

# **Netherlands: Major Overhaul of Immigration Policies in 2013**

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# Netherlands: Immigration

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**SUMMARY** In June 2013, new immigration policies will take effect in the Netherlands through the adoption of two new laws, the Modern Migration Policy Act and the National Visa Act. One key feature of the Modern Migration Policy Act, which amends the Aliens Act 2000, is a new emphasis on sponsorship. Another significant feature is the streamlining of the resident permit application process by combining into one procedure the application processes for the provisional ninety-day residence permit and the long-term residence permit. The Act also strengthens enforcement provisions of the Aliens Act 2000. Some other notable changes in Dutch immigration policy, on the issues of family reunification, criminalization of illegal residence, and strengthening of public order and national security measures vis-à-vis foreign residents, were made in 2012.

## I. Introduction

The Dutch Immigration and Naturalisation Service (Immigratie-en Naturalisatiedienst, IND) reported on March 6, 2013, that the Modern Migration Policy Act (MMPA) and the National Visa Act will both enter into force on June 1, 2013.<sup>1</sup> Implementation of the MMPA was delayed pending the full functioning of the IND's new INDiGO information system, which is needed to support implementation of the Act.<sup>2</sup>

The two new Acts amend the Aliens Act 2000<sup>3</sup> and some other related laws. The two Acts do not apply, however, to foreign nationals who are citizens of a European Economic Area (EEA) country, i.e., the twenty-seven Member States of the European Union plus Iceland, Liechtenstein, and Norway.<sup>4</sup> They also do not apply to Switzerland.<sup>5</sup>

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<sup>1</sup> *Modern Migration Policy Act Enters into Force on 1 June 2013*, Immigration and Naturalisation Service, MINISTRY OF SECURITY AND JUSTICE (hereinafter IND) (Mar. 6, 2013), <http://www.ind.nl/en/Employers/News/Pages/ModernMigrationPolicyActentersintoforceon1June2013.aspx>.

<sup>2</sup> *Id.*

<sup>3</sup> *Vreemdelingenwet 2000 [Aliens Act 2000]* (Nov. 23, 2000, as last amended effective Mar. 9, 2013), OVERHEID.NL, [http://wetten.overheid.nl/BWBR0011823/geldigheidsdatum\\_26-03-2013](http://wetten.overheid.nl/BWBR0011823/geldigheidsdatum_26-03-2013).

<sup>4</sup> *Netherlands: Modern Migration Policy Act to Be Introduced on June 1, 2013*, PRO-LINK GLOBAL (Mar. 12, 2013), <http://www.pro-linkglobal.com/resources/immigration-alerts/2013/netherlands-modern-migration-policy-act-to-be-introduced-on-june-1-2013-a263.aspx>; *European Economic Area*, EFTA, <http://www.efta.int/eea.aspx> (last visited Mar. 27, 2013).

<sup>5</sup> Aliens Act 2000, art. 1 (e) no. 5.

## II. Key Features of the Modern Migration Policy Act

### A. Sponsorship

The focus of the Modern Migration Policy Act (Wet modern migratiebeleid) is indicated in its full formal title; the Act is on “the strengthening of the position of the sponsor in the regular immigration law and the acceleration of immigration procedures.”<sup>6</sup> The MMPA introduces in the Aliens Act 2000 a new section entitled “the sponsor,” which now requires most migrants to have a sponsor for their stay in the Netherlands. Both migrants and sponsors have statutory obligations under the Act, including the obligations to provide the government with correct information and to keep records. The Act further provides that henceforth sponsors can submit an application for a residence permit for migrants.<sup>7</sup>

#### 1. Highly Skilled Workers

In order to sponsor foreign nationals, businesses and legal entities must be registered by the IND as a qualified sponsor. Although authorized sponsors have certain legal obligations, they may also enjoy certain immigration benefits.<sup>8</sup> The immigration firm Pro-Link Global has pointed out that the MMPA will have a direct impact on the program for Highly Skilled Migrants (*kennismigranten*), described as “a popular work permit category used by Dutch companies to sponsor highly-skilled IT or specialized knowledge workers outside the . . . traditional work permit program.”<sup>9</sup>

Employers already registered as users of the highly skilled migrants scheme or that have a covenant (*verbond*)<sup>10</sup> with the IND will automatically become authorized sponsors when the

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<sup>6</sup> Wet van 7 juli 2010 tot wijziging van de Vreemdelingenwet 2000 en enkele andere wetten in verband met de versterking van de positie van de referent in het reguliere vreemdelingenrecht en versnelling van de vreemdelingenrechtelijke procedure (Wet modern migratiebeleid) [Act of July 7, 2010, to amend the Aliens Act 2000 and Some Other Acts Related to the Strengthening of the Position of the Sponsor in the Regular Immigration Law and the Acceleration of Immigration Procedures (Modern Migration Policy Act)] (hereinafter MMPA), 290 STAATSBLAD [Official Gazette] (July 16, 2010), OVERHEID.NL, <https://zoek.officielebekendmakingen.nl/stb-2010-290.html>.

<sup>7</sup> *Modern Migration Policy Act Enters into Force on 1 June 2013*, IND, *supra* note 1.

<sup>8</sup> PRO-LINK GLOBAL, *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> Labor migrants who satisfy certain conditions may apply for an accelerated procedure that leads to obtaining a residence permit. To make use of the procedure, they must first conclude a covenant with the IND, which requires that they submit a written request to the Office for Labour and Highly Skilled Migrants (Loket Kennis- en Arbeidsmigratie). If that Office approves the request, the IND will conclude a covenant with the Dutch organization that will sponsor the migrant. IND, BRINGING A FOREIGN EMPLOYEE TO THE NETHERLANDS 4 (Mar. 2013), <http://www.ind.nl/en/Custom-Information/Documents/6002.pdf>.

MMPA comes into effect, provided they have submitted at least one residency application that has been granted in the previous year.<sup>11</sup>

In the case of highly skilled migrants who work at a company that does not become an authorized sponsor after the Act takes effect, those who have submitted an application for a residence permit prior to July 1, 2010, will be allowed to stay in the Netherlands until the permit's term of validity expires; in such cases the obligations for sponsors and foreign nationals under the MMPA will not apply. Highly skilled migrants who have submitted a permanent residency application on or after July 1, 2010, will be allowed to remain in the country until the permit's term of validity expires, but they will be subject to the rights and obligations imposed by the MMPA.<sup>12</sup>

There is an exception in the case of Turkish nationals, however, because of the association agreement between the European Commission and Turkey and related documents. Turkish nationals admitted to the Netherlands on the basis of the MMPA for work as highly skilled migrants or scientific researchers, within the meaning of Directive 2005/71/EC,<sup>13</sup> cannot be required to have their employer act as a sponsor. Therefore, the employer does not have the additional information and administration obligations imposed under the Act; only the existing information obligations—most notably the obligation to report if the migrant no longer fulfills the purpose of stay for which residence was permitted and/or leaves the Netherlands—continue to apply to the employee. On the other hand, an employer can voluntarily opt for sponsorship of the Turkish migrant.<sup>14</sup>

## 2. *Temporary/Seasonal Workers*

Under the MMPA, employers of migrant seasonal workers have the option to become the legal sponsors of such migrants, but they are not obliged to do so.<sup>15</sup>

As in the case of employers of highly skilled workers, employers that already have a covenant with seasonal migrants automatically become authorized sponsors when the MMPA takes effect if they have submitted at least one residency application that has been granted in the previous year. The seasonal workers will be subject to the rights and obligations of the MMPA if their employer has a covenant and becomes an authorized sponsor when the Act enters into force.<sup>16</sup>

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<sup>11</sup> *Knowledge and Talent (Highly Skilled Migrants)*, IND, [http://www.ind.nl/en/Themes/Modern-Migration/Consequences-for-each-purpose-of-stay/Pages/Knowledgeandtalent\(highlyskilledmigrants\).aspx](http://www.ind.nl/en/Themes/Modern-Migration/Consequences-for-each-purpose-of-stay/Pages/Knowledgeandtalent(highlyskilledmigrants).aspx) (last visited Apr. 16, 2013).

<sup>12</sup> *Id.*

<sup>13</sup> Council Directive 2005/71/EC of 12 October 2005 on a Specific Procedure for Admitting Third-Country Nationals for the Purposes of Scientific Research, 2005 O.J. (L 289) 15, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF>.

<sup>14</sup> *Knowledge and Talent (Highly Skilled Migrants)*, IND, *supra* note 10.

<sup>15</sup> *Seasonal Work*, IND, [http://english.ind.nl/themas/momi/Consequenties\\_per\\_verblijfsdoel/seizoensarbeid.aspx](http://english.ind.nl/themas/momi/Consequenties_per_verblijfsdoel/seizoensarbeid.aspx) (last visited Mar. 27, 2013).

<sup>16</sup> *Id.*

Foreign seasonal workers who work in a company that does not become an authorized sponsor after the MMPA comes into effect and who submitted an application for a residence permit before July 1, 2010, will continue to be subject to the current laws and regulations for a period not to exceed five years. Applications for extension of the term of validity will also be governed by the old law, if the first application was submitted before July 1, 2010. If the residence permit application or an application for a change in a restriction was submitted on or after July 1, 2010, it will be subject to the MMPA from the time the Act takes effect.<sup>17</sup>

### 3. *Au Pairs*

On the basis of the MMPA, au pair and cultural exchange agencies will be the sponsor of an au pair or a youth exchange participant; the host family will no longer be the (informal) sponsor. This change will require authorization of such agencies as sponsors. As a result, those agencies that lack authorization will not be able to sponsor au pairs and exchange participants who need a residence permit in the Netherlands, and host families cannot arrange to host a youth exchange participant without the intercession of an authorized agency.<sup>18</sup> Those au pair or exchange agencies that already have a covenant will automatically become authorized sponsors when the MMPA takes effect, provided that “they have submitted at least one residency application that has been granted in the previous year,” just as in the case of other employment agencies.<sup>19</sup>

Sponsors must meet certain statutory obligations, including the duty to inform the IND; the duty to administer the records of the au pair or the youth on exchange by keeping certain relevant data about them (and to retain the data for up to five years after the completion of the sponsorship); the duty of care, e.g., to ensure careful recruitment and selection for youth exchanges; and the responsibility for return of the alien.<sup>20</sup> Under the new policy, there is an income requirement that the host family provide the au pair with 150% of the minimum wage.<sup>21</sup>

## **B. Streamlined Residence Permit Application Procedures**

Another major benefit of the MMPA, according to the IND, is that it streamlines the application procedure for admission to enter the Netherlands by combining into a single procedure the application processes for the regular provisional residence permit (*Machtiging tot Voorlopig Verblijf*), issued for a ninety-day period, and for the regular (long-term) residence permit. The provisional residence permit is affixed to the passport of foreign nationals who need an entry visa to the Netherlands and apply for a long-term residence permit.<sup>22</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Au Pairs and Cultural Exchanges*, IND, <http://www.ind.nl/en/Themes/Modern-Migration/Consequences-for-each-purpose-of-stay/Pages/Aupairsandculturalexchanges.aspx> (last visited Apr. 12, 2013).

<sup>19</sup> *Id.*

<sup>20</sup> Informatiebericht over wijziging van het migratiebeleid voor au pair en culturele uitwisseling [Information Notice on the Amendment of Migration Policy for Au Pair and Cultural Exchange], IND (Mar. 2013), <http://www.ind.nl/Klant-informatie/Documents/1011%20kennis%20ned%20uitwisseling.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> PRO-LINK GLOBAL, *supra* note 4; *Modern Migration Policy Act Enters into Force on 1 June 2013*, IND, *supra* note 1.

Under current law, the applicant must go through a two-step process: (1) application for the provisional residence permit at a Dutch consular post, and (2) submission of an additional residence permit application after entry into the Netherlands. Under the MMPA, sponsors and foreign nationals will be able to avoid this process by using the Admission and Residence Procedure, whereby after a consulate issues the provisional residence permit, the IND will automatically grant the residence permit, so that the migrant or the sponsor will only need to submit a single application.<sup>23</sup> In addition, regular residence permits can be granted for a longer period, entailing fewer renewals.<sup>24</sup>

The MMPA's adoption "also means that it will become easier, for instance, to switch to a different educational institute without this requiring a new permit," resulting in "faster procedures and a lower administrative burden on citizens and companies," according to State Secretary Fredrik Teeven of the Ministry of Security and Justice.<sup>25</sup> The point of departure of the MMPA, Teeven stated, is selectivity, which "means that the policy is inviting to migrants for whom there is an economic need and that it is restricting to others."<sup>26</sup>

### C. Enforcement Provisions

Enforcement of immigration policies will be strengthened under the MMPA by the introduction of administrative fines on sponsors. An employer who fails to adequately include a labor migrant's documentation in their paperwork, for example, risks being fined a maximum sum of €3,000 (about US\$3,845).<sup>27</sup> The penalty may be increased by 50% if, on the day the offense is discovered, less than twenty-four months have elapsed since a previous violation of the same statutory obligation.<sup>28</sup>

### III. New Visa Provisions

The National Visa Act amends the Aliens Act 2000 by adding a new chapter 1A titled "National Visa." The new chapter, comprising articles 2a–2u of the Aliens Act 2000, covers interdepartmental coordination; required visas; the powers of the Minister of Justice; and fees, regulations, restrictions, and obligations. It also addresses, among other topics, the temporary

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<sup>23</sup> PRO-LINK GLOBAL, *supra* note 4; *Modern Migration Policy Act Enters into Force on 1 June 2013*, IND, *supra* note 1.

<sup>24</sup> *Modern Migration Policy Act Coming into Force on 1 June 2013*, GOVERNMENT OF THE NETHERLANDS (Mar. 8, 2013), <http://www.government.nl/news/2013/03/06/modern-migration-policy-act-coming-into-force-on-1-june-2013.html>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> MMPA art. T (inserting a new article 55a in the Aliens Act 2000), 290 STAATSBLED [Official Gazette] (July 16, 2010), OVERHEID.NL, <https://zoek.officielebekendmakingen.nl/stb-2010-290.html>.

residence permit, the application for and issuance of temporary residence permits, the information required, and the decision period; and return visas.<sup>29</sup>

## IV. Other Changes in Dutch Immigration Policy

### A. Family Reunification

The legal basis for admission to the Netherlands on family reunification grounds is article 15 of the Aliens Act 2000. The specific rules for each ground are set forth in the Aliens Decree 2000.<sup>30</sup>

Although the MMPA does not provide for significant changes to family reunification policies, an amendment to the Aliens Decree 2000 published on April 11, 2012, and effective October 1, 2012, introduced new restrictions with respect to family reunification. The amendment made the possibility of family reunification applicable only to the nuclear family (spouses/registered partners and minor children) and did away with former policies that had made that possibility applicable to unregistered partners, extended family, children over eighteen years of age, and the elderly (single, dependent parents over sixty-five years old). It also abrogated the policy allowing family visits for purposes of family reunification leading to residence.<sup>31</sup>

However, on December 21, 2012, State Secretary Teeven announced in a letter to the Parliament that he would partly reverse some of the measures by reintroducing the previous partner policy. Teeven justified the reversal by indicating that, based on the government Coalition Agreement, for purposes of family reunification a sustainable and exclusive relationship between the unmarried alien partner and the resident of the Netherlands is sufficient.<sup>32</sup> The extension of the period of qualification for “continued residence” from three to five years, the introduction of a waiting period of one year for family reunification, and a reduction from nine to six months of

<sup>29</sup> Wet van 24 mei 2012 tot wijziging van de Vreemdelingenwet 2000 in verband met nationale visa en enkele andere onderwerpen [Act of May 24, 2012, to Amend the Aliens Act 2000 Related to the National Visa and Some Other Topics], 258 STAATSBLAD (June 15, 2012), <https://zoek.officielebekendmakingen.nl/stb-2012-258.html>.

<sup>30</sup> Vreemdelingenbesluit 2000 [Aliens Decree 2000] (Nov. 23, 2000, as last amended effective Jan. 1, 2013), OVERHEID.NL, [http://wetten.overheid.nl/BWBR0011825/geldigheidsdatum\\_28-03-2013](http://wetten.overheid.nl/BWBR0011825/geldigheidsdatum_28-03-2013).

<sup>31</sup> Besluit van 27 maart 2012 tot wijziging van het Vreemdelingenbesluit 2000, het Besluit modern migratiebeleid en het Besluit inburgering (aanscherping eisen gezinsmigratie) [Decree of 27 March 2012 on Amendment of the Aliens Decree 2000, the Decree on Modern Migration Policy, and the Decree on Civic Integration (Tightening Family Migration Requirements)], 148 STAATSBLAD (Apr. 11, 2012), <https://zoek.officielebekendmakingen.nl/stb-2012-148.html>; *Planned Reintroduction of Partner Policy*, IND (Jan. 14, 2013), <http://english.ind.nl/nieuws/2013/planned-reintroduction-of-partner-policy.aspx?cp=111&cs=385> (last visited Apr. 1, 2013); *Restrictions on Family Reunification Partly Reversed*, EVERAERT ADVOCATEN, <http://www.everaert.nl/en/news/16-particulieren/166-beperkingen-gezinsmigratie-gedeeltelijk-teruggedraaid> (last visited Mar. 28, 2013);

<sup>32</sup> EVERAERT ADVOCATEN, *supra* note 30 (see also hyperlink to Teeven’s letter, in Dutch); *Coalition Agreement*, GOVERNMENT OF THE NETHERLANDS, <http://www.government.nl/government/coalition-agreement> (last visited Mar. 28, 2013) (click on “IX. Immigration, integration and asylum”).

the term after which the migrant's relocation back to his residence outside the Netherlands is assumed are all features of the amending provisions that remain unchanged.<sup>33</sup>

## B. Illegal Residence a Crime

Under the immigration policy as revamped in 2012, illegal residence in the Netherlands has been made a criminal offense, so that aliens who entered the country illegally and have not departed (or have failed to do so by the set time limit) are committing a crime. Other changes in the law, aside from illegal residence becoming a criminal offense, include

- the possible sentencing of persons living in the Netherlands illegally to a maximum of four months' imprisonment or a fine of €3,800 (about US\$4,971), with unpaid fines remaining in force for four years;
- the restriction of criminal liability to illegal residents over the age of majority (eighteen years);
- the decriminalization of acting as an accessory to illegal residence, e.g., "by providing illegal immigrants with accommodation or food in very cold weather"; and
- the possible prosecution of anyone found guilty of human trafficking or employment of illegal residents.<sup>34</sup>

## C. Public Order and National Security Policy Strengthened

The IND makes a determination regarding every application for a residence permit as to whether the applicant poses a threat to public order or national security; permits may also be withdrawn by the IND on such grounds. Effective July 1, 2012, the "sliding scale" system used to assess specific applications, such as renewal applications, for public security purposes was amended. The system is set forth in article 3.86 of the Aliens Decree 2000 and in greater detail in paragraph B1/5.3.6 of the Aliens Act Implementation Guidelines (Vreemdelingen-circulaire) 2000.<sup>35</sup>

Under the sliding scale system, "[t]he longer a foreign citizen has lived in the Netherlands, the more serious the crime must be before his residence permit is withdrawn."<sup>36</sup> The amended measures, however, allow for expulsion at an earlier stage of residence by reducing the length of the prison sentence on which the determination to withdraw a residence permit is based. For

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<sup>33</sup> EVERAERT ADVOCATEN, *supra* note 30; *Family Migration Measures: Commencement Date 1 October 2012 (The Netherlands)*, VISAGOLLANDIA (Aug. 28, 2012), <http://visagollandia.blogspot.com/2012/08/family-migration-measures.html>.

<sup>34</sup> *Immigration*, GOVERNMENT OF THE NETHERLANDS, <http://www.government.nl/issues/asylum-policy-and-immigration/immigration> (last visited Apr. 11, 2013).

<sup>35</sup> *Stricter (Public Order) Policy Starting 1 July 2012*, IND (July 2, 2012), [http://www.ind.nl/en/News/Pages/Stricter\(publicorder\)policystarting1July2012.aspx](http://www.ind.nl/en/News/Pages/Stricter(publicorder)policystarting1July2012.aspx). For provision B 1/5.3.6 of the Aliens Act Implementation Guidelines 2000 in Dutch, *see* Vreemdelingen-circulaire, 2000 (B) (as last amended Mar. 28, 2013, to enter in force on June 1, 2013), OVERHEID.NL, [http://wetten.overheid.nl/BWBR0012289/1/5/53/536/geldigheidsdatum\\_12-04-2013](http://wetten.overheid.nl/BWBR0012289/1/5/53/536/geldigheidsdatum_12-04-2013).

<sup>36</sup> GOVERNMENT OF THE NETHERLANDS, *supra* note 33.

example, it has become possible to reject a renewal application of a foreign resident who, within the first three years of residence in the Netherlands, has committed an offense punishable by a prison sentence of two years or more, if the person has been given a prison sentence of at least one day, as opposed to the formerly required sentence period of at least one month.<sup>37</sup>

Under other measures, it is now possible to withdraw the residence permit of a foreign resident who has had three convictions within a period of three years and to consider a foreign resident offender to be a multiple offender at an earlier stage than had previously been permitted. For multiple offenders, moreover, higher standards are applied to assessment of the renewal application.<sup>38</sup> In addition, the time limits attached to the sliding scale have been eliminated, so that “even after a foreign citizen has lived in the Netherlands for over ten years, he can still be expelled if he commits a very serious offence.”<sup>39</sup>

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<sup>37</sup> *Stricter (Public Order) Policy Starting 1 July 2012*, IND, *supra* note 34.

<sup>38</sup> *Id.*; GOVERNMENT OF THE NETHERLANDS, *supra* note 33.

<sup>39</sup> GOVERNMENT OF THE NETHERLANDS, *supra* note 33.