

Annex 2

Country Case: Netherlands

Annex 2 of the Talent Attraction and Work-related Residence Permit Process
Models in Comparison Countries -report

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1 Introduction

The Dutch talent attraction system is based on an economic rationale: what does the Netherlands need to do to remain internationally competitive? At the turn of the millennium, talented workforce was recognised as one of the key resources the Netherlands needed to stay competitive on the global economic stage. For a service oriented and innovative economy, talented individuals are key resource, and the realisation came that such talent may also need to be recruited from abroad. Several different laws and regulations were introduced over the years to encourage more EU and non-EU workers to come to the Netherlands.

Fast-forwarding to the last several years, some key changes were made, including the introduction of the Law on Modern Migration policy (2014) and an elaboration of the role of Certified Employers in bringing specialised or highly skilled workers to the Netherlands. In response to the EU Directive on a Single Permit (2011/98/EU), the Dutch government introduced the Single Permit, the combined employment and residence permit. The aim here is to streamline the application process for workers from outside the EU and EEA in order to make it easier for talented workers to come to the Netherlands. The Dutch Immigration and Nationalisation Service (the IND) and the Public Employment Service (the UWV) work together to assess the Single Permit application within a legal period of seven weeks. This is in no small part possible because 1) Certified Employers can submit the GVVA and these types of employers take on more responsibilities and obligations for their workers in return for the quicker application procedures and 2) because compliance with regulations is checked in an ad hoc fashion, as opposed to before or during the application process.

All in all, the system is considered to be working well by both external evaluators and those involved in the processing of the applications. The looming policy discussion now concerns ways to find a good balance in the number of foreign workers as well as new possible areas to focus on for the recruitment of foreign workers, for instance, in the field of AI, for which the Netherlands is starting to actively look for talented individuals abroad while setting up educational curricula and institutes for high-tech fields.

1.1 Structure and main actors in talent attraction

The main actors involved in talent attraction include the Ministry of Economic Affairs and Climate, the Ministry of Social Affairs and Employment, the Labour Inspectorate, the Ministry of Justice and Safety, the Agency for Immigration and Naturalisation, and the Public Employment Service, the UWV.

- **The Ministry of Economic Affairs** is further removed from talent attraction in practical terms, but plays a role in the current political strategy regarding talented foreign workers, as can be seen below in the next section.
- **The Ministry for Social Affairs and Employment**, through its **Labour Inspectorate** is involved in policy design as well as implementation. The Labour Inspectorate conducts compliance checks with employers to ensure they are treating workers, both foreign and national, properly and according to set guidelines. They play a role in the monitoring and compliance of employers who have foreign workers.
- **The Ministry of Justice and Safety** and its agency, the **Agency for Immigration and Naturalisation (IND)**, play a role by designing laws as well as doing the bulk of the processing of applications for foreign work permits. The IND provides the information and forms, grants permits and conducts monitoring and compliance checks on certified employers and the foreign workers they employ.
- **The Public Employment Agency (UWV in the Netherlands)** plays a role in the application procedures for foreign worker permits as well. The main contribution is providing formal advice to the IND as it evaluates requests for foreign workers. The UWV provides insight on whether or not the foreign worker will fulfil a job for which no Dutch or EU worker can be found.

Municipalities and Dutch representations abroad also play roles in formally handing out residence (or combined worker and residence) permits.

1.2 Main target groups of talent attraction

In the Netherlands, the rationale towards attracting talented foreign workers appears to be a predominantly economic one.

The Netherlands does not appear to target countries for foreign talent as much as individuals from certain groups and sectors. The Dutch economic policy is built around a strategy called the top sector policy, which aims to give impulses and extra support to ten different sectors (e.g. the cultural and creative sectors, the agrarian sector, chemistry, the high-tech sector, logistics and water, amongst others). Knowledge migrants, as well as other talented status holders, are seen as that contribute to keeping the Dutch labour force and economy competitive and innovative. The Netherlands appears to have bilateral agreements in place with certain countries and this makes it slightly easier for nationals from there to come to the Netherlands to work. Beyond this, Dutch foreign talent attraction appears to take place on a case-by-case basis, largely driven by employers.

In 2014, there have been some changes in the area of migrants with knowledge and skills. The points system of the self-employed scheme has been adjusted, making it easier for the creative sector to achieve sufficient points. The Minister of Education, Culture and Science has launched the "Make it in the Netherlands!" action plan. The Minister of Economic Affairs presented his vision on ambitious entrepreneurship with a focus on attracting start-ups. The proposed changes are 1) exemption from temporary residence permits for knowledge and talented immigrants with lawful residence in other Schengen Member States and 2) expansion of the orientation year for highly educated people¹.

In practice, the government supports start-ups through a range of instruments, national and foreign alike. Through subsidies, access to networks, tax exemptions, etc., as well as the strong prevalence of information available in English amongst key players, the government strives to support enterprises from abroad, notably start-ups.²

The Dutch migration policy mainly targets educated, white-collar workers. Policy discussions have been going on for many years on the importance of skilled blue-collar

¹https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2014Z12658&did=2014D25374.

² Government of the Netherlands, (no date), The government supports entrepreneurs, available at: <https://www.government.nl/topics/enterprise-and-innovation/the-government-supports-entrepreneurs>.

workers, especially given that some industrial and public service sectors have been showing signs of increasingly urgent labour shortages.

1.3 Major legislative changes related to talent attraction

Two major legislative changes are important to the Dutch legal talent attraction framework. During the last decade, the Law on Foreign Workers was adapted in 2012 to incorporate the EU Directive on a single permit procedure, and the Law on Modern Migration Policy was introduced in 2013 to further facilitate the hiring of desirable migrant workers. These two changes are each explained below. In the case of the Law on Foreign Workers, this was also accompanied by an implementation regulation in 2014 on how the law was to be put into practice.

The **Law on Foreign Workers** (De Wet Arbeid Vreemdelingen (WAV)) originally came into force in 1994 but has seen several amendments over the years. The most recent and more substantial amendment came in 2012 when the EU Directive 2011/98/EU on the introduction of one application procedure for third country nationals coming to work in EU Member States was incorporated. The key aim of the law is to provide a framework of conditions and criteria under which workers from third countries may work in the Netherlands. Employer of these third country workers are obliged to check whether a foreign worker is allowed to work in the Netherlands. One of the key changes made by the amendment of this legislation is that the application and assessment for working and residence permits could be combined. Following this amendment, third country workers wishing to work in the Netherlands could make use of the work permit (*tewerkstellingsvergunning* or TWV), or a combined residence and work permit (the *gecombineerde vergunning voor verblijf en arbeid* or GVVA).³

In combination with this law, the **Regulation on Implementing the Law on Foreign Workers** specifies that the Ministry of Social Affairs and the Public Employment Service (the UWV) are involved in the permit procedures related to employment, while the Ministry of Justice and Safety and the Immigration and Naturalisation Service (the IND) is responsible for the residence components within the permit procedures⁴.

³ Ministerie van Sociale Zaken en Werkgelegenheid, (no date), Wet Arbeid Vreemdelingen, available at: <https://www.arboportaal.nl/externe-bronnen/wetgeving/wet-arbeid-vreemdelingen>

⁴ Overheid.nl, (2019), Regeling uitvoering Wet arbeid vreemdelingen 2014, available at: <https://wetten.overheid.nl/BWBR0034945/2019-10-01>

In practice this means that when third country workers wish to work in the Netherlands, they need a TWV or a GVVA. A TWV is a work permit and is applied for via the UWV; the GVVA permit application is submitted to the IND, which assesses the eligibility for a residence permit while the UWV then receives the application to make a decision on the work permit component of the application. Once the UWV has made its assessment, it sends its formal advice to the IND regarding the application and the IND communicates the outcomes of the application process to the worker in question⁵.

The last big change in the area of work permits was in 2014. With the revision of the WAV as of 1 January 2014, the test for priority labour supply became stricter. The purpose of this **more restrictive policy** is to adapt labour migration to the specific needs of the labour market in such a way that the crowding of priority supply and the benefit dependence of migrants is prevented. As such, from 2014, employers can hire workers more easily from outside the EU and EEA. The law now requires employers to pay workers a decent salary if they wish to be able to acquire a residence permit for their foreign workers and the permit can be withheld from an employer if they engage in negative or unfair labour practices.

The **Law on Modern Migration Policy** (*Wet Modern Migratiebeleid*), adopted in 2013, aims to help strengthen the Dutch knowledge economy and to maintain the country's competitive position on the global market. The law allows for a selective migration policy where knowledge migrants can be allowed into the Netherlands for work quickly and easily. For workers with a lower education, the entry requirements to the Dutch labour market remain the same⁶.

This law introduced three key changes to the permit application procedures. The changes included the simplification of the permit application procedures (by combining the application for a short stay permit with the Single Permit or GVVA), the introduction of the certified employer as a reference and the strengthening of the reference employer's role in the permit application process, as well as ad hoc checks on compliance⁷.

⁵ Information from an interview

⁶ WODC, (2019), *Selectief naast restrictief. Evaluatie van de Wet modern migratiebeleid*, by University of Leiden, available at: https://www.wodc.nl/binaries/2878_Samenvatting_tcm28-399590.pdf

⁷ HR Kiosk, (no date), *Wetten*, available at: <https://www.hr-kiosk.nl/hoofdstuk/werken-elders/buitenlandse-werknemers/wetten>

The new law on Modern Migration Policy has been evaluated in 2018 and it appears to be operating effectively. The law achieves what it set out to achieve, namely, it has indeed made it easier and more attractive to come to work in the Netherlands.

The Law on the Labour of Foreign Workers, which came into force in the 1970s in response to the oil crisis, was repealed in 2008. The law included strict requirements for foreign workers to work in the Netherlands and high fines for employers who did not adhere to these requirements⁸.

1.4 Talent attraction and COVID-19

So far the effects of the COVID-19 pandemic on talent attraction in the Netherlands has concentrated on the practicalities of the permit process. For example, the IND has made arrangements to deliver residence and work permits to applicants at home, instead of them coming to the municipalities to pick them up.

Additionally, the IND has provided the possibility to request extensions for certain permits more easily, if a permit is about to expire while a person is abroad or if they are unable to travel home once a permit expires. The possibilities vary depending on the work or residence permit form. Examples include⁹:

- Some permits, such as the Orientation Year, are legally valid for only for one year. These individuals must either leave the Netherlands at the end of this year or, if they have work, apply for a different type of residence or work permit.
- Students from outside the EU, who must usually show that they have enough income to study in the Netherlands, are given some flexibility with the income criteria, so that they may continue their studies.
- For knowledge migrants, the income criteria still applies. However, if the employer made use of short term work scheme a regulation that was stopped once emergency support measures for businesses with employers were introduced), the IND approaches the income criteria with more flexibility; the residence permit will not be revoked, if a migrant temporarily earns less than is dictated by the salary criteria.

⁸ Vijfdeeuwenmigratie, (2009), Wet Arbeid Buitenlandse werknemers (WABW) 1979, available at: <https://vijfdeeuwenmigratie.nl/foto/wet-arbeid-buitenlandse-werknemers-wabw-1979>

⁹ For more examples and information, see <https://ind.nl/en/Pages/Coronavirus.aspx>.

2 Residence permit models and talent attraction

The residence permit system in the Netherlands puts a lot of the administrative responsibility on employers. In general, it is the employer who applies for the work and residence permit for the employee.

The Dutch work and residence permit system has two main types, namely, residence permits for stays of 90 days or less and the permits required for a stay of 90 days or longer. If an individual stays less than 90 days, they can receive a permit for a short stay, or “machtiging voor kort verblijf” (MVV) from the Immigration and Naturalisation Service (IND). This must usually be requested in combination with a work permit, the TWV. The application for a work permit goes through the Dutch Public Employment Service, the UWV¹⁰. It is also possible to combine the application for a residence and a work permit for workers coming from outside of the EU or EEA countries. This is known as the combined permit for residence and employment (GVVA) and is applied for via the IND¹¹. Whether a GVVA or a TWV is required depends on the status of the worker.

Based on the overview of foreign worker statuses in Section 2.1 however, it appears that most often, for workers coming from outside the EU or EEA countries, the combined GVVA permit is the norm. The application process differs depending on whether or not a worker needs a short stay permit for the first 90 days in the Netherlands. Below, we take a closer look at these different permits.

Less than 90 day stay in the Netherlands

Permit for a short stay (MVV) and work permit (TWV)

When a person who is not EU, EEA or Swiss citizen wants to visit the Netherlands for less than 90 days, they generally need to apply for a short-stay visa (*machtiging tot voorlopig verblijf* or MVV). The MVV allows a person to stay in the Netherlands for

¹⁰ Rijksoverheid, (no date), Mag ik personeel uit het buitenland in dienst nemen? Available at: [rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/vraag-en-antwoord/mag-ik-personeel-uit-het-buitenland-in-dienst-nemen](https://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/vraag-en-antwoord/mag-ik-personeel-uit-het-buitenland-in-dienst-nemen).

¹¹Rijksoverheid, (no date), Vergunningen buitenlandse werknemers, available at: <https://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/vergunningen-buitenlandse-werknemers>

up to 90 days. It is worth noting that in the event of a longer stay, an MVV is usually also needed first to ensure that a worker can come to the Netherlands legally, while the work and residence permits are organised.

Nationals from certain third countries or in certain positions may not need to apply for an MVV. In some cases, the Netherlands has a bilateral agreement with certain countries concerning workers and individuals from these countries may, under certain circumstances, not need the temporary residence permit¹². For instance, nationals from Australia, Canada, Japan, Mexico, New Zealand, the Vatican City, the United States of America, and South Korea do not need an MVV to live in the Netherlands¹³.

Application for a permit for a short stay

In the event that a person stays in the Netherlands for under 90 days, they usually apply for the MVV themselves (as opposed to stays of over 90 days, where the employer often applies for the MVV simultaneously with other residence and work permits). The individual must apply for the MVV at a Dutch representation in their country, while, in the case of a short stay for employment, the employer applies for a work permit (*tewerkstellingsvergunning* or TWV).

An individual applies for the MVV by going to a Dutch representation abroad and citing their reason for staying in the Netherlands (this may be work or study, but can also be staying with a relative). In the case that an individual is coming to the Netherlands to be with a partner or spouse, the applicant must have completed and passed the basic civic exam (*basis examen inburgering buitenland*).

If the applicant receives the MVV, they receive a sticker in their passport and from that moment they may travel to the Netherlands and remain there until the 90 days (from the time the sticker has been placed in the passport) has passed.

During these 90 days, the foreign citizen is allowed to work, if his/her employer has a work (TWV) for this employee. The Public Employment Service (UWV) issues this permit. If an employer hires a worker from outside the EU, the worker needs a work-permit. Usually the employer must act as a reference for that worker. This means that an employer requests the work permit on behalf of the worker (the TWV) who comes to the Netherlands to work for a maximum of 90 days. The employer applies for a TWV at the UWV (the Dutch Public Employment Service). Among other things, the

¹² IND, (no date), Mvv-vrijstellingscategorieën, available at: <https://ind.nl/Paginas/mvv-vrijstellingscategorie%C3%ABn.aspx>

¹³ IND, (no date), Mvv-vrijstellingscategorieën, available at: <https://ind.nl/Paginas/mvv-vrijstellingscategorie%C3%ABn.aspx>

UWV checks if there are employees with Dutch, EU/EEA or Swiss nationalities that are qualified and available for the job¹⁴.

This is the normal procedure for coming to the Netherlands to work for less than 90 days and it applies to both regular types of employment and the more specialised permit types (knowledge migrant, EU Blue Card, and the Researcher permit).

A stay of 90 days or longer in the Netherlands

Combined permit for employment and residence (GVVA)

If an employer wishes to hire a worker from outside the EEA or Switzerland for more than 90 days, they need to apply for the combined permit for employment and residence (the GVVA). The GVVA is for individuals outside the EEA who wish to work in the Netherlands for over 90 days¹⁵. The application is done electronically via the IND website.

As discussed earlier in earlier in this text, the 2014 Law on Modern Migration Policy merged the permit application procedure for a residence permit and a work permit. Until this law change, the work permit (TWV) was requested via the UWV and the residence permit via the IND. For stays of over 90 days, the permit procedure has been combined and is now the responsibility of the IND. However, to assess the work permit component, the IND still takes the formal advice of the UWV, which continues to assess the employment part of the GVVA¹⁶.

The UWV assesses the work permit component by checking, if the employer has fulfilled the necessary criteria to be allowed to hire someone for a given position from outside of the Netherlands, or, in some cases, outside of the EU and EEA. In turn, the IND conducts the assessment to ensure that a worker may indeed reside in the Netherlands.

Persons coming from outside the EU/EEA area also need an MVV to enter the country, unless there is a bilateral agreement with the Netherlands and the country of origin. In this case, the MVV is, in effect, a visa. It is applied for simultaneously with the GVVA. The purpose of the MVV is to allow someone to enter the country legally. The MVV is applied for via the IND and collected at a Dutch representation in the country of the foreign applicant. As indicated in the description of the general process,

¹⁴ IND, (no date), Employing a foreign employee, available at: <https://ind.nl/en/work/Pages/Engaging-a-foreign-employee.aspx>

¹⁵ Werk.nl, (no date), GVVA aanvragen bij IND, available at: <https://www.werk.nl/werkgevers/wervingsadvies/werkvergunning/aanvragen/gvva/index.aspx>

¹⁶ Information from an interview.

the MVV takes the shape of a sticker, which is put in the foreign worker's passport. The foreign worker may then pick up their residence or combined residence and work permit in the Netherlands. In the event that no MVV is needed, a foreign worker can come to the Netherlands for up to 90 days without one and can pick up their GVVA permit upon arrival at an IND desk.

2.1 Work-related residence permit schemes

At this stage, it is also worth noting that when it comes to talented migrant workers, the Netherlands has several categories of permits; these differ from the permits required for third country workers wishing to work on the regular labour market. These special permits include permits for:

- Knowledge Migrant ("Kennis Migrant")
- European Blue Card
- Researchers within the meaning of Council Directive (EU) 2016/801

The role of Dutch employer in the application process is significant. Employers must usually act as referees ("referent" in Dutch) and are often responsible for collecting information on the foreign worker they wish to hire. In many cases, they are also the parties responsible for submitting permit applications. An employer may also opt to certify itself and, in this case and if they meet all the regulatory requirements, these Certified Employers can make use of a faster track when applying for the relevant residence and work permits.

2.1.1 Overview of types of residence (and work) permits for non-EU workers

Workers from the EU only need a residence permit. The form of the residence permit, in particular, depends on the specific status of the worker. The different statuses of foreign workers are provided in Table 1 and

Table 2 in the section below. This case focuses on the Knowledge Migrant and other specialised workers.

There is a series of special statuses for foreign nationals coming to the Netherlands. These include for instance Knowledge Migrants, students looking to work, interns, non-students looking to do vocational traineeships and, artists.

For most of these foreign workers, a similar process is used to apply for a residence (and employment) permit. A combined work and residence permit, the GVVA, is usually needed. This is requested by the employer. The application is submitted to the IND, the authority that either grants or rejects the GVVA. The IND considers the formal advice from the UWV in this situation (where the UWV assesses the application based on criteria in the Law on Foreign Workers)¹⁷.

The GVVA is usually needed but for Knowledge Migrants and talented workers form an exception. In their case, only a resident permit is required (see table 1). For each GVVA or residence permit, different criteria apply to the foreign worker in question and different documents that must be provided.

Table 1: Main permit statuses for Knowledge Migrants and talented workers

Schemes / type of permit	Description	Application by employer	Period
Knowledge Migrant ("Kennis Migrant")	The employee will work in a high-level position, or as a (guest) lecturer, trainee doctor or researcher in paid employment. Specific salary requirements apply.	Yes or guest agreement or appointment decision	
European Blue Card	The European blue card is intended to facilitate the residence of employees who carry out highly qualified tasks within the EU. However, in this context, the national conditions for the provision of the European blue card must be fulfilled. In order to be eligible for a European blue card, employees must fulfil wage and training requirements.	Yes, highly qualified job for at least 1 year	
Researchers within the meaning of Council Directive (EU) 2016/801	Researchers may be admitted on the basis of Directive (EU) 2016/801. A residence permit is required for Knowledge Migrants (not the combined GVVA permit).	Yes or guest agreement	

Note. Only applicable to employees from outside the EU/EEA and Switzerland.

¹⁷ IND, (no date), Geestelijke dienaar, available at: <https://ind.nl/werk/werken-in-Nederland/Paginas/Geestelijk-bedienaar.aspx>

Table 2: Regular paid employment statuses

Schemes / type of permit	Description	Application by employer	Period
Intra-company transferee (other than Intra Corporate Transferee)	The employee works for an international group and is transferred to the Netherlands as a trainee, key staff member or specialist. They are not covered by the rules concerning Intra Corporate Transferees. A GVVA permit is required.	Yes	
Work experience	'Work experience' refers to gaining working experience in the Netherlands that is relevant for your training or job abroad via a work placement.	Yes	
Regular paid employment	Regular paid work refers to a paid job, which is not seasonal labour or work experience. A residence permit for regular labour can be requested by any employer with a base in the Netherlands or who is represented in the Netherlands by an authorised trading agent.	Yes	
Enterprise within the International Trade Regulation	The International Trade Regulation provides a flexible procedure that enables enterprises to have foreign employees come to the Netherlands on a temporary basis. The work of these employees must not result in displacement in the Dutch labour market. Enterprises must first apply with the UWV to enter the trajectory and fall under the remit of the International Trade Regulation. If the UWV accepts the applications, an enterprise can start the process of acquiring permits for the foreign worker. The employer must then apply for a residence permit at the UWV.	Yes	
Spiritual counsellor	The employee will work as a spiritual counsellor. He must integrate. Before coming to the Netherlands, he must already have passed the basic civic integration examination abroad . A combined residence and working permit (GVVA) is needed. This can be requested by the worker or by the employer. The application is submitted to the IND, who makes a decision. The IND considers the formal advice from the UWV in this situation (where the UWV assess the application based on criteria in the Law on Foreign Workers). ¹⁸	Yes or the worker	
Employee in the Asian hotel and catering industry	The employee will work in the Asian catering industry. A combined residence and working permit (GVVA) is needed.	Yes	
Supply of goods by a foreign company	The employee will work in paid employment for the assembly and repair of equipment delivered by his/her foreign company.	Yes	

¹⁸ The IND, (no date), Geestelijke dienaar, available at: <https://ind.nl/werk/werken-in-Nederland/Paginas/Geestelijk-bedienaar.aspx>

Schemes / type of permit	Description	Application by employer	Period
	A GVVA permit is required.		
Cross-border service and goods provider	The employee works at a company in the EU, EEA or Switzerland and will provide services for this company in the Netherlands. A GVVA permit is required.	Yes	
Employee in specific positions in art and culture	The employee works in the fields of dance, classical music, opera, musical, theatre, stage and cultural workshops and is going to earn a sufficient income that is independent and long-term. A GVVA permit is required. ¹⁹	Yes	
Employee at an international non-profit organisation	The employee will work in paid employment for an international non-profit organization in the Netherlands. A GVVA permit is required ²⁰ .	Yes	
Media correspondent	The employee will work as a correspondent employed by a mass-media company. A residence permit is required.	Yes	
Au Pair	A residence permit to live as an au pair with a host family. Only allowed under an exchange programme as an au pair via a recognised au pair agency.	Yes	
Working students ²¹	Alongside a course, a student may work as an independent entrepreneur or in paid employment. In paid employment, the student can work during the year for no more than 16 hours per week or he can work in the months of June, July and August. Different conditions apply, depending on the work. Generally, working students also need the GVVA permit ²² .	Yes, for paid employment a work permit and for a work placement in the context of a course, they need a work placement contract.	
Orientation year for highly educated persons	The orientation year for highly educated persons is meant for highly educated persons, who seek employment in the Netherlands as a highly skilled migrant. A residence permit for the purpose of residency, 'the seeking and undertaking of work, whether in employment or not', applies for a maximum of one year and must be applied for personally, without the intervention of a sponsor.	No	1 year
Working Holiday Program (WHP)/Working	The Working Holiday Program (WHP) or Working Holiday Scheme (WHS) is a mutual cultural exchange program, which makes it possible for persons aged 18 to 30 to apply for a	No	1 year

¹⁹ The IND, (no date), Werknemer in specifieke functies in kunst en cultuur, s available at: <https://ind.nl/werk/werken-in-Nederland/Paginas/Werknemer-in-kunst-en-cultuur.aspx>.

²⁰ Ibid.

²¹ <https://ind.nl/en/Forms/3087.pdf>.

²² The IND, (no date), Stage lopen of werkervaring opdoen, available at: <https://ind.nl/werk/werken-in-Nederland/Paginas/Stage-of-werkervaring.aspx>.

Schemes / type of permit	Description	Application by employer	Period
Holiday Scheme (WHS)	residence permit to stay in one of the participating countries for a maximum of one year.		
Start-up	A residence permit as 'start-up' gives ambitious starters a year to start an innovative company in the Netherlands. The start-ups are supervised by a reliable supervisor (facilitator) in the Netherlands. A residence permit is needed. The criteria include having personal experience, a business plan and some form of added value to the Netherlands ²³ .	No, but signed agreement with a facilitator	1 year
Self-employed person	As a self-employed person, you can work in the Netherlands when your activities are about to serve an essential interest for the Dutch economy. The Netherlands Enterprise Agency (RVO) will advise the IND.	No	

2.1.2 Statistics on different permits

The IND monitors the number and type of permit applications received and processed. Some of the data relevant to the case is presented below.

Table 3: Knowledge Migrants & Talented workers

Knowledge Migrants & talented workers	2018	2017
Applications	19.840	16.640
Decisions	19.350	16.560
Granted permits	94%	94%

Source: the IND, (2018), Bijlage: Cijfers Jaaroverzicht 2018, available at: <https://ind.nl/Documents/Cijferoverzicht%20IND%20Jaarresultaten%202018.pdf>

The top three nationalities for granted permit applications were Indian, American, and Chinese. For students, the top three nationalities are the same.

²³ The IND, (no date), Zelfstandig ondernemer, available at: <https://ind.nl/werk/werken-in-Nederland/Paginas/Zelfstandig-ondernemer.aspx>

Table 4: Foreign workers

Foreign workers ²⁴	2018	2017
Applications	2.960	2.600
Decisions	2.900	2.590
Granted permits	78%	74%

Source: The IND, (2018), Bijlage: Cijfers Jaaroverzicht 2018, available at: <https://ind.nl/Documents/Cijferoverzicht%20IND%20Jaarresultaten%202018.pdf>

The top three nationalities of these migrants were Chinese, American, and Indian. The publicly available numbers do not indicate the proportion of migrant workers from these three nationalities.

Table 5: Students

Students	2018	2017
Applications	18.640	17.310
Decisions	18.670	17.320
Granted permits	98%	98%

Source: the IND, (2018), Bijlage: Cijfers Jaaroverzicht 2018, available at: <https://ind.nl/Documents/Cijferoverzicht%20IND%20Jaarresultaten%202018.pdf>

2.2 Students and Researchers

There are special statuses in place for students and researchers, as well as Knowledge Migrants. These are all groups of highly qualified or highly specialised workers or students and these groups can make use of specialised permits.

In the case of students, educational institutes must still be certified in order to be allowed to have students from outside the EEA to study there. The same requirements that apply to certified employers also apply to educational institutes if they wish to act as referees for students from outside the EEA. In addition to the normal requirements to become certified, educational institutes must also comply with a series of other criteria that varies depending on which the educational level the institute (e.g. higher education or secondary education)²⁵.

²⁵ The IND, (no date), Onderwijsinstelling: erkenning als referent, available at: <https://ind.nl/Studie/Paginas/Onderwijsinstellingen.aspx>

The main permits available for students, student workers, and researchers are provided in the table below.

Table 6: Overview of permits for students, researchers, and working students

Schemes/ type of permit	Description	Application by employer	Period
Researchers within the meaning of Council Directive (EU) 2016/801	Researchers may be admitted on the basis of Directive (EU) 2016/801.	Yes or guest agreement	(n.a.)
Work experience	'Work experience' refers to gaining working experience in the Netherlands that is relevant for your training or job abroad via a work placement.	Yes	(n.a.)
Working students	Alongside a course, a student may work as an independent entrepreneur or in paid employment. In paid employment, the student can work during the year for no more than 16 hours per week or he can work in the months of June, July and August. Different conditions apply, depending on the work. Generally though, working students also need the GVVA permit ²⁶ .	Yes, for paid employment a work permit and for a work placement in the context of a course, they need a work placement contract.	(n.a.)
Orientation year for highly educated persons	The orientation year for highly educated persons is meant for highly educated persons, who seek employment in the Netherlands as a highly skilled migrant. A residence permit for the purpose of residency, 'the seeking and undertaking of work, whether in employment or not', applies for a maximum of 1 year and must be applied for personally, without the intervention of a sponsor.	No	1 year
Working Holiday Program (WHP)/Working Holiday Scheme (WHS)	The Working Holiday Program (WHP) or Working Holiday Scheme (WHS) is a mutual cultural exchange program, which makes it possible for persons aged 18 to 30 to apply for a residence permit to stay in one of the participating countries for a maximum of 1 year.	No	1 year

²⁶ The IND, (no date), Stage lopen of werkervaring opdoen, available at: <https://ind.nl/werk/werken-in-Nederland/Paginas/Stage-of-werkervaring.aspx>

2.3 Application forms and fees

Several different application forms exist for individuals from outside the EU/EEA, who wish to work in the Netherlands. In essence, the IND refers to these permits as residence permits that allow an individual from outside the EU/EEA to work in the Netherlands.

For most permit types, there is an application form for the permit to be filled in by a Certified Employer and an application form for the family of the employee. In some cases, where an employer does not need to be certified to hire a worker from a third country, an application form for non-certified employers (regular employers) is also available.

The following table highlights the application forms required for the permit statuses for highly qualified or specialised foreign workers:

Table 7: Application forms required for the permit statuses for highly qualified or specialised foreign workers

Permit type	Application form (NL)	Application form (ENG)	Who fills it?	Fee €	Paper or online submission
Knowledge Migrant	Aanvraag voor het verblijfsdoel arbeid als kennismigrant ²⁷	Application form: knowledge migrant	Certified employer	290	Paper or online
	Aanvraag voor gezinsleden van uw werknemer via erkend referent ²⁸	Application form: family members of an employee via a certified employer	Certified employer	174	Paper or online
Researcher	Aanvraag voor het verblijfsdoel onderzoeker	Application form: researcher	Certified employer	174	Paper
	Aanvraag voor gezinsleden van uw werknemer via erkend referent	Application form: family members of an employee via a certified employer	Certified employer	174	Paper or online

²⁷ IND, (no date), Aanvraag voor het verblijfsdoel arbeid als kennismigrant, available at: <https://ind.nl/Formulieren/7011.pdf>

²⁸ IND, (no date), Aanvraag voor gezinsleden van uw werknemer via erkend referent, available at <https://ind.nl/Formulieren/7014.pdf>

Permit type	Application form (NL)	Application form (ENG)	Who fills it?	Fee €	Paper or online submission
European Blue Card	Aanvraag voor het verblijfsdoel Europese blauwe kaart (voor erkend referent)	Application form: European Blue Card (for certified employers)	Certified employer	290	Paper
	Aanvraag voor het verblijfsdoel Europese blauwe kaart (voor referent)	Application form: European Blue Card (for non-certified employers)	Non-certified employer	290	Paper
	Aanvraag voor gezinsleden van uw werknemer via erkend referent	Application form: family members of an employee via a certified employer	Certified employer	174	Paper or online

The forms above are usually filled by employers or host organisations of foreign workers. The application forms with any identification documents (translated into Dutch, English, French or German) are sent to the IND to be checked. Details on the required information and evidence or biometric evidence, as well as how to pay for the process, are all included in the application forms. The payment of the fee should also be transferred to the IND. If the payment or any documentation is unclear or missing, the IND pauses the procedure and contacts the applicant (usually the employer, but this may also be the foreign worker, if personal documents require clarification). The procedure remains paused, until the fee is fully paid and/or completed documents are received.

The Netherlands has a general trend of trying to digitize its public services as much as possible. In an effort to make processes less costly and more efficient, services from health insurance to financing for tertiary education to tax returns can all be done online, using a personal digital citizen's account (the Digid). Where possible, this general rationale seems to also extend to residence and work permit provision. As such, most of the permit statuses of more specialised workers (as shown in the table above) can be done online. This tends to happen quicker when done online. The IND also indicates that it is easier to have an employer do the application, as they are able to respond to requests from within the Netherlands better, notably so, if the employer submitting the application is a Certified Employer (as being a Certified Employer gains an employer and their foreign worker a quicker permit application procedure).

2.4 Fast track schemes

Two observations are key when looking at the Dutch fast track system for foreign workers: the first relates to the 2014 legal change and the second to the Certified Employer status, which allows an employer to have their applications processed more quickly (described below in more detail).

Overall permit process streamlined since the 2014 Law on Modern Migration

To begin with, it should be noted here that since 2014, with the Law on Modern Migration policy, a number of changes were made to the permit application process in order to make it more efficient. One of the key changes was that the general permit procedure for residence and work permit was merged into one. This only applies to workers outside the EU and EEA countries; workers from these countries only need a residence permit.

The overall application procedure has been streamlined by combining the two procedures. Before 2014, the UWV (public employment service) handled work permits and the IND (the naturalization and immigration service), handled residence permits. With two permit procedures now combined, the IND conducts the majority of the permit applications and assessments, while deferring to the UWV for formalised advice on the employment component of the combined permit. This is the norm for all third country nationals.

The 2014 Law also includes legally established decision-making terms for the IND, thereby adding a legal obligation to handle the permit applications more rapidly. This has been made possible, to a large extent, due to the more efficient combined permit process. The overall legal maximum decision-making period for a GVVA permit in the fast track is seven weeks: the UWV has five weeks to conduct its check of the employment component, while the IND has two weeks to check the residence permit criteria.

The fast-track system linked to Certified Employer status

The fast track procedures in the Netherlands are not tied so much to types of workers as they are to the employers who will be hiring third country workers. In the Netherlands, employer certification is one of the elements that determines the speed of permit application and assessment. One of the main reasons for this is that the employer has more responsibilities and legal obligations regarding background and identification checks of potential third country workers.

2.4.1 Certification of companies

In order to hire a foreign worker from outside the EU/EEA countries and to be allowed to request the relevant permits for a foreign worker, the employer must usually act as “certified employer” (erkende werkgever) (referee) for that worker.

Being a certified employer is obligatory if an employer wants to hire au pairs, exchange students or youths, knowledge migrants and researchers (as defined under EU Regulation 2016/801)²⁹. If an employer wishes to hire regular workers (who are employed with an organisation), seasonal workers, workers who come to learn, a worker who is being transferred within an enterprise or a holder of a European blue card, they do not necessarily need to be a certified employer.

The criteria for being a certified employer are as follows:

- The organisation is registered in the national business register.
- The continuity and solvency of the organisation has been sufficiently ensured and checked. The IND can seek advice from the national Economic Agency (RVO) to check this using a points system.
- The organisation may not be bankrupt.
- The organisation, its governors or board of managers, must be trustworthy.
- The organisation complies with the relevant behavioural guidelines and codes of conduct³⁰.

Advantages of being a certified employer include:

- Being able to make use of a faster application and admission procedure. In this case, the IND strives to make their decision regarding an application within two weeks. In the event that a permit is needed for both work and residence and the UWV has been consulted on whether the foreign worker adheres to the criteria laid out in the Law on Foreign Workers, the IND strives to make its decision within seven weeks.
- Sending less administration and evidence to the IND. In many cases, a statement by the employer vouching that the foreign worker in question adheres to the relevant criteria for entering the country is enough. The evidence documentation that proves the foreign worker adheres to the criteria is stored by the employer.

²⁹ The IND, 2020, Erkenning als referent, available at: <https://ind.nl/Formulieren/3075.pdf>.

³⁰ The IND.nl, (no date), Algemene voorwaarden erkenning als referent, available at: <https://ind.nl/Paginas/Algemene-voorwaarden-erkenning-als-referent.aspx>

- A certified employer may make use of the information telephone line and mailbox (with the IND) for certified employers.

2.4.2 Evaluation of the fast track scheme

The Law on Modern Migration policy, which helped to bring about the current fast track system for permits, was evaluated and the report published in 2019. This report, as well as interviewees, indicates that the Law, overall, has achieved the changes it aimed to achieve. The administrative burden related to the assessment of permit applications has been reduced by simplifying the application process for the Single Permit by moving more responsibility for identifying and checking foreign workers using the system of Certified Employers and a new system of compliance control, namely by having the Labour Inspectorate do random ad hoc checks on employers to check that they adhere to the labour laws.

The evaluation indicates that the time it takes to process applications has indeed decreased since the time for processing applications has been established in law. Applications for permits by Certified Employers are almost always granted and the legal decision-making time of two weeks is achieved on average between 70% and 90% of the time, according to the evaluation. The Certified Employers and their lawyers are generally quite positive about the efficiency of the procedure.

One of the most important causes for any delays that occur during the summer months is the fact that resources are lower at the IND and UWV due to summer holidays and, conversely, the influx of seasonal workers is higher. Furthermore, although larger enterprises all cite that the application procedure for a certified employer is better, smaller employers are not always as up to date on the full range of obligations and responsibilities they must fulfil when it comes to foreign workers from outside the EU/EEA (please see the section on certified employers for more details on these obligations)³¹.

³¹ Universiteit Leiden, Instituut voor Immigratierecht, (2019), Selectief naast restrictief. Evaluatie van de Wet modern migratiebeleid, available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2019/12/04/tk-bijlage-evaluatie-van-de-wet-modern-migratie-beleid/tk-bijlage-evaluatie-van-de-wet-modern-migratiebeleid.pdf>

2.5 The application procedure

The general **application procedure** follows several steps³²:

1. An employer must first check that they adhere to the criteria for being able to provide a work permit. The criteria here include:
 - Having checked that no workers in the Netherlands or the EEA/EU can do the job. This is done by demonstrating that the vacancy has been public for at least three months and that the employer has searched broadly, using internet and recruitment bureaus, with evidence (screenshots, prints and copies) of the attempts made to promote the vacancy.
 - Registering the job vacancy with the UWV at least five weeks before the employer tries to apply for an work permit or the GVVA. The UWV makes use of its EURES network to check for suitable workers in the EU/EEA as well.
 - Having a valid residence permit in the event that a worker intends to stay for over three months; if it is under three months, a visa may suffice.
 - The employer must stick to all valid Dutch (and European) labour laws and conditions, such as paying at least the minimum wage for workers of 21 years of age and over, etc.
 - Having organised a clean and orderly residence for the foreign employer.
 - Ensuring the foreign worker is 18 years of age or older.
 - The employer must not have violated any labour laws in the last five years prior to the permit application.
2. Apply for the GVVA permit via the IND website by filling in one of the two forms (one is for employment and the other for traineeships or learning while working).
3. After receiving this application form, the IND formally requests advice from the UWV to evaluate the employment component of the GVVA permit. The UWV may approach the employer in question, if more information is needed on their application.
4. The UWV checks whether the application complies with the criteria in the Law on Foreign Workers (Wet arbeid vreemdelingen, Articles 8 and 9³³). These criteria are reflected on in step 1 – the UWV examines whether the criteria are indeed met by the employer.

³² Werk.nl, (no date), GVVA aanvragen bij IND, available at: <https://www.werk.nl/werkgevers/wervingsadvies/werkvergunning/aanvragen/gvva/index.aspx>

³³ Overheid.nl, (2018), Wet arbeid vreemdelingen, available at: <https://wetten.overheid.nl/BWBR0007149/2018-01-01>

5. The IND considers and includes the decision or formal advice provided by the UWV. If the GVVA can be granted, the IND sends two messages to the employer:
 - A message that the foreign worker will receive their GVVA permit
 - A message indicating when a foreign worker may come to pick up their residence permit. The worker must organise the pick-up of the documentation him or herself by making an appointment with the IND desk.
6. For the applications by the **certified employers**, the IND then considers the application and must make a decision within seven weeks of receiving the application (for non-certified employers, the maximum processing time is 90 days). The UWV has a period of five weeks within those seven weeks to make their decision regarding the employment component of the GVVA permit. If the decision is positive and an employee receives the GVVA, the foreign worker in question makes an appointment to pick up the residence permit at an IND desk in the Netherlands.³⁴
7. There is a slight difference in the final stages of the procedure, depending on whether a foreign worker has or needs a permit for a short stay (MVV) or not.

Process with a temporary residence permit (MVV)

The certified employer requests the MVV from the IND online by filling the MVV form and sending along other necessary documents for the worker in question. The IND receives and confirms receipt with the applicant and indicates how the payment for the permit should be made.

Upon a decision by the IND, the individual in question can go pick up their MVV. It must be picked up by making an appointment with a Dutch representation in or nearest to the individual's country of residence. An individual has three months to pick up their MVV. Upon picking it up, the individual must submit biometric details, namely, fingerprints and a passport photograph. There is no information on how long the waiting times for these appointments are. Additionally, no interviews are required. The permit processes are based on documents delivered.

³⁴ The IND, (no date), Werk zoeken na studie, promotie of wetenschappelijk onderzoek, available at: <https://ind.nl/werk/werken-in-Nederland/Paginas/Werk-zoeken-na-studie-promotie-of-wetenschappelijk-onderzoek.aspx>

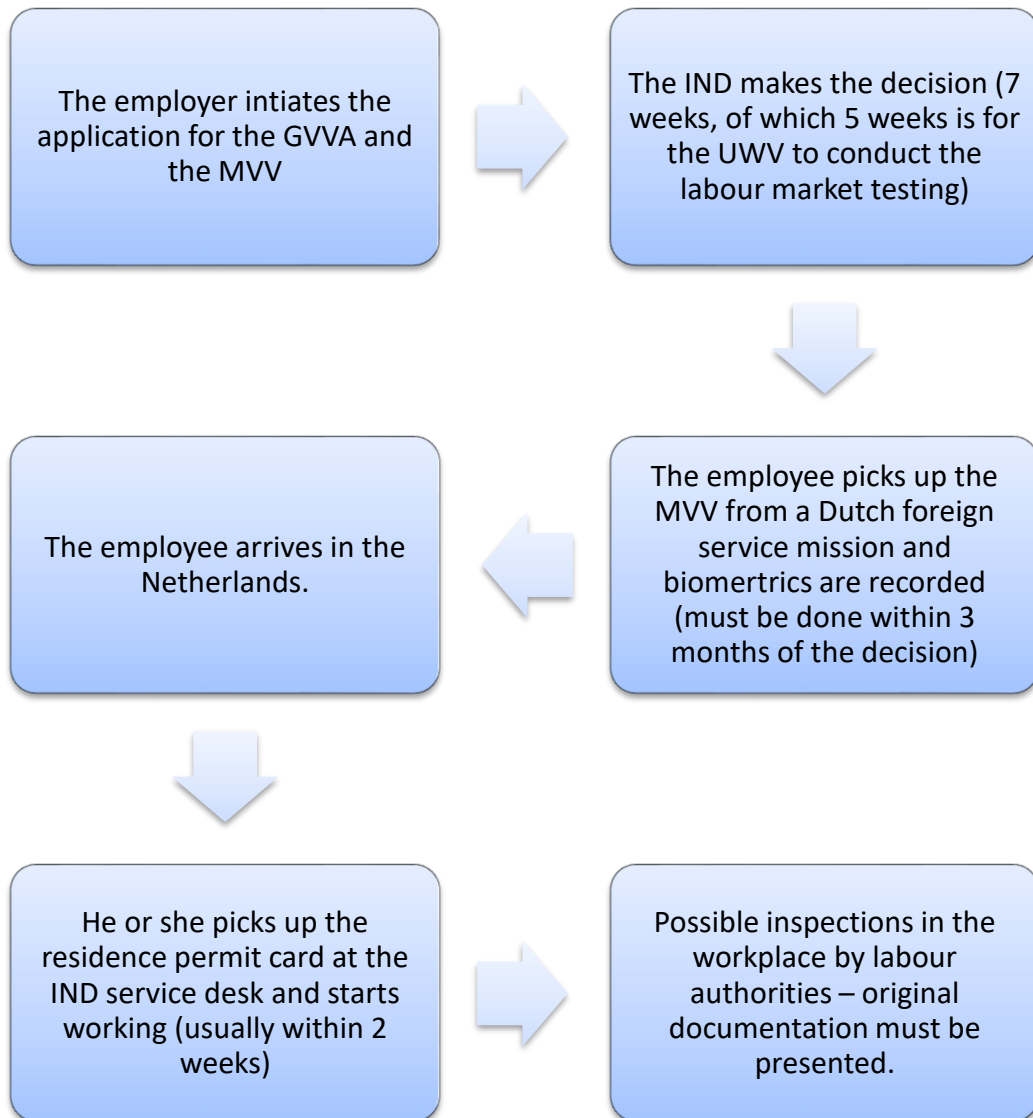
Process without a temporary residence permit (no MVV)

In the event an individual does not need an MVV, they may freely travel to the Netherlands. In this case, they have three months to get a residence permit. This residence permit procedure is described above, it is the process whereby a certified employer applies for the combined residence and working permit.

If a foreign worker needs an MVV, he or she will pick it up at a Dutch representation in their country, where the application for the MVV was made. The worker has three months to pick up the MVV and must take their passport with them (which must be valid for at least another 6 months from the moment they pick up the MVV). The MVV takes the physical form of a sticker, which is put in the passport. The biometrics of the applicant are recorded at this appointment.

8. Once an individual has their MVV, they may travel to the Netherlands. The MVV sticker indicates the start and end date of the MVV. The individual is then allowed to be in the Netherlands until their residence and working permit is ready to be picked up. An individual may come to the Netherlands as soon as they have an MVV, but the IND advises only coming to the Netherlands once the IND has also accepted the residence and worker permits. When in the Netherlands, the worker may go to the IND to pick up their GVVA. This is done by making an appointment at an IND office in the Netherlands, where the appointment is made online. After a decision has been made, the IND strives to have the physical document ready for pick-up within two weeks.

Figure 1: The Application process in the certified employer model for a non-EU/EEA citizen, who is coming to work for over 90 days and needs a MVV to enter the Netherlands:



Identification of the foreign worker and inspections

The identity of the worker is established by the employer at the point when the employer and worker decide to enter a working relationship. In order to sign an employment contract in the Netherlands, all workers must take identification with them; this is usually copied and saved in an employee file. This is no different for foreign workers³⁵. The employer has a duty to verify the identity of the worker, Dutch or otherwise.

The employer checks other employee documentation as well. The certified employers have even less duties to provide documentation with the application than non-certified employers. In many cases, a statement by the certified employer vouching that the foreign worker in question adheres to the relevant criteria for entering the country suffices.

However, checking by the state can take place in an ad hoc manner. The Labour Inspectorate (a public institution affiliated with the Ministry of Social Affairs and Employment) has a policy of checking samples of foreign worker contracts as the employer, in principle, conducts a first verification of identity. Officially, original documents would be needed at both stages of the process. However, the MVV and the GVVA are often done simultaneously. The employer must submit a number of documents with the GVVA application, including a copy of the passport of the foreign worker. If an MVV is needed, the certified employer applies for this together with the GVVA. The application form for the GVVA includes details on which types of personal identification documents must be provided as copies with the application form. If an MVV is not needed, the employer skips these questions on the GVVA application form.

The Labour Inspectorate does random checks of employment contracts on site to reduce the length of the permit application procedures and administrative burden. As the evaluation of the Law on Modern Migration Policy indicates, this indeed seems to have reduced administrative burden for public institutes when it comes to processing applications; a fact confirmed in expert interviews. The Labour Inspection does not indicate these verification visits beforehand; they are legally mandated to enter any room or space of the work environment, to speak with anyone, to request cooperation from everyone and to demand to see valid identification documents³⁶.

³⁵ The IND, (no date), Identiteitscontrole, available at: <https://www.inspectieszw.nl/onderwerpen/identiteitscontrole>

³⁶ Inspectie SZW, (2018), Controles van de Inspectie SZW op tewerkstellen van buitenlandse arbeidskrachten, betaling minimum loon en arbeidstijden, available at: <https://www.inspectieszw.nl/binaries/inspectieszw/documenten/brochures/2018/11/05/-inspectie-szw-op-wav-wml-en-atw/Controles-van-de-inspectie-szw-op-tewerkstellen-van-buitenlandse-arbeidskrachten-betaling-minimumloon-en-arbeidstijden-2018.pdf> .

In order to ensure the proper documentation has been collected by employers for their foreign workers and to make sure that the foreign workers comply with the relevant criteria, the IND has started “controle bezoeken”, or verification visits, from January 2018. Every week, inspectors from the monitoring and compliance team of the IND visit a series of certified employers to ensure that they and their foreign workers adhere to all the necessary requirements. These verification visits are done together with the inspections carried out by the Labour Inspectorate outlined in the preceding paragraph. The Labour Inspectorate checks the compliance with the Law on Foreign Workers (“Wet Arbeid Vreemdelingen”)³⁷.

In cases of non-compliance (accidental or otherwise), depending on the severity of the case at hand, a warning or an administrative fine is given. In special cases of very serious breaches in compliance, the IND can decide to revoke the certified employer status and/or the residence permit of the worker in question.

The role of the employer/university in the process

If an employer hires a worker from outside the EU, the worker needs a work permit. The employer must usually act as a reference for that worker. This means that an employer requests the work permit on behalf of the worker, who comes to the Netherlands to work for a maximum of 90 days. If the worker stays longer, the employer requests a combined residence and work permit (the GVVA), via the Immigration and Naturalisation Service (the IND)³⁸.

The employer is the party responsible for applying for residence and work permits if they wish to hire a foreign worker. Once the permit has been granted, the employer still has a number of responsibilities in relation to their foreign worker.

The employer hiring a foreign worker has several **legal obligations**. These include:

- a duty to inform,
- a duty to administrate and safeguard certain documentation,
- and, in the case of acknowledged references, a duty to ensure the worker adheres to necessary legal and administrative requirements³⁹.

³⁷ The IND, (2018), Controlebezoeken bij erkende referenten, available at: <https://ind.nl/nieuws/Paginas/Controlebezoeken-bij-erkende-referenten.aspx>.

³⁸ Rijksoverheid, (no date), Mag ik personeel uit het buitenland in dienst nemen? Available at: rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/vraag-en-antwoord/mag-ik-personeel-uit-het-buitenland-in-dienst-nemen.

³⁹ The IND, (no date), Wettelijke verplichtingen (erkend) referent arbeid, available at: [https://ind.nl/Paginas/Wettelijke-verplichtingen-\(erkend\)-referent-arbeid.aspx](https://ind.nl/Paginas/Wettelijke-verplichtingen-(erkend)-referent-arbeid.aspx)

The **duty to administrate** is especially interesting in that it involves a number of obligations. Employers have the responsibility to have the following information registered for a foreign worker:

- The employment contract,
- The original work permit (if needed by the employee) or the combined residence and work permit (GVVA),
- A copy of the employee's passport,
- In case of transfers of employees within the same enterprise, a declaration that the organisation where the worker is now employed is part of a larger concern or mother enterprise abroad,
- Salary specifications,
- In the case of certain professions such as doctors, the employee must be registered in the national register for health care professionals, the BIG Register

Furthermore, in some cases the employer must receive a statement on the background of the worker (also known as an *antecedentsverklaring*), which, essentially, serves to show that the worker does not have a criminal record.

Labour market testing

The labour market testing is done by the UWV, the public employment service. The UWV does annual monitoring of the professions that face labour shortages and publishes these reports. However, although the UWV is well placed to analyse which professions are necessary to the Netherlands, it is unclear by which process the UWV assesses whether a Knowledge Migrant or some other specialised foreign worker is a necessary worker to the enterprise applying to have them come to the Netherlands.

Entrance into the country of employment and other requirements to start work

Following a positive decision, the IND then aims to have the permit ready within the following two weeks. The residence permit in the Netherlands takes the form of a plastic, machine readable card⁴⁰. It contains personal details similar to the Dutch national identity card. After picking up the card, the employee can start working.

⁴⁰ The IND, (2019), Uw verblijfsvergunning, available at: <https://ind.nl/Formulieren/1320.pdf>

Individuals coming to the Netherlands for more than 90 days must register themselves in the National Population Register (the BRP) and set up health insurance (compulsory by law).

If an individual wishes to extend their residence permit, they can do so via the online digital government platform, DigiD. In the Netherlands, this is used for civilians to access and arrange some of their personal information, such as a change of address. It is also a key route through which the government and its institutions and agencies communicate with citizens.

2.5.1 Family members in the certified employer scheme

Family members can come to the country of work and are seen, from an administrative perspective, as being sponsored by the foreign worker for whom the Single Permit (the GVVA) has been arranged. In turn, the worker is sponsored by the Certified Employer. If a worker needs the Single Permit, a permit to work is also required for family members. If a worker does not need a GVVA (only a residence permit is required for workers in the EU and EEA), family members also do not need a work permit. As has been demonstrated in section 2.3, the work permit for family members is similar for most of the more highly qualified categories of permits and must usually be applied for by the Certified Employer.

2.6 Identified bottlenecks in the permit process and possible solutions to them

The evaluation of the Law on modern Migration policy has been relatively recent (published in 2019). One of the main bottlenecks identified was that for smaller employers, the degree of responsibility and legal obligations of a Certified Employer is not always clear. In practice, some employers were therefore not always aware of the full scale of their obligations. The fact that larger employers and organisations, with more resources to thoroughly check and monitor their own compliance, perform better when it comes to administrative and regulatory burden is not an uncommon trend. Overall, however, the measure has been found to be working quite well in its current form. Possible adjustments will not be made in the near future given the recent publication of the evaluation findings and the current Covid-19 crisis. It is not a top policy priority.

3 Special focus areas in the Netherlands

The following section highlights three different measures that have helped attract foreign talent to the Netherlands. A national level law, national regulation and a regional initiative have been presented, these are the:

- Law on Modern Migration policy
- The 30% Facility
- The Brainport Eindhoven

3.1 The Law on Modern Migration (Wet Moderne Migratie) and Law on Foreign Workers (Wet Arbeidsvreemdelingen)

The Dutch Law on Modern Migration came into force on 1 June 2013 with the aim of modernising migration policy for different groups of migrants⁴¹. It aims specifically to ease the migration process for migrants from outside of the EU⁴². It does so in different ways. The law builds on changes made in the Law on Foreign Workers (adjusted in 2014 to transport the 2011 Single Permit Directive), which introduced the combined residence and work permit, the GVVA. One of the significant changes the Law on Modern Migration makes is that it combines the application procedures for temporary residence (the MVV) into one with the GVVA or TWV permits⁴³. Another change is that under the new law, residence permits may be awarded for a longer period of time. These changes streamline the admission process considerably and expel unnecessary administrative and financial burden for the applicant. This combining of applications has received very positive feedback, as has the speediness of the new policies⁴⁴.

⁴¹ Government, 'Modern Migration Policy Act Coming into Force on 1 June 2013' Available at: <https://www.government.nl/latest/news/2013/03/06/modern-migration-policy-act-coming-into-force-on-1-june-2013>

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Universiteit Leiden, Instituut voor Immigratierecht, 'Selectief naast restrictief. Evaluatie van de Wet modern migratiebeleid (Summary)' Available at: https://www.wodc.nl/binaries/2878_Summary_tcm28-399591.pdf

The Law on Modern Migration also introduces a new regime. While some of the changes this law made are merely streamlining the existing process, the Law on Modern Migration also implements a policy which clusters migrants together in different categories (e.g. Students, knowledge and talent, labour temporary, labour permanent). These different categories of migrants all have their own rights and obligations under migration law.

The substantive changes that apply to those workers that fall under the category 'knowledge and talent' are the simplified procedures explained above: that under the new law, employers as legal entities will become sponsors for migrants in their residence application and that the sponsors can guarantee the immigration position of a migrant and can apply for the required permits, while the migrant is still abroad⁴⁵. To be able to sponsor a highly skilled migrant, the company needs to become an authorised sponsor⁴⁶. As an authorised sponsor, an employer has several legal obligations, including a reporting duty, administrative duty and a duty of care⁴⁷. The sponsor is also responsible for the migrant's repatriation. They can be sanctioned with a fine of up to € 3,000 for violating these responsibilities⁴⁸. Other categories of qualified sponsors for different types of migrants include research, study and exchange institutions⁴⁹.

Quantitative research carried out by the Leiden University has shown that in migration for normal workers, acceptance of requests is around 75% and the feedback on the procedure by the sponsors and the lawyers representing them is overwhelmingly negative⁵⁰. However, this is not the case for skilled workers. The acceptance of migration requests for skilled workers is around 86%⁵¹. Feedback on the procedure by sponsors getting approval for their skilled worker has been positive⁵². Companies and their legal professionals indicate that the procedure is simple and fast and they appreciate the fact that the procedure has been digitalised⁵³. The information and assistance they received from the IND is also characterised as positive⁵⁴.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid; Government, 'Modern Migration Policy Act Coming into Force on 1 June 2013' Available at: <https://www.government.nl/latest/news/2013/03/06/modern-migration-policy-act-coming-into-force-on-1-june-2013>

⁴⁹ Universiteit Leiden, Instituut voor Immigratierecht, 'Selectief naast restrictief. Evaluatie van de Wet modern migratiebeleid' Available at: https://www.wodc.nl/binaries/2878_Volledige_Tekst_tcm28-399592.pdf

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

The research did point out that there are some issues of accessibility in this procedure due to difficulties that arise in the acquiring of authorisation to be a sponsor⁵⁵. Firstly, the request of companies to become an authorised sponsor can present a challenge, because of the non-recurring nature of the application⁵⁶. This is why the company will often hire a legal professional to make the application for them⁵⁷. A second factor is the lack of clarity in the proof required from companies when they are making an application. Especially when young companies want to make the application, it can be unclear how they are supposed to prove that they are still starting up⁵⁸. This is important, because start-ups pay a lower cost for the application, thereby lowering the barrier for them to get authorised. There are also several issues with the authorisation criteria⁵⁹. One question that came up is whether payroll companies should be able to get authorisation, as they often have little to no contact with the employee, which makes it questionable whether it would be reasonable to make them carry responsibilities for the employee⁶⁰.

3.2 The 30% Facility

The 30% facility is a tax advantage that was created by the Dutch government to encourage highly skilled migrants to relocate to the Netherlands⁶¹. The rule allows the employers of these migrants to offer them 30% of their income from employment free of tax. The rationale behind the rule is that the tax advantage serves to reimburse the migrants for the cost of relocating. For this reason, the tax advantage has a limited timeframe. Migrant experts may receive this benefit for five years (previously eight), after which they will be taxed on their entire income.

To receive the 30% facility, the migrant worker needs to apply for it with the Dutch Tax Authority. If they receive a valid decision, they may use this decision to receive the benefit within the term that the decision is valid⁶². This term differs depending on when the decision was granted and may be influenced by the exact profile of the

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Belastingdienst, '30% Facility for Incoming Employees' Available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/

⁶² Belastingdienst, 'You Have a Valid Decision' Available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/conditions_30_p_facility/you_have_a_valid_decision

worker⁶³. Currently, given decisions are valid for up to 8 years, whereas those granted before 1 January 2012 may be valid for up to 10 years⁶⁴.

There is a detailed profile that a worker must meet to receive a valid decision of eligibility for the 30% rule⁶⁵. As of 1 January 2012, the main conditions to receive a decision are four-fold⁶⁶. The worker is required to have an employment relationship and they must be recruited from another country by their employer or be sent from another country to their employer⁶⁷. Furthermore, to ensure that they are truly foreign employees, out of the 2 years before the worker's first working day in the Netherlands, they must have lived outside the Netherlands for more than 16 months, at a distance of more than 150 kilometres from the Dutch border⁶⁸. The strict rules on distance from the Dutch border have several exceptions pertaining to workers, who came to the Netherlands to study a Master's or doctorate before they attained employment⁶⁹. Another requirement is that the worker must have specific expertise that is not available or is only barely available on the Dutch employment market⁷⁰. The specific expertise test is generally a nominal one measuring expertise by salary⁷¹. Workers need to meet a certain minimum salary to qualify⁷². This minimum salary requirement is lower for workers that are under the age of 30 and possess a Master's degree⁷³. There is an exception to the minimum salary requirement for workers, whose employment involves conducting scientific research at a designated research institution. They will automatically qualify as a worker with specific expertise⁷⁴. When the worker has met

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Belastingdienst, 'Conditions of the 30% Facility for Incoming Employees' Available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/conditions_30_p_facility/

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Belastingdienst, 'You live more than 150 kilometres from the Dutch border' Available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/conditions_30_p_facility/you_live_more_than_150_kilometres_away_from_the_dutch_border

⁷⁰ Belastingdienst, 'Conditions of the 30% Facility for Incoming Employees' Available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/conditions_30_p_facility/

⁷¹ Belastingdienst, 'Specific Expertise' Available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/conditions_30_p_facility/you_possess_a_specific_expertise

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

all of these criteria and has received a valid decision on their eligibility for the 30% facility, they may make use of this within the time frame of their decision⁷⁵.

There is little research available on the effectiveness of the 30% facility in attracting foreign workers. However, from the experiences of expats with this ruling, we can anticipate some of the impact it has. Some expats have indicated that this benefit played a substantial role in their salary negotiations and their decision to come work in the Netherlands⁷⁶. They also explained that they find this benefit fair, especially to those that come to work in the Netherlands temporarily⁷⁷. The factors they take into consideration when saying this are not just the cost of relocating, but also that expats often don't make as much use of public facilities and especially those with children often have extra costs incurred to enrol their children in expensive international schools, as they are not easily integrated into the Dutch system⁷⁸.

3.3 Brainport Eindhoven

Brainport Eindhoven is a regional initiative to create an area that is primed for innovative processes to take place⁷⁹. It is an economic development agency for the Brainport area in which different levels of government work together to manage the Brainport region⁸⁰. The Brainport region is an innovation port that is a hotspot for the high-tech industry⁸¹. Brainport Eindhoven aims to create life-changing technology and assist companies and other institutions in their innovation⁸².

Brainport aspires to stimulate the growth of innovation by connecting people – providing an expansive network of industry, university and government partners⁸³. The tri-fecta of industry, university and government has been found to be particularly effective in bringing about innovative ideas and solutions and has therefore been the basis

⁷⁵ Belastingdienst, 'Conditions of the 30% Facility for Incoming Employees' Available at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/conditions_30_p_facility/

⁷⁶ Erasmus Magazine, 'EUR Academics Annoyed by Cuts to the 30% Rule' Available at: <https://www.erasmusmagazine.nl/en/2018/10/23/eur-academics-annoyed-by-cuts-to-30-rule/>

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Brainport Eindhoven, 'Home page' Available at: <https://brainporteindhoven.com/int/>

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

of innovation at Brainport⁸⁴. It creates an ecosystem for innovation, as the different actors depend on each other to allow innovation to occur⁸⁵. Brainport is now shifting to bring even more people into their innovation model⁸⁶. Instead of being restricted by the university-industry-government triangle, they are now moving towards involving citizens, customers, consumers, investors, designers, artists and corporations; looking at innovation that is created by a blend of stakeholder views⁸⁷. There is still a significant shortage of certain stakeholders, such as qualified workers, in the field of technology and ICT⁸⁸. Brainport aims to minimise that shortage and to bring balance to the market⁸⁹. Brainport is also known for their integral and multi-disciplinary way of working⁹⁰. Just as different entities are brought together and solutions to shortages are sought, Brainport also brings together different disciplines⁹¹. This allows the innovators in the Brainport region to excel at inventing, developing and integrating complex high tech machines, systems, parts and products with precision and accuracy⁹². Some examples of technology the Brainport region provides are lithography machines that produce chips for 80% of all smartphones on the globe, smart health innovations developed with doctors and patients and electron microscopes that may lead to revolutionary breakthroughs in cancer research⁹³.

A think tank was also set up in the Brainport area. Brainport development assists in driving the development of the Brainport region further.

The Brainport Talent Attraction was created with the aim to assist and cooperate with small, medium and large enterprises to improve recruitment of new talent in the fields of technology and IT⁹⁴. In 2019, they also organised an HR Recruitment Congress in which the participants were given innovative views on recruitment of talent⁹⁵.

The information available on Brainport Eindhoven is mainly provided by the company itself. There is little outside evaluation.

⁸⁴ Brainport Eindhoven, 'Brainport Eindhoven Region Co-Creating the Future' Available at: <https://www.tno.nl/media/7608/info-brainport-eng.pdf>

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Brainport Eindhoven, 'Jaarplan 2020' Available at: https://brainporteindhoven.com/fileadmin/user_upload/Brainport_Development/Jaarplan_2020.pdf

⁸⁹ Ibid.

⁹⁰ Brainport Eindhoven, 'Home page' Available at: <https://brainporteindhoven.com/int/>

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Brainport Eindhoven, 'Jaaroverzicht 2019' Available at: https://brainporteindhoven.com/fileadmin/user_upload/Brainport_Development/Jaaroverzicht_2019_definitief.pdf