> The term ‘natives’ is not entirely correct when we consider second-generation migrants, who are also native Dutch.

### 2.1.1 Migrant-native employment gaps

**Employment gaps between migrants and ‘natives’ are large in the Netherlands.** An important study on integration by SCP (2016) finds that unemployment rates for second generation ‘non-Western’ migrants in the Netherlands are still up to three times higher than for their ethnic Dutch counterparts. As Figure 2.1 shows, only about 50% of that difference can be attributed to differences in background characteristics, such as education, age, or work experience. Moreover, these gaps did not reduce during 2003-2015 (i.e., the gaps are persistent).

**Figure 2.1** There are large differences in unemployment rates between ‘natives’ and non-Western migrants in the Netherlands.



Source: SCP (2016), based on data from Statistics Netherlands (CBS, EBB 2015).

Note: Unemployment in percent of total labour force, factual and corrected difference between migrants and natives, by origin, 2015.

**The average employment gap of migrants with a ‘non-Western’ migration background was equal to 4.6 percentage points in 2015.** In fact, the average unemployment rate for this group was nearly 9.6 percentage points higher than for their ethnic Dutch counterparts, but this could partly be explained by differences in background characteristics, such as education, age, and work experience. When such differences are accounted for, the employment gap is still 4.6 percent. (As indicated in the last two columns of Figure 2.1.

**The employment gap is highest for Dutch migrants of Moroccan descent, followed by those of Antillian descent.** As Figure 2.1 shows, migrants of Moroccan origin experience the largest employment gap, as 7.3 percentage points of their total unemployment rate (12.9%) cannot be explained by their background characteristics. Migrants of Antillean descent experience the second highest employment gap (5.5%), followed by those of Turkish descent (4.2%), Surinamese descent (4.0%) and then other non-Western migrants (3.6%).

### 2.1.2 Probability of being employed by type of migrant

**A comprehensive study on labour force participation rates for different types of migrants was published by Statistics Netherlands in 2017.** In this study, Maliepaard et al (2017) used cohort data covering around 90,000 migrants in the Social Statistical Database (*Sociaal Statistisch Bestand*, CBS) to analyse the employment status of three types of migrants: (1) refugees (*asielmigranten*), (2) labour migrants (*arbeidsmigranten*) and (3) family migrants (*gezinsmigranten*). The definition of ‘employment’ was not the regular ILO definition of being employed for more than 20 hours per week, but an adjusted definition of labour force participation: having a paid job for 8 hours or more per week. The authors decided to use this definition because their focus was on the probability of migrants’ labour force participation rather than the extent of their participation.

**The group under consideration consisted of all refugees and other non-Western migrants who formally registered in the Netherlands (in ‘GBA’) between 1995-1999 and who stayed in the Netherlands through 2011.** The sample excluded migrants who were younger than 18 upon arrival, emigrated during the sample period, or passed away within this period. ‘Family migrants’ were defined as people who migrated because of family reunification or family formation, while ‘labour migrants’ were defined as people who migrated because of a specific employment opportunity.

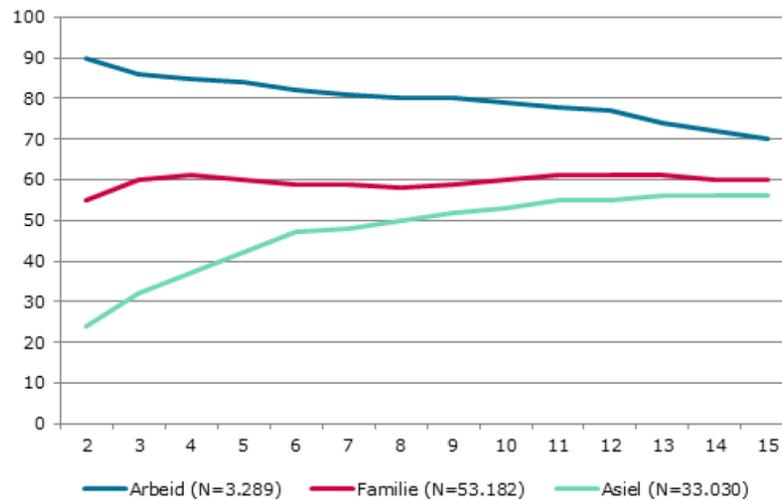
**In order to gain insight into the most important predictors of labour market participation of migrants, a number of background characteristics were controlled for.** The control variables used by Maliepaard et al (2017) included: age at migration, gender, country of origin, year of arrival, position in the household, type of municipality (extent of ‘urbanisation’), completion of a Dutch diploma (secondary or tertiary), and possession of Dutch nationality. It was not possible to control for the level of education or language ability, because these data were not included in the SSB database.

**A key finding is that the labour market prospects for labour migrants are best, while those for refugees are worst.** For labour migrants, labour market prospects are almost good by definition, given that they come to the Netherlands with the prospect of a job (otherwise they would not have been provided with a labour migrant visa). For family migrants, there may be no direct job prospect but an important advantage for them, as compared with refugees, is the existence of a (social) network in the Netherlands, which typically increases the chances of finding a job. This is less self-evident for refugees, who typically have different motives to flee their country of origin, typically personal safety reasons. Moreover, they must first go through a lengthy Dutch asylum procedure before they can fully participate in the Dutch labour market. As a consequence, it is not surprising that refugees experience lower employment rates than other migrant groups, even when correcting for background characteristics. This is what sometimes is referred to as the ‘refugee gap’ (Connor, 2010).

**However, the ‘refugee gap’ persists even after 15 years from the date of arrival in the Netherlands.** As Figure 2.2 shows, two years after arrival, the employment rate of refugees is around 25 percent, compared with 55 percent for family migrants and 90 percent for labour migrants. Over time, the employment rates for the three migrant groups converge to 55-70 percent, but differences persist even after 15 years. As expected, labour migrants perform the

best in terms of employment, especially in the first few years after arrival. The employment rate for family migrants remains relatively stable during their entire stay, averaging around 60%. Refugees perform really poorly in the labour market the first few years. Seven years after arrival, still less than half of all refugees are in employment. This rate then stabilizes slightly below 60% in the long term, slightly beneath family migrants and well beneath labour migrants.

**Figure 2.2** The 'refugee gap' decreases over time, but persists even after 15 years.



Source: Malievelde et al. (2017), based on cohort data from Statistics Netherlands (CBS).

Notes: Employment [ $>8$  hours per week] by migration motive, cohort 1995-99 in percent, per years of residence in the Netherlands.

'Arbeid' = Labour migrants; 'Familie' = Family migrants; 'Asiel' = Refugees. N= number of migrants in the sample

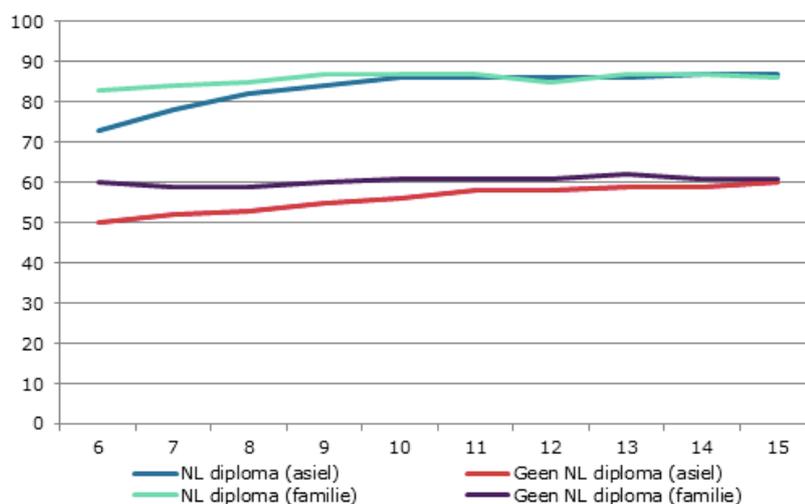
**After controlling for key background characteristics, refugees have a structurally lower chance of being employed than labour migrants or family migrants.** The difference between refugees and family migrants is smaller, but still significant. Migrants from former Yugoslavia and Sub-Saharan Africa have the highest probability of being employed. Migrants from Somalia have the smallest chance of being employed. The findings are consistent with earlier research, and could be related to large differences in (prior) education levels for which it was not able to control. For example, the education level of Somali migrants is known to be low: only two-thirds of this group completed primary education.

**Migrants with a Dutch diploma integrate considerably better in the labour market than migrants without one.** This conclusion holds for both family migrants and refugees.<sup>173</sup> After 15 years, 90% if migrants with a Dutch diploma are employed, while this was only 60% for migrants without a Dutch diploma (Figure 2.3). This statistic could be interpreted to mean that it is worth for refugees and family migrants (and the Netherlands as a receiving society) to invest in obtaining a Dutch diploma. However, it is also possible that only those refugees and family migrants with the best labour market prospects (e.g., because of valuable foreign diplomas or work experience) were able to qualify for obtaining a Dutch diploma, so that the Dutch diploma is more like a 'signalling device'. With further research, we could use CBS data to try to control

<sup>173</sup> Labour migrants were not included in figure 2.4 because there were not sufficient non-Western labour migrants with a Dutch diploma in the sample to make the group differences meaningful.

for this potential selection bias and distinguish between the signaling effect and the true effect of a Dutch education.

**Figure 2.3** Migrants with a Dutch diploma perform considerably better on the Dutch labour market.



Source: Malievelde et al. (2017)

Note: Notes: Employment [>8 hours per week] by migration motive, cohort 1995-99 in percent, per years of residence in the Netherlands.  
'Arbeid' = Labour migrants; 'Familie' = Family,migrants; 'Asiel' = Refugees. N= number of migrants in the sample

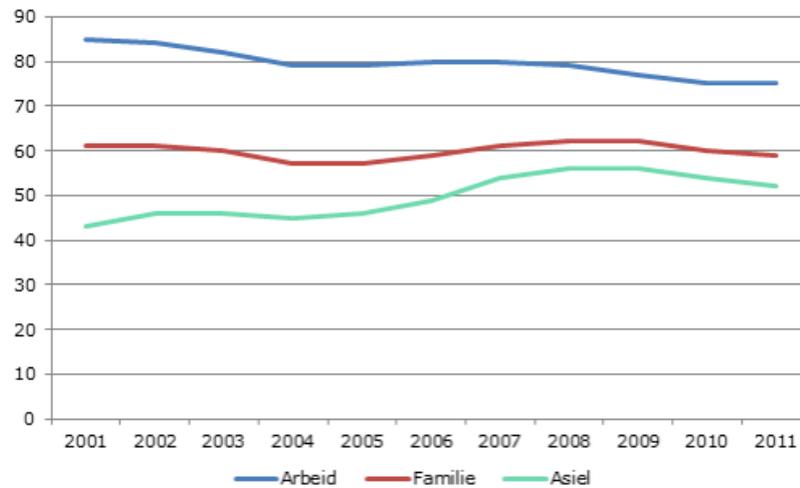
### 2.1.3 Probability of losing a job

**The overall employment rates for all groups of migrants decreased slightly after the start of the financial crisis in 2007-2008.** This is probably not an age-effect, as the average age of the different groups of migrant was around 30 at the start of the data. As Figure 2.4 shows, the probability of being employed fell during the crisis period (2007-2011) from roughly 80 to 75 percent for labour migrants; from 62 to 59 percent for family migrants; and from 56 to 52 percent for refugees. The refugee gap persisted over the years, and did not appear to change much during the crisis.

**Migrants who were employed in 2007 had a higher probability than 'natives' of losing their job during the economic crisis between 2007 and 2011.** This probability was highest for refugees and family migrants (with only a small difference between them), and was smaller for labour migrants [but a gap with natives remained]. A possible explanation is that native Dutch workers generally are more likely to have a permanent contract and were therefore better protected during the crisis.

**Other factors that influenced the probability of losing one's job were gender and age.** Conditional on other factors, women had a larger risk of losing their jobs than men. A possible explanation is that women are generally more likely to work part-time (Klaver et al., 2014). The probability of losing one's job also increased with the age at which migrants obtained refugee status.

**Figure 2.4** The probability of being employed decreased for all migrant groups during the financial crisis, and the refugee gap persisted.



Source: Malieveld et al. (2017), based on cohort data from Statistics Netherlands (CBS).

Notes: Employment [>8 hours per week] by migration motive, cohort 1995-99 in percent.

'Arbeid' = Labour migrants; 'Familie' = Family migrants; 'Asiel' = Refugees. N= number of migrants in the sample

**Other research shows that unemployment rates among migrants are significantly higher than those of natives across all education levels and generations.** The Hague Process on Refugees and Migration (THP 2015) carried out a large study on migrants and the labour market under the Rotterdam Business-City Partnership Project. Based on a mix of surveys and interviews,<sup>174</sup> they found that employment gaps were highest for the first generation of non-Western migrants. In addition, they reported that migrants were disproportionately hired under temporary contracts or via agencies.

### 2.1.4 Income gaps

**A related measure of labour market integration is the income gap between natives and non-Western migrants, which is substantial and shows no signs of narrowing.** This means that even non-Western migrants that do find employment in the Netherlands still earn significantly less than 'native' Dutch workers. As Figure 6.5 shows, the standardised annual household income of 'natives' has exceeded that of non-Western migrants for many years. Moreover, the income gap shows a slight gradually increase over time, to around 7,400 euros by 2014.

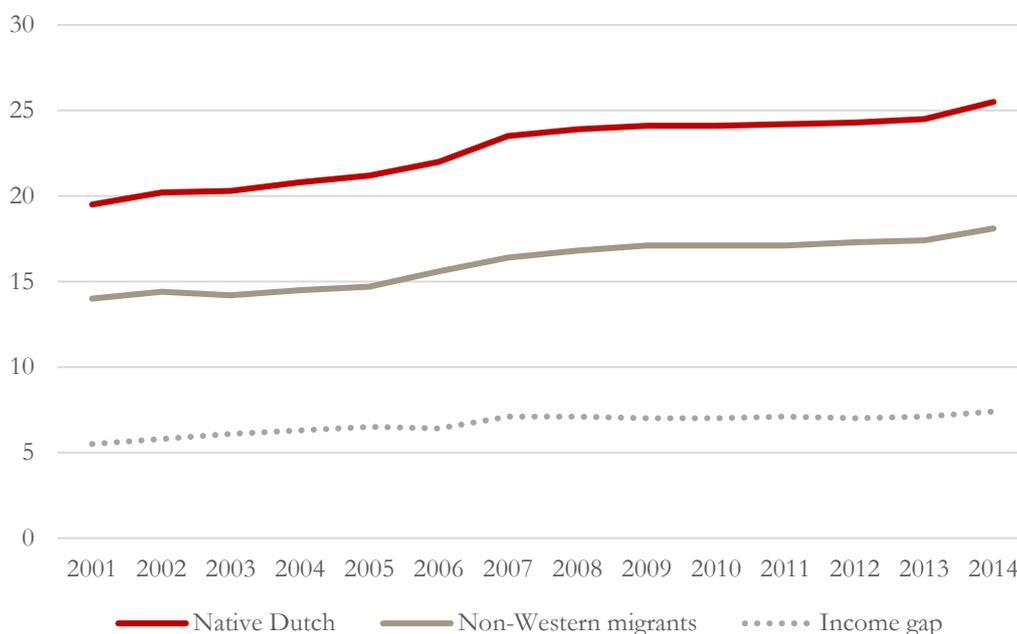
**The income gap of non-Western migrants increased gradually in the period 2001 to 2014.** This is due to the fact that the incomes of Dutch natives increased more rapidly in the period 2001-2014 than they did among non-Western migrants. Consequently, the income gap widened

<sup>174</sup> The THP (2015) study was based on migrant and company surveys and interviews in the Rijnmond area, including Rotterdam. Sources included the following:

- Migrant survey (1000 respondents)
- Migrant community interviews (23 interviews)
- Company survey (80+ respondents)
- Company interviews (35 interviews with representatives of large companies and SMEs)
- Training institutes interviews (20 interviews).

slightly from 5.5% in 2001 to 7.4% in 2014. As there are no apparent reasons for a possible reversal of this trend, this income gap will most likely persist in the years to come.

**Figure 6.5** The income levels of both native Dutch and non-Western migrants have increased, but the gap has widened.



Source: SCP (2016), based on data from Statistics Netherlands (CBS).  
 Note: Standardised annual household income (in thousands of euros)

## 2.2 Barriers to integration in the Netherlands

**Why are employment gaps and incomes gaps between migrants and natives so large and persistent in the Netherlands?** What are the reasons for their unexplained differences in employment and income? Why does the refugee gap persist? Since the existing statistical studies based on cohort studies (SCP 2016, Maliepaard et al 2017) do not answer these questions, we turn to surveys and interviews for insights.

**Our research suggests that there are various barriers to integration in the Dutch labour market experienced by both employers and (potential) migrant workers.** Below we present findings from our literature review enriched with findings from interviews. We generally find that barriers could be broadly classified into the following categories:

1. Cultural differences/ lack of 'soft skills' appropriate to Dutch culture
2. Dutch language ability
3. Lack of relevant (social) networks
4. Stereotyping by employers ('statistical discrimination')

In addition to carrying out a literature review, we conducted around 20 interviews the following groups:

1. ***Interviews with migrants in the Netherlands.*** Among these migrants were (former) students, labour migrants (mostly high-skilled ‘knowledge migrants’, or *kennismigranten*), family migrants, and (former) refugees.
2. ***Interviews with representatives of institutions and companies dealing with migrants.*** These included an employment agency, a recruiter, an education and training institution, a networking organisation, a foundations assisting newcomers with integration, a foundation advising on migration issues.

**While the sample was too small to be representative, a minimum level of representativeness was ensured by means of purposive sampling:** pre-selecting the interviewees on a basis of a brief survey that asked about key characteristics. The survey was distributed electronically through websites of SEO, ASCL, and AYP Network. Interviews took place in person or by phone/Skype. Selected respondents for interviewees from the first group came from various countries in Africa (e.g. Cameroon, Ethiopia, Libya, Nigeria, Republic of Congo and Zimbabwe) and the Middle East (e.g. Iran and Jordan). Interview respondents from the second group were selected on a basis of own research, networking and/or recommendations from the client.

**We also ensured that respondents were active in a variety of sectors and professions.** These included the high tech sector (manager, trainer), education sector (teacher, PhD student), health care sector (professional, recruiter), and advisory services (adviser, project assistant, HR manager).

The interviews in the Netherlands took place in person, or in a few cases by phone/Skype. Among the interviewed agencies were:

- The African Young Professional (AYP) Network
- Foundation ‘Ik wil’, which assists refugees with integration, and which provides Dutch language training, among other courses.
- The Hague Process on Refugees and Migration (THP).
- IP Techniek, an employment agency recruiting people from all over the world for technical jobs in the Eindhoven region
- Brainport Industries College, offering vocational technical education
- X-Medic, a recruitment agency in the health care sector

### 2.2.1 Language barriers

**Various studies show that Dutch language proficiency is an important factor for successful integration in the Dutch labour market.** Van der Raad (2015) points to jargon and language use as one of the key distinctive cultural manifestations of the legal sector. IntegratieBarometer (2018) emphasises the importance of mastering Dutch language and advises to ‘learn Dutch better in practice than from a textbook’. Maliepaard et al (2017) argues that Dutch language ability is part of the larger reservoir of human capital that contributes to successful integration.

**Interviews held with migrants and representatives of companies confirmed that employer expectations regarding Dutch language fluency is a major barrier to integration for certain groups of migrants.** This holds especially for migrants with the following profile:

- Mid-level education background (e.g., vocational training, technical college)
- Available for work at small and medium-sized enterprises (SMEs)
- Available for work with companies serving Dutch clients.

SMEs serving Dutch clients typically operate in Dutch and look for Dutch-speaking employees. For mid-level technical professions it is also generally important to speak Dutch, for example with regard to safety measures or interactions with clients. Finally, jobs in the health area also typically require Dutch, given the importance of interacting with patients/clients in their native Dutch language.

**Mastering Dutch language appears to be less important for the labour market success of higher skilled migrants who work for multinationals (including tech firms and banks) or for companies serving international clients.** Multinationals serving international clients operate in various languages, depending on their market. An example is the Dutch multinational ASML, which employs 90 nationalities in Veldhoven. The standard business language used here is usually English. These companies are interested in attracting and hiring international talent. They therefore provide facilities that cater to their international employees, which also include prayer rooms and various cuisines.

### 2.2.2 Soft skills

**A key barrier to integration that is often mentioned in the Netherlands is the perception by employers that it is difficult to work with migrants due to ‘cultural differences’ or lack of ‘soft skills’ specific to Dutch work culture.** Examples of soft skills that are considered specific to the Dutch work culture include: the ability to work independently, taking initiative, speak up, feel/show responsibility for your area of work, and the Dutch ‘work ethic’.<sup>175</sup>

**International research confirms that business executives today typically value both hard skills and soft skills.** While ‘hard skills’ are the technical expertise and knowledge needed for a job, ‘soft skills’ are interpersonal qualities, also known as ‘people skills’, and personal attributes that one possesses. The top 10 soft skills as perceived the most important by business executives are: integrity, communication, courtesy, responsibility, social skills, positive attitude, professionalism, flexibility, teamwork, and work ethic. (Robles, 2012).<sup>176</sup>

**During the past decade, much research has been carried out on the importance of soft skills in the workplace.**<sup>177</sup> One study found that hard skills contribute only 15 percent to labour market success, whereas soft skills contribute 85 percent (Watts & Watts, 2008, as cited in

<sup>175</sup> This list is taken from the ToR for this study.

<sup>176</sup> The Collins English Dictionary defines the term ‘soft skills’ as “desirable qualities for certain forms of employment that do not depend on acquired knowledge: they include common sense, the ability to deal with people, and a positive flexible attitude.” A definition based on reviewed literature explains soft skills as an umbrella term for skills under three key functional elements: people skills, social skills, and personal career attributes (Robles 2012)

<sup>177</sup> See Klaus, 2010; Maes, Weldy, & Icenogel, 1997; Mitchell et al., 2010; Nealy, 2005; Smith, 2007 (all cited by Robles, 2012).

John, 2009). Another study indicated that long-term job success depends 75 percent on ‘people skills’, and only 25 percent on technical knowledge (Klaus, 2010). Such numbers obviously can differ by country, sector, profession, and year.

**In a large study based on migrant and company surveys and interviews in the Rotterdam area, THP (2015) found a lack of soft skills among unemployed migrants.** The key soft skills that migrants seemed to lack in particular were ‘flexibility’, ‘cooperation’ and ‘creativity’. Companies that took part in the THP (2015) research indicated that they are generally struggling to find sufficiently cooperative, creative, and flexible employees. Migrants are generally perceived by employers to lack these dimensions, so targeted upskilling could improve migrant employment, according to THP (2015). Their analysis by education level shows that all education levels lack ‘flexibility’ but the lack of ‘other soft skills’ is concentrated in so-called MBO educated migrants.

**Employers acknowledge the importance of soft skills for good functioning within and outside an organisation, particularly in contacts with clients.** According to employers, there is scope to improve the soft skills of migrants. Soft skills that, in their view, should be developed are: cooperation, dealing with managers, communication, presentation, motivation and work attitude. The importance of soft skills was emphasised for professions with direct client contacts, such as attorneys, doctors, advisers. Van der Raad (2015) illustrates this for the legal sector and connects the soft skills to mastering the Dutch language and ability to build social networks.

**Siebers (2018) argues that assessing applicant and employees on their ‘soft skills’ represents a clear example of indirect discrimination.**<sup>178</sup> This is because the soft skills are not job-related. He sees ‘soft skills’ or personality prescriptions as cultural capital and not human capital. He explains the role of soft skills as follows: “Job applicants and workers are no longer only assessed on input (human capital) and output (quantity and quality of one’s work and the observance of regulations and protocols) but also on the ways in which they perform their work and with which personality traits. These personality traits are often phrased as ‘attitudes’ and ‘soft skills’ (being enthusiastic, motivated, communicative, proactive, assertive, authentic, creative, flexible, etc.)”.<sup>179</sup>

**The functionality of soft skills as selection and assessment criteria is not proven.** All organisations studied by Siebers (2018) had introduced soft skills selection and assessment criteria, but concluded that their functionality was questionable. HR advisors and supervisors were not able to answer questions why these qualifications were necessary for achieving the work targets and results. For example, they asked the question why a tax administrator, whose job it is to control tax files, should be ‘creative.’ In addition, they would like to know what is the surplus value of controlling how one achieves his/her targets, if the targets themselves are already assessed. In their view, the processes to be achieved by requiring soft skills from employees, like

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<sup>178</sup> This study was based on a broad range of research projects carried out in Dutch organisations, including the Dutch police; the Dutch tax administration; The Hague University of Applied Sciences; the provincial administration of Noord-Holland; the Dutch ministry of Agriculture, Nature and Food Quality; the Dutch ministry of Education, Culture and Science; Deloitte; and the municipality of Eindhoven. Most of these projects combined a meso perspective (based on questionnaires and document analysis) with a micro focus on everyday interactions and experiences (based on observations and interviews).

<sup>179</sup> Siebers (2018).

open and fluent communication, are basically social processes. Therefore, Siebers (2018) considers it inappropriate to put the responsibility for good communication processes unilaterally on the shoulders of individual applicants and employees. He sees it as the responsibility of an organisation itself to ensure that someone with the right human capital is able to work effectively and communicatively.

### 2.2.3 Social networks

**Access to social networks has also been recognised as an important factor for successful labour market integration in the Netherlands.** THP (2015) pointed to a lack of networks as one of the structural issues migrants face in accessing the Dutch labour market. WRR (2015) also report that the lack of relevant social networks negatively affected the labour market position of refugees.

**Social networks (or ‘social capital’) and economic integration are directly related.** As Maliepaard et al (2017) explain, social networks help with finding a job, and having a job gives people the opportunity to engage in social contacts.<sup>180</sup> Similarly, IntegratieBarometer (2018) suggests that intermediaries are important to develop a network in the Netherlands and engage in social contacts.

**Siebers (2017) found that people with a ‘non-Western’ migration background tend to find it difficult to network.** Surveys suggest that they feel uncomfortable when they need to make use of their network connections for gathering information about a particular vacancy of their interest or to mobilise support for themselves in general.

**The importance of social networks was confirmed in our interviews with Dutch migrants.** Many respondents noted the importance of having ‘social connections’, not only for being selected for a job but, possibly more importantly, for being invited for a first interview or meeting. Members of the African Young Professionals network in the Netherlands generally highly valued the networking events organised by this organisation, precisely for this reason.

### 2.2.4 Stereotyping / statistical discrimination

**Negative stereotyping based on employer experiences with past and current migrant experiences, appear to be a key barrier to integration in the Dutch labour market.** A negative stereotype is a widely held belief about an individual or group which displays them in a poor light and is normally not representative of the actual situation. A related concept is ‘statistical discrimination’, where the average characteristic of a group is incorrectly attributed to the characteristics of individuals.

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<sup>180</sup> Social capital is by definition closely interwoven with social integration, with social capital being considered an investment or a process, and social integration as a result.(Maliepaard et al 2017).

**Stereotyping and resistance from mid-level management to diversity are among the structural issues migrants face when accessing the labour market.** This is a result that comes out of the THP (2015) study. Dutch employers appear to underestimate the education levels and productivity of non-Western migrants, possibly because of their past (often limited) experience. The existence of stereotyping practices may complicate the integration of migrants. For example, Syrian refugees in the Netherlands are typically assumed to be much lower educated than they in fact are.

**SCP (2010) found some evidence that prejudices about ethnic origins play a role in the selection of job applicants by Dutch employers.** The study, entitled “Liever Mark dan Mohammed?” conducted an experiment whereby 1300 fictional CVs were submitted to employers using either a Dutch name (‘Mark’) or a non-Western name (‘Mohammed’). The study concluded that, for some employers, a non-Western ethnic origin (suggested by the name used in the CV) can be sufficient reason for not inviting a potentially suitable candidate for a job interview. In interviews, the existence of ‘customer discrimination’ (in jobs with customer contact) was a reason mentioned by some employers for justifying make a distinction among job applicants with different ethnic origins.

**The available evidence indicates that discrimination is particularly prevalent in certain segments of the labour market, particularly the bottom end.** Being associated with a migrant group means having fewer opportunities on the labour market. Even in the most favourable circumstances – having the right profile, writing a substantiated application letter and applying in a time of economic prosperity – members of minority groups have more difficulty finding a job than native Dutch applicants. On top of this, there are some specific sectors (retail, hospitality) where the difference in the chance of being invited for an interview is greater than in other sectors.

## 2.3 Labour market integration of migrants in Europe

**Migrants in many other European countries face similar problems with labour market integration as migrants in the Netherlands.** A recent literature review in the *Handbook of the Economics of International Migration* reports “large and highly persistent gaps in the economic performance of immigrants relative to natives in most destination countries [in Europe], with only few instances of encouraging progress” (La Rica et al 2015).

**The extent of labour market integration in Europe tends to differ by (1) length of residence; (2) level of education; and (3) country of origin.** The key empirical findings for each of these three factors is briefly discussed below.

**First, researchers generally find a positive relationship between length of residence and employment gaps.** For example, in Sweden, the number of years since migration explains at least 70% of the employment gap among all migrant categories (Luik et al. 2016: 16). European cross-sectional evidence for many destination countries generally confirms that the gap reduces with the number of years of residence in the host country (Dustmann et al., 2017; European

Commission and OECD 2016).<sup>181</sup> However, in most studies the gaps in employment outcomes do not tend to disappear entirely.

**Second, employment gaps in Europe in fact tend to be smaller for migrants with basic education.** The European Commission study finds that migrants with basic level of education from all regions, except for the MENA region, had higher employment rates than natives (Grubanov-Boskovic et al 2017, p. 24). This was true in both 2008 and 2015. However, the opposite is true when observing the ‘upper-secondary’ and ‘post-secondary non-tertiary education’. Indeed, in 2015, natives had higher employment rates than migrants, regardless of their region of origin. Such distance between natives and migrants is further accentuated in the case of tertiary education (ibid. pp. 24-25).

**Third, employment gaps depend on the country or region of origin, and tend to be larger for non-European migrants, particularly those from the Middle East and North Africa (MENA) region.** A consistent finding across the literature is that migrants’ performance in European labour markets (both in terms of income and employment) tends to vary according to the country of origin, even when the educational level of migrant is taken into account. According to Grubanov-Boskovic et al (2017), non-European migrants and their descendants, both men and women, face substantially more difficulties integrating into the labour market of Western European countries. European migrants, especially in the second generation, seem to experience less difficulty than non-Europeans in incorporating into the labour force. In particular, migrants from the MENA region remain worse off despite length of residency.

**Combining the second and third factors, the literature finds that tertiary-educated immigrants from MENA appears to have the largest average employment gap (20%).** In 2015, higher educated migrants from the MENA region had an average employment rate of 64%, as compared with the average employment rate of 84% for natives with the same educational attainment (Grubanov-Boskovic et al 2017, p. 28). Comparing employment rates by educational levels also reveals that, particularly for the MENA region of origin, the economic return in terms of employment rates of achieving tertiary education for migrants is lower than for natives (see Figure 12 and 13 in their report). For example, research on Sweden shows that having “at least a three-year secondary education is essential for migrants’ employment success”; however, advancing in education beyond this level “does not, on average, improve migrants’ employment levels” (Luik et al.2016: 16). In other words, more education above a certain level does not appear to increase one’s chances of employment.

## 2.4 Labour market integration of migrants in the US

**Employment gaps for migrants in the United States (typically called ‘immigrants’ there) are generally smaller and seem to close faster than in Europe.** While the two continents are different in many respects, and the US in particular has many different types of migrants, it is

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<sup>181</sup> An exception is Norway, where migrants appear to have worse employment outcomes the longer they reside there. Longitudinal data showed that “[a]fter five to ten years of residence, virtually all immigrant groups from low- income countries – regardless of gender and admission class – experience declining employment rates.” (Bratsberg et al. 2017, p. 29)

nevertheless striking that migrants in the US generally do better than in Europe.<sup>182</sup> After an initial period of adjustment in which migrants' employment lags behind that of natives, immigrants in the US on average tend to gradually catch up with their native-born age-peers (Panel on the Economic and Fiscal Consequences of Immigration, cited in Grubanov-Boskovic 2017 et al p.14). While employment and income gaps between migrants and natives are very persistent in Europe, they tend to close in the US after 10-20 years, across ethnicity and gender.<sup>183</sup>

**Recent studies show that migrants in the US tend to have little trouble finding paid employment and that the wages they earn are commensurate with their skills.** A recent literature survey in the *Handbook of the Economics of International Migration* finds that, overall, the labour market performance of US migrants is "surprisingly good". Their key conclusions are the following:

- **"Immigrants have little trouble finding jobs,** and this is particularly true of unskilled immigrants."
- **"Most immigrants experience substantial earnings growth** as they adapt to the American labour market, and the wages they earn are commensurate with their skills."
- **"Overall, the US-born second generation has achieved educational parity with mainstream society;** for some Hispanic groups, however, this is not the case."
- **"On the whole, immigration to the US has not had large adverse consequences** for the labour market opportunities of native workers." (Cadena et al 2015, p. 1251).

**The historical differences in labour market integration between migrants in Europe and in the US are striking.** The positive findings for the US are particularly remarkable given that a large share of new migrants arrive in the US with very low levels of schooling, English proficiency, and other skills that have become increasingly important determinants of success in the US labour market.

**While further research is needed on this issue, we have two hypotheses that could explain the large differences between Europe and the US:**

1. **Hypothesis 1: selection effects:** the baseline characteristics of migrants that have historically arrived in Europe are very different from those in the US, among other reasons because of different (past) migration policies and different historical circumstances. Migrants in the Netherlands originally came from three key groups: (a) guest workers (mostly from Morocco and Turkey), (b) people from former colonies (e.g., Suriname, Indonesia, the Antilles, and (c) refugees from war-torn countries (e.g., Syria, Eritrea, Iraq) that were admitted for humanitarian reasons. Migrants in the United States, however, (apart from African Americans) mostly have come voluntarily from all over the world, and have tended

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<sup>182</sup> The complexity of comparing immigration outcomes in Europe versus the United States are well documented. See, for example, Alba and Foner (2015).

<sup>183</sup> Various early studies on US labour market integration by Barry Chiswick and others found that adult white immigrant men (a) started out with lower earnings than their native-born counterparts; (b) reached earnings parity with the native-born after around 15 years of having been in the US; (c) had higher earnings on average after 15 years (Chiswick 1978). For male migrants of all races and ethnicities, and from all countries of origin, migrant earnings were found to catch up with native-born earnings in the 10- to 20-year period (Chiswick 1979). In these studies, the 'natives' with whom the migrants were compared with had the same race/ethnic origin as the migrants, in order to make the comparison as 'clean' as possible. For women, parity in earnings with their native-born counterparts came sooner than for men (Chiswick 1980).

to be more entrepreneurial than migrants in Europe; actively in search of better economic opportunities. Whether indeed migrants coming to Europe are less entrepreneurial themselves or whether the receiving societies lack welcoming structures for people with entrepreneurial skills is understudied.

2. **Hypothesis 2: stereotyping / statistical discrimination:** this hypothesis states that, in the absence of direct information about labour productivity or ‘ability’, an employer will substitute group averages.<sup>184</sup> This means they may resort to basing employment decisions on the workers’ observable features, such as nationality or ethnicity, as long as these features correlate with labour productivity. Statistical discrimination can result in a self-reinforcing ‘vicious circle’ over time, as the atypical individuals from the discriminated group are discouraged from participating in the market (Rodgers 2009). They may even be discouraged from improving their skills, as their expected return on investment in education or training is less than for the non-discriminated group (Dau-Schmidt 2009). If this is the case, then the finding by Luik et al (2016) that more education above a certain level does not appear to increase one’s chances of employment may actually be the result of forms of discrimination.

**Combining the two hypotheses leads to the prediction that initial conditions matter for labour market integration.** If there are selection effects, and if statistical discrimination plays a role, then the perceived productivity of migrants (and therefore employer attitudes towards migrants) in the Netherlands will be affected by the past sample for potentially a long period. If new groups of migrants have higher average productivity than past migrants, this can lead employers to underestimate the productivity of the new migrants. The specific previous Dutch experience with specific groups of migrants is likely to create such a ‘sample bias’.

**Another way of saying this is that employers’ responses to increased heterogeneity of workers depend on initial conditions.** That is, the more the diverse an initial population distribution (in terms of ethnicity/nationality/religion/language ability, etc) the less ethnicity/nationality can predict labour market outcomes. Similarly, the more diverse an initial population, the less productivity is underestimated and the smaller the effect of ethnicity/nationality on the labour market outcomes of future migrants (as attitudes towards migrants improve).<sup>185</sup> This, then, could potentially help explain why labour market gaps for migrants are so persistent in countries like the Netherlands that started out with a very limited and highly specific experience with migrants (post-colonial and post WWII guest workers).

## 2.5 Conclusion

**Employment and income gaps remain large and persistent for migrants in the Netherlands and other European destination countries.** Despite having acquired Dutch

<sup>184</sup> This theory goes back to Kenneth Arrow and Edmund Phelps, as described in Fang and Moro (2011), who offer an excellent literature review on this topic.

<sup>185</sup> Newman (2013) finds some evidence that Americans’ responses to local demographic changes depend on the prior demographic balance. Where there are few Hispanics initially, an influx of Hispanics increases cultural threat and opposition to immigration. Such an influx has the opposite effect in places where there are many Hispanics at baseline. Similarly, Damelang & Haas (2012) find that young immigrants in Germany face significantly lower barriers for employment entry in culturally more diverse German regions.

education and Dutch language fluency, labour market participation 15 years after resettlement is still worse for these groups and the unemployment rates for these groups are still up to three times higher than for their ethnic Dutch counterparts and did not reduce during 2003-2015. Only about 50% of that difference can be attributed to differences by education, age, or work experience. Similar large and persistent gaps are found in other European destination countries.

**The gap that cannot be explained by socio-economic background characteristics is often attributed to ‘cultural differences’ or lack of ‘soft skills.’** These are barriers to integration that are frequently mentioned by Dutch employers in surveys and interviews. Other barriers to integration mentioned by migrants themselves are (1) high expectations from employers regarding Dutch language requirements, (2) non-familiarity of Dutch employers with cultural differences, (3) a lack of relevant social networks; and (4) stereotyping (sometimes called ‘statistical discrimination’).<sup>186</sup> The latter is likely based on the limited and specific previous Dutch experience with special groups of migrants (guest workers, former colonies, and refugees) that are likely not representative of future migrant flows and which therefore can create a ‘sample bias’.

**International experience suggests that ‘cultural differences’ and ‘lack of soft skills’ should not be barriers in the long term.** For example, in the U.S., there is a wide variety of culturally diverse migrants who do well in the labour market. Both first and second generations of migrants tend to assimilate faster and achieve parity more quickly in labour market outcomes. In fact, migrants in the US sometimes perform better than ‘natives’ on various indicators. As the Netherlands grows more culturally diverse, we therefore expect such barriers to dissipate over time.

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<sup>186</sup> Note that higher-skilled migrants did not mention this in interviews. Quite the contrary, they were very positive about Dutch professional culture (e.g., direct feedback and dialogue with superiors).

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