The European Migration Network (EMN) has been set up by the Council of the European Union. The EMN collects up-to-date, objective, reliable and where possible comparable information on migration and asylum. The EMN publishes reports on a variety of subjects in the field of asylum and migration. The establishment of the EMN is consistent with the aim of the EU to establish an effective asylum and migration policy.

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PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION IN THE NETHERLANDS

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Title  
Practical Measures for Reducing Irregular Migration in the Netherlands

Author  
Denis Diepenhorst  
Researcher  
T +31 (0)70 779 41 63  
F +31 (0)70 779 43 97  
d.diepenhorst@ind.minbzk.nl  
Ministry of the Interior and Kingdom Relations  
Immigration and Naturalisation Service (IND);  
Directorate for Implementation Strategy and Advice (DUSA)  
IND Information and Analysis Centre (INDIAC)  
Dutch national contact point for the European Migration Network (EMN)  
Dr. H. Colijnlaan 341 I 2283 XL Rijswijk  
P.O. Box 5800, 2280 HV Rijswijk, The Netherlands
MANAGEMENT SUMMARY

This report provides an overview of the existing practical approaches, mechanisms, and measures developed by the Netherlands to tackle irregular migration. On the basis of this report and similar reports issued by the other EU Member States, the European Migration Network (EMN) will draw up a comparative ‘European’ report.

The prevention of irregular migration is high on the European agenda. An essential item of this European agenda for the period of 2010-2014 is the Stockholm Programme. According to this Programme, effective action against illegal immigration is of crucial importance when developing a common immigration policy.

An important aim of the report is not only to identify practical measures undertaken by the Netherlands to tackle irregular migration, but also to be able to draw conclusions about the effectiveness of those measures, including considerations of proportionality and the highlighting of best practices. Another aim is to explore the availability of data to estimate the scope of the population of irregular migrants in the Netherlands.

The most important conclusions that may be drawn are as follows:

- A study into the effectiveness of policy measures to tackle irregular migration is complicated. Many factors affect the scope of the population of irregular migrants. Conclusive ‘evidence’ for effectiveness is lacking. Many measures were evaluated summarily or not evaluated at all. The measures that were evaluated proved not to be an unqualified success.
- The enlargement of the EU and regularisation programmes, such as the regularisation in 2007, apparently did affect the scope of the population of irregular migrants.
- In both the political and social debate, much attention is paid to the issue of return, often prompted by individual cases.
- In some cases, European policy and European legislation conflict with national policy to tackle irregular migration.

A short summary of the different Sections is given below.

Section 2 outlines the national policy and legal framework in relation to irregular migration in the Netherlands. After providing a short historical perspective, a description is given of more recent developments. Among the developments discussed are the Benefit Entitlement (Residence Status) Act; and, although this Act dates from 1998, it could not be ignored in this report. Other developments discussed in this report include the Policy Document on Illegal Aliens, the Policy Document on Return, and, of course, the plans of the current Cabinet to make illegal stay a criminal offence. As usual in EMN reports, attention is also paid to the political and social debate on irregular migration.

Finally, this Section provides an overview of the most important institutions active in the area of irregular migration.
Section 3 provides an overview of the practical measures, and is structured around the following four stages recognised in irregular migration:

- pre-entry
- entry (border control)
- stay on Dutch territory, after having passed the border
- pathways out of irregularity

A discussion of the most important measures is provided with regard to each of these stages.

Below are a few examples by way of illustration:

- With regard to the pre-entry stage, the measures may include those which are taken in the countries of origin. For instance, maintaining a network of Immigration Liaison Officers;
- The Border Management Renewal Programme is an example of how the Netherlands seeks to identify and detect irregular migration at the borders;
- Unlawful residence is prevented, among other things, by the Mobile Mobile Security Monitoring;
- A major way out of irregularity is return. The establishment of the Repatriation and Departure Service is an example of the way in which the Dutch government aims at realising a more effective return policy. Ways out of irregularity may, however, also include the granting of a residence permit, for instance on the basis of special individual circumstances.

International cooperation has become increasingly more important in combating irregular migration in European context. Section 4 outlines the problems encountered from an international perspective and shows, among other things, that with the establishment of Frontex, for instance, border control has been organised more and more frequently at European level.

The European impact has also been translated into laws and regulations. Section 5 sheds more light on, among other things, the Return Directive and the Directive to combat illegal employment (Sanctions Directive). This Section also considers relevant case law in this context.

Section 6 aims to estimate the scope of the population of irregular migrants in the Netherlands on the basis of the available data. By means of national data related to irregular migration and a report of the Scientific Research and Documentation Centre (WODC) it has been possible to establish in any case that this estimated population has decreased since 2002.
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1 INTRODUCTION: OBJECTIVES, METHODOLOGY AND DEFINITIONS

This report was written on the instructions of the European Migration Network (EMN). The EMN, which was established on the initiative of the European Commission, gathers and analyses information on migration and asylum (including information on social and political debates, academic research, statistical data, policy, and case law). At the meeting of 15 October 2010, the EMN Steering Board approved the subjects of two theme studies to be conducted by the EMN in 2011. ‘Practical measures for reducing irregular migration’ is one of these two subjects. Each national contact point (NCP) for the EMN will draw up a national report in this context, based on the most recent data. As the National Contact Point for the EMN in the Netherlands, the Information and Analysis Centre (INDIAC), operating under the Directorate for Implementation Strategy and Advice of the Immigration and Naturalisation Service (IND), is responsible for the Dutch report. On the basis of this report and the reports issued by the other EU Member States, the EMN will draw up a comparative EU-wide Report.

1.1 EU policy context

Tackling irregular migration constitutes an important element within the common immigration policy framework at EU level. One of the five basic commitments from the European Pact on Immigration and Asylum adopted in 2008 focuses on combating irregular migration.

According to the Stockholm Programme, which sets out the main policy objectives for the development of an area of freedom, security and justice in the European Union in the period of 2010-2014, effective action against illegal immigration remains essential when developing a common immigration policy.

‘Moreover, in order to maintain credible and sustainable immigration and asylum systems in the Union, it is necessary to prevent, control and combat illegal immigration as the Union faces increasing pressure from illegal migration flows, and particularly the Member States at its external borders, including at its Southern borders in line with the conclusions of the European Council of October 2009.’

1.2 Objective

The overall objective of this study is to provide an overview of existing approaches, mechanisms and measures implemented by Member States to tackle irregular migration in the EU. This report will explore the situation in the Netherlands.

3 Stockholm Programme, Section 1.1 Political Priorities.
4 Norway will also participate in this EMN study and for the purpose of this study is considered as a Member State.
The specific aims of the report are as follows:

- To examine the overall historical and political approaches towards irregular migration in the Member States;
- To outline the EU and national policy and legal frameworks with regard to preventing, detecting, tackling, and reducing irregular migration;
- To provide a comprehensive overview of practical approaches, mechanisms and measures developed by the Netherlands to reduce irregular migration;
- To review transnational cooperation in the area of irregular migration;
- To explore the availability of data and the methods of data collection used by the Netherlands to estimate the population of irregular migrants;
- To explore the effects of EU policy and legislation on national policy, procedures and practices;
- To draw conclusions about the effectiveness of the practical responses to tackle irregular migration, including considerations of proportionality and the highlighting of best practices.

The report will identify practical measures taken on the basis of the following four stages:

- Addressing irregular migration before the third-country national arrives in the Netherlands – i.e. at pre-entry level;
- Detection of the entry of irregular migrants into the Netherlands;
- Monitoring and ensuring compliance of third-country nationals with the respective conditions of their visa and/or other forms of legal stay in the Netherlands in order to avoid overstay; and
- Addressing measures taken in the area of regularisation or return or other ways out of irregularity.

The report will in particular focus on the following groups of third-country nationals found to be illegally present:

- Persons who have entered the Netherlands illegally (e.g. via smuggling, crossing a border with false documents, or fraudulently stating their purpose of residence);
- Persons who have overstayed the period of validity of their visa (the so-called 'overstayers');
- Persons who have violated the conditions of their visa, work permit or residence permit (i.e. they no longer satisfy the conditions);
- Persons who have not left the Netherlands upon rejection of their asylum application;
- Persons who have absconded during the asylum procedure and did not leave the Netherlands.
The study report will not address victims of trafficking in human beings. In order to maintain a narrow focus, it was decided not to address this category.

This report will be a source of information to inform policy makers and others, including practitioners who have affinity with the subject. The report will provide them information about the practical measures that have proved effective and proportionate in addressing irregular migration, both in relation to prevention and in providing ways out of irregularity.

At the European level, the report will contribute to the fight against irregular migration by identifying successful measures that may be beneficial to other Member States.

1.3 Definitions

This report uses the definitions of relevant terms included in the EMN Asylum and Migration Glossary. The terms and definitions included in the glossary developed by the EMN are intended, among other things, to increase the comparability of the information exchanged between the EU Member States. The following definitions represent the Dutch situation. In those cases where the EMN Glossary does not include a definition that is applicable to the Dutch situation, the definition is based on Dutch legislation.

**Third-Country National**
Any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the Union right to freedom of movement, as defined in Article 2(5) of the Schengen Borders Code.

**Third-Country National Found to Be Illegally Present**
A third-country national who is officially found to be on the territory of the Netherlands and who does not fulfil, or no longer fulfils, the conditions to stay in the Netherlands.

**Illegal Entry**
Entry of a third-country national into the Netherlands without the permission of the Dutch authorities.
In Schengen context: The entry of a third-country national who does not fulfil the conditions set out in Article 5 of the Schengen Border Code (SBC).

**Illegal Stay**
The presence on Dutch territory of a third-country national who does not fulfil, or no longer fulfils, the conditions for entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry or stay as set out in national laws or regulations.

**Irregular Migrant**
In the EU context: a third-country national who does not fulfil, or no longer fulfils, the
conditions for entry or stay as set out in Article 5 of the Schengen Borders Code or the conditions for entry or stay applicable in the Netherlands.

**Smuggling of Migrants**
The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into the Netherlands, which person is not a Dutch citizen nor a permanent resident.

**Illegal Employment**
Gainful occupation carried out in violation of provisions set by legislation.
In the EU context, this covers both the illegal employment of a third-country national who is found to be illegally present on the territory of a Member State and of a legally resident third-country national working outside the conditions of his residence permit and/or without a work permit.

**Illegal Immigration**
The immigration of a person to a new place of residence using irregular or illegal means, without valid documents or carrying false documents.

**Overstayer**
A person who has legally entered but then stayed in the Netherlands beyond the allowed duration of their permitted stay without needing a visa, or of their visa and/or residence permit.
1.4 **Methodology**

This report is the result of desk research. The report has been drawn up on behalf of the national contact point for the EMN in the Netherlands by D. Diepenhorst, researcher at INDIAC. For this purpose, grateful use was made of the expertise of the Legal Affairs Department, the Enforcement Department, and the Implementation Advice Department of the IND. The Directorate for Migration Policy (DMB) of the Ministry of the Interior and Kingdom Relations also rendered its cooperation to this report. In addition, other relevant organisations, such as the Repatriation and Departure Service and the Royal Netherlands Marechaussee, provided valuable information.

Information about policies and legislative framework in the Netherlands in relation to irregular migration was derived from parliamentary documents, media coverage, and Dutch laws and regulations.

For the purpose of providing statistic data in Section 6, the following sources were used:

**INDIS**
The data taken from the IND Information System (INDIS) relate to data on irregular migration. The data from INDIS include data on third-country nationals found to be illegally present, rejected asylum seekers, and asylum statuses that were withdrawn. All these INDIS data are also available in Eurostat, the database of the European statistical office situated in Luxembourg.

**PSH-V/VBS**
The study of the Scientific Research and Documentation Centre (WODC) described in Section 6 is based on the illegal immigration registration systems of the police – the PSH-V (Politie Suite Handhaving Vreemdelingen), and the Royal Netherlands Marechaussee – the VBS (Vreemdelingenbasissysteem, VBS).

**VBS**
Information about refusals on entry on the border by the Royal Netherlands Marechaussee was derived from the Aliens Basic System (Vreemdelingenbasissysteem, VBS).

**ZUIS**
Data on refusals of entries at the border by the Rotterdam Seaport Police were drawn from the ZUIS registration system.
2 NATIONAL POLICY AND LEGAL FRAMEWORK IN RELATION TO IRREGULAR MIGRATION

This Section provides an overview of the national policy and the institutional and legal frameworks in relation to irregular migration in the Netherlands. First of all, a short historical perspective is given about the period following the Second World War.

Historical perspective
The first post-war migration wave consisted, for the most part, of poorly educated labour migrants from South Europe, Turkey, and the Maghreb. Shortages on the fringe of the labour market, which arose as a result of the unprecedented economic growth in that period, forced West European countries including the Netherlands to recruit guest workers. This period can be characterised as a period of ‘great leniency’ with regard to the entry of ‘spontaneous migrants’ from the Mediterranean.6

The oil crisis and the subsequent recession of 1973 caused the Netherlands and most other Western countries to announce a restrictive policy on labour migration. Contrary to other countries, the Netherlands was relatively late in implementing measures restricting labour migration. Gradually, a restrictive aliens policy was developed. The policy attention for irregular migrants has strongly increased, in particular since the nineties. A wide gap between legislation and practical implementation became visible, as a result of which irregular migrants could initially still obtain a tax and social insurance number7. This subsequently resulted in the problem of the so-called ‘irregular migrants who were able to prove long residence’.8 In 1991, the publication of the report of the Zeevalking Committee marked a policy turnaround9. The most important recommendation of this Committee was that the third-country nationals found to be illegally present in the Netherlands should, in principle, be excluded from the use of collective provisions. On 1 February 1996, a link was established between the Aliens Administration System and the Municipal Personal Records Database. This finally resulted in the Benefit Entitlement (Residence Status) Act in 1998. It was, in particular, the introduction of this Act that caused a major turning point in the attitude towards irregular migrants. Since the nineties, the Dutch government has, in addition, attached stricter conditions to non-Western family migration and asylum migration.10

7 The tax and social insurance number was the predecessor of the citizen service number. The tax and social insurance number was a unique number solely for tax and social insurance purposes whereas the citizen service number is automatically allocated to everyone registered in the Municipal Personal Records Database and is also used for identification purposes. See also www.burgerservicenummer.nl/http://www.govemment.nl/issues/identification-documents/the-citizen-service-number.
8 Irregular migrants who were able to prove long residence: Irregular migrants who did not have a residence permit, but who still used specific collective provisions.
9 Committee on Domestic Aliens Supervision, report of 18 March 1991.
Once the tone had been set for a more restrictive immigration policy with the entry into force of the new Aliens Act in 2001, the consecutive Balkenende Cabinets (I up to and including IV) also put increasingly more efforts, starting in 2003, into the development of policies to tackle irregular migration and illegal stay. The former Minister for Immigration and Integration stated in her letter of 21 November 2003 to the Dutch House of Representatives that in the preceding years much attention had been paid to measures to limit the influx and consequently the number of asylum applications in the Netherlands, but she believed that this had resulted in the fact that ‘at the same time, less attention than necessary had been paid to the return of asylum seekers who had exhausted all legal remedies, and other third-country nationals who did not hold a residence permit’. The issue of removal also became increasingly more important. In 2004, the Minister for Immigration and Integration sent a Policy Document on Illegal Aliens to the Dutch House of Representatives. The Cabinet at the time was of the opinion that more vigorous action should be taken against the illegal stay of third-country nationals in the Netherlands. The starting points in this policy document included realising an effective return policy, taking action against those people who benefited from third-country nationals who are illegally present in the Netherlands, and ensuring basic rights such as those to education and health care.\footnote{Parliamentary Papers II 2003/2004, 29 537, no. 2.}

In practice, however, the return policy was not nearly always as effective as desired. Many third-country nationals appeared not to have left the Netherlands after having gone through one or more residence procedures. This resulted, among other things, in the fact that the Balkenende Cabinet IV announced a regularisation in 2007. For many third-country nationals, finally approximately 30,000 persons, this ‘general pardon’ meant an end to an often long period of uncertainty about their residence status. The Cabinet furthermore had a comprehensive qualitative study into irregularity conducted in 2008. This study identified the causes, consequences, and backgrounds of irregularity. In its letter of 20 June 2008 - a response to the aforementioned study - the Cabinet announced measures it intended to take in order to combat illegal stay.\footnote{Parliamentary Papers II 2007/2008, 19 637, no. 1207.} It was decided, among other things, to increase the number of exclusion orders imposed on irregular migrants and to optimise cooperation between the cooperating organisations in the criminal justice system and the cooperating organisations in the immigration process.

In July 2008, the Cabinet also sent its Policy Document on International Migration and Development to the Dutch House of Representatives; this was a joint document of the former Minister for Development Cooperation and State Secretary for Justice.\footnote{Parliamentary Papers II 2007/2008, 30 573, no. 11.} Two policy priorities out of this document that are relevant to this report are institutional development in the area of migration management and the facilitation of permanent return and reintegration.

Below an overview is given of, among other things, the most recent policy developments and the plans of the current Cabinet with regard to irregular migration.
2.1 National policy and legislation towards irregular migration

In this Subsection, the national policy and legislation towards irregular migration is described in outline on the basis of the four stages mentioned in the Introduction: pre-entry, entry, stay, and pathways out of irregularity. Attention will also be paid to the political and social debates in these areas in the Netherlands.

Pre-entry

One of the starting points of Dutch aliens policy is that Dutch authorities verify whether a third-country national complies with the entry conditions as much as possible before his entry into the Netherlands. This does not only apply to short stays but also to third-country nationals who wish to settle in the Netherlands for a longer period of time. A large portion of foreign visitors to the Netherlands are subject to the visa requirement and require a visa to enter the Netherlands for a stay shorter than 90 days. Whether a third-country national is required to hold a short-stay visa depends on the applicant’s nationality and the duration of the intended stay. Until 5 April 2010, the legislative framework for this purpose was formed by the Convention Implementing the Schengen Agreement. The Visa Code has been applicable since 5 April 2010.

The purpose of the visa policy is to control and regulate the entry of third-country nationals to the Schengen area, and more in particular to that of the Netherlands. This serves various interests, namely economic, political, cultural, and humanitarian interests as well as the interest of controlling public order (including illegal stay), and ensuring national security and international relations.

Third-country nationals who wish to enter the Netherlands for a longer period of time are subject to the general rule that they must hold a so-called Regular Provisional Residence Permit (MVV). With the exception of Union citizens and citizens from countries including the United States, Canada, and Japan, this obligation applies to all third-country nationals who wish to stay in the Netherlands for a period of longer than three months. The grounds for issuing or refusing an MVV are the same as those which apply to issuing a regular residence permit.

The requirement to apply for an MVV before travelling to the Netherlands enables the Dutch authorities to verify whether the third-country national satisfies all entry requirements, without being presented with a fait accompli due to the third-country national’s

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15 INDIAC (2010).

16 Section 1(h) of the Aliens Act defines the Regular Provisional Residence Permit (MVV) as follows: a visa for a stay of longer than three months applied for by the third-country national in person and issued with the prior authorisation of the Minister of Foreign Affairs by a Dutch diplomatic or consular representation in the country of origin or in the country of continuous residence or - in the absence of such a representation - in the nearest country where the Netherlands does have a representation, or by the Office of the Governor of the Netherlands Antilles or by the Office of the Governor of Aruba in those countries.

presence in this country. For more information about Dutch visa policy please refer to the EMN report *Visa Policy as Migration Channel*.

The wish of the Dutch government to tackle irregular migration at the earliest possible stage has resulted in various measures which also extend to the countries of origin and transit. For this purpose, the Netherlands maintains, for instance, a network of Immigration Liaison Officers (ILOs) in the most important countries of origin and transit. The duties of these ILOs are explained in Subsection 3.1. Another example is the ‘Swift Action Teams’. These teams are deployed to identify, at an early stage, any minor third-country nationals who run the risk of falling victim to activities of human traffickers or migrant smugglers, and to prevent them from ending up in a situation of exploitation in the Netherlands.

*Border control/Entry*

It is the opinion of the Dutch government that each policy on irregular migration should begin by preventing illegal border crossing and illegal stay, through the deployment of adequate border control at the external borders. The Dutch government has adopted a concentric approach to border control. In this approach, the concept of border is seen as a series of imaginary consecutive circles, in which different forms of controls are performed by the different services. By checking the person’s intended purpose and duration of stay, for instance in the visa process, migrants may be prevented from staying illegally on Dutch territory with improper intentions.

Border control in the inner circle is performed at the Dutch external borders of the Schengen area, in particular at the Dutch airports and seaports which have been designated as border crossing points, of which the most important are Amsterdam Airport Schiphol and the Rotterdam docks.

In the past period, various measures have been taken at the European level to strengthen the management of the external borders. The proposals are in line with the Dutch ambitions in this area for the next few years, which includes the development of an effective and efficient border control process that facilitates the mobility of bona fide travellers, combats irregular migration, and contributes fully to the security of the Netherlands and the Schengen area. An important development in this context is the Border Management Renewal Programme which is currently being implemented. According to the Cabinet, it is the ambition of this programme to develop an effective and efficient border control process with the use of advanced technology, including biometrics.

With regard to the removal of third-country nationals who have been refused entry into Dutch territory, the Dutch government pursues the principle that the responsibility rests with the carrier.

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Stay

The national policy regarding third-country nationals found to be illegally present on Dutch territory may be characterised by the ‘central principle of exclusion’. The Benefit Entitlement (Residence Status) Act is an important, if not the most important exponent of this. The Benefit Entitlement (Residence Status) Act provides that third-country nationals are not entitled to collective provisions if they do not hold a residence permit. They are, however, entitled to the provision of medically necessary care.

Broeders distinguishes between two different logics of exclusion. The first logic is that of exclusion from documentation and registration. On the basis of this logic, migrants are excluded from core institutes in society, such as the formal labour market, education, the housing market, and facilities of the welfare state. The purpose is to discourage illegal stay through exclusion.

Irregular migrants, however, do not let themselves be discourage and, as already pointed out above, they do not always return ‘spontaneously’ to their country of origin. According to Broeders, removal policy has taken up a more central position in internal control of migration in recent years. From this follows the second logic of exclusion, that of exclusion by means of documentation and registration. This logic assumes a policy that is aimed at ensuring that the migrant is registered and documented. This logic is furthermore aimed at making every effort to reduce the anonymity which protects irregular migrants relatively effectively. Broeders reasons that the key element in this second logic is that ‘the unknown irregular migrant can be identified’. An illustration of this development can be read in the annex to the so called ‘Remove-Detain’ Programme (Uitzetten-Vastzetten). The Personal Approach Project (Project persoonsgebonden aanpak) describes the following real-life case (see box):

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It concerned a migrant with a record of more than 40 [criminal] offences. He used several aliases, as a result of which the investigation into the identity and nationality was very difficult. The migrant concerned was placed in aliens detention early in 2007 and presented to various authorities, but this did not result in the issuance of replacement travel documents. After 13 months, the court ordered the termination of the aliens detention on the ground of a weighing of interests. In November 2008, the person concerned was placed in aliens detention again. This migrant was subjected to the Personal Approach. During the repatriation procedure, the Aliens Police permitted him to call his brother. The reaction of the person concerned was so emotional that he stated his true identity. This made it possible to present him to the relevant authorities under his own name and these authorities subsequently issued a laissez passer to him. He was removed by the Repatriation and Departure Service on 13 December 2008.

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21 Ibid pp. 191-192.
22 The Personal Approach Project (PGA procedure) is a project carried out in close cooperation between the Repatriation and Departure Service and the police, which was entered into in July 2008. The aim of the project is to realise the return of criminal third-country nationals and third-country nationals causing nuisance. The essence of the approach is to fully investigate all leads that could result in ascertaining the third-country national’s identity and nationality.
The key objectives of Dutch policy to combat illegal stay are measures against criminals found to be illegally present (e.g. to increase the number of exclusion orders) and the protection of victims of trafficking in human beings and exploitation, including unaccompanied minors. The current Cabinet has made the penalisation of illegal stay a key policy objective.

**Pathways out of irregularity**

Return is the most important pathway out of irregularity. In the course of years, a number of basic principles have been formulated and further developed in Dutch return policy. The underlying idea is that an effective migration and asylum policy is not possible without an effective return policy. For the implementation and the level of support of Dutch migration policy, it is considered an essential principle that migrants who are not legally staying, or no longer legally staying, in the Netherlands should leave this country, preferably independently.

The migrant’s own responsibility for departure is and continues to be the basic principle of Dutch return policy. The migrant who does not hold, or who no longer holds a residence permit is obliged to leave the country independently. As a result of this principle, the different reintegration and return programmes focus in particular on asylum seekers who have exhausted all legal remedies and whose statutory departure deadline has not yet expired. The underlying idea in this context is that people who did not meet the obligation to leave the country (such as irregular migrants or asylum seekers who have exhausted all legal remedies who have overstayed their final departure deadline) should not be rewarded for their behaviour.

In order to realise an effective organisation of the return process, the Dutch government established a separate return organisation in 2007, the Repatriation and Departure Service. In practice, however, the return policy appears to be overly rigid, and is not nearly always as effective as desired. For this reason, the Netherlands also decided several times to implement a regularisation. The last settlement in this context was implemented in 2007.

Regularisations have always been controversial in the Netherlands. This also applied to the settlement in 2007. As pointed out above, to many third-country nationals this settlement meant an end to an often long period of uncertainty about their residence status. In the course of years, a large group of asylum seekers had developed who had submitted their asylum applications (initial or repeated applications) under the former Aliens Act and who had been staying in the Netherlands for a long period of time by then. Among them were many families with children who had integrated into Dutch society to a large extent. The impression existed that the long-term stay of the persons concerned could partly also be blamed on the government, as asylum procedures under the former Aliens Act could take up much time. Many people in Dutch society were of the opinion that these asylum seekers could no longer be required to still return to the country of origin. In practice, it also turned out to be extremely difficult to realise return.

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after a long-term stay in the Netherlands. The regularisation measure was also seen as an opportunity to clear the backlog from the past. There was, however, also much criticism from the right-wing opposition. This criticism included the high direct and indirect costs associated with the settlement, as well as its possible magnet effect. The most important point of criticism was, however, that the third-country nationals who had failed to comply with the law by not leaving the Netherlands despite one or more final rejections of their asylum requests were being rewarded by this settlement. The left-wing opposition was, in principle, positive about this settlement, but still attempted to stretch it further.

With regard to the regularisation measures, such as the one in 2007, it should be noted that most third-country nationals who were finally granted residence permits pursuant to this settlement had not illegally stayed in the Netherlands, but were often still engaged in the procedure and were awaiting a final decision on their initial or repeated application.

In addition to this form of regularisation, which is category-specific, the Dutch Minister also has the option to decide to approve the residence and to grant a residence permit in individual cases. In 2011, there was much discussion about individual cases, and this resulted in both political and social debates. In particular the Afghan girl Sahar and the Angolan young man Mauro received much attention and media coverage.

2.2 Legal framework in relation to irregular migration

This Subsection provides a discussion of the most important laws and regulations that relate to irregular migration.

Constitution
Section 2 of the Dutch Constitution assigns the entry and removal of third-country nationals to the legislature. The legislature regulated this in the Aliens Act 2000.

Aliens laws and regulations
The substantive national sources of Dutch aliens laws can be found in the above-mentioned Aliens Act 2000 and in subordinate legislation including the Aliens Decree 2000, the Aliens Regulations 2000, and the Aliens Act Implementation Guidelines 2000. These substantive sources regulate, among other things, entry, stay, aliens supervision, and return.

The Sovereign Decree 1813 merits special mention. This Royal Decree from 1813, which has the status of an Act of Parliament, grants the Minister of Foreign Affairs the power to issue visas. Visas are issued in accordance with the criteria agreed within EU Schengen and Benelux context. Amendments to the Aliens Act 2000 with regard to national visas and other aspects were under preparation. The relevant proposal bill was submitted on
5 August and adopted by the Dutch House of Representatives on 1 November 2011.26 This bill adds rules to the Aliens Act 2000 pertaining to the granting of national visas for stays longer than 90 days. This proposed amendment contains the criteria on the basis of which those national visas (for longer than 90 days) will be granted.

The Aliens Act 2000 and the Aliens Decree grant the Minister for Immigration, Integration and Asylum Policy the power to set new or further rules or regulations. These rules can be found in the Aliens Regulations.

Pursuant to Section 48(2) and (3) of the Aliens Act, the Minister furthermore has the power to issue general and special directions to the officials charged with border control and aliens supervision. These general directions have been laid down in the Aliens Act Implementation Guidelines. In this context, the directions concern, in particular, such issues as the division of powers and the instructions detailing the procedures.

Apart from the above-mentioned directions, the Aliens Act Implementation Guidelines also include the details of the conditions for granting or refusing entry, as well as the grounds on which residence permits are granted, extended or withdrawn.27

In this context, it is worth mentioning that staying in the Netherlands without a residence permit does not necessarily mean that the relevant third-country national’s stay in this country is illegal. To the contrary, Sections 1 and 8 of the Aliens Act provide, for instance, that specific categories of third-country nationals who are still awaiting a decision on their application for a residence permit, or who cannot be removed for medical reasons, have legal stay in the Netherlands. Therefore, residence without a residence permit cannot simply be considered equal to ‘illegal’ stay.28

The way in which the entry and the right to residence of third-country nationals have been regulated in the Netherlands has been discussed above. In order to enforce the provisions of the Aliens Act and, in particular, of the restrictive entry policy, aliens law and regulations also contain a large number of legal instruments. In addition to the required identification and residence documents which a third-country national is obliged to hold, there are various statutory regulations that oblige the third-country national to provide information about his residence or living situation. Apart from this, the law provides various possibilities of restricting the freedom of third-country nationals or depriving them of their liberty. For the purpose of combating illegal stay, the measures contained in Section 56 (restriction of freedom) and Section 58 (deprivation of liberty) of the Aliens Act are of particular importance. These measures may be imposed to ensure removal. The most far-reaching measure of deprivation of liberty provided by the Aliens Act is detention, which is regulated by Section 59 of the Aliens Act. Aliens detention is an administrative measure for the purpose of removal.

28 Ibid p. 93.
The Benefit Entitlement (Residence Status) Act
The Benefit Entitlement (Residence Status) Act was already discussed briefly in Subsection 2.1 above. On 1 February 1996, a link was established between the Aliens Administration System and the Municipal Personal Records Database. This finally resulted in the implementation of the Benefit Entitlement (Residence Status) Act in 1998; officially this Act is called the ‘Act amending the Aliens Act and several other Acts in order to link the entitlement of third-country nationals, via administrative bodies, to provisions, facilities, benefit payments, exemptions, and permits, to the third-country national’s legal stay in the Netherlands’. The purpose of this Act was to discourage illegal stay and to prevent irregular migrants from acquiring a ‘semblance of regularity’, as a result of which they become – with the passage of time – difficult to remove.

The Benefit Entitlement (Residence Status) Act provides that third-country nationals are not entitled to collective provisions if they do not hold a residence permit. The provisions concerned included social assistance benefit payment, rent allowance, and student grants and loans. In addition to these provisions, other provisions consist of exemptions, permits, and other issuances.

Upon receipt of an application for such a provision, each agency providing a collective provision checks whether the applicant is entitled to this provision pursuant to his right of residence. At the same time, the agency also checks whether the right of residence still applies.

This checking of the right of residence is performed nearly automatically. The details of the third-country national have been registered in the Central Shared Database with Basic Information on Applicants. This system is linked to the Municipal Personal Records Database of the municipality. Nearly all municipal agencies have access to the Municipal Personal Records Database and can check which form of right of residence/residence permit/residence status a person has. On the basis of those details, the agency determines whether a person is entitled to the provision applied for.29

Foreign Nationals (Employment) Act
The principle of exclusion of irregular migrants as described above also applies to the labour market. The entry of third-country nationals to perform work as an employee is permitted only if the presence of this third-country national serves an essential Dutch interest. The assessment of whether Dutch interests are served is regulated in the Foreign Nationals (Employment) Act. The responsibility for entry into the Dutch labour market pursuant to the Foreign Nationals (Employment) Act rests with the Minister of Social Affairs and Employment. This Minister determines whether a work permit may be granted to a future or current employer in respect of a third-country national. The basic principle for granting a work permit is the availability of the priority workforce in the Dutch labour market. This means that the needs of the labour market must be satisfied as much as possible by engaging the supply present, or reasonably to be expected to be

present, in the Netherlands, or the labour supply from the EU or the EEA, to the extent that the free movement of employees applies to this supply.

Among the group of third-country nationals who are exempted from the work permit requirement are those who hold a residence permit to perform work on a self-employed basis. Apart from that, their entry is also subject to various conditions. By governmental decree, it is furthermore possible to designate a specific category of third-country nationals who are not required to apply for a work permit.30

After 3 years of stay on the basis of a residence permit issued to perform work, the third-country national is entirely free to move in the labour market. This means that at the end of this period, the employer is not required, or no longer required, to hold a work permit.

2.3 Sanctions imposed in cases of illegal stay

This Subsection provides an overview of the possible measures provided for in Dutch legislation in cases of illegal stay

Exclusion order
Before the Return Directive had been implemented in Dutch legislation, an indirect way of making illegal stay a criminal offence existed. Section 67 of the Aliens Act, for instance, provided the possibility of imposing an exclusion order on third-country nationals who were found to be illegally present in the Netherlands if they had committed an offence that had been made a criminal offence by the Aliens Act. Third-country nationals who posed a danger to public order or national security could also receive an exclusion order. Contrary to the stay of an ‘ordinary’ irregular migrant, the stay of a third-country national who has received an exclusion order is punishable. As explained above, the Aliens Act provides a number of possible measures which either restrict a person’s freedom or deprive a person of his liberty. With the implementation of the Return Directive31, the court usually no longer imposes an exclusion order but imposes an entry ban instead.

Penalties for illegal employment
Since 1 January 2005, the Foreign Nationals (Employment) Act has been enforced under administrative law (before that date criminal law applied). An employer who employs a third-country national without a residence permit will receive a penalty of € 8,000 for each third-country national who is found to be illegally present in the Netherlands (private persons will receive a penalty of € 4,000). The Foreign Nationals (Employment) Act is enforced by the Social Affairs and Employment Inspectorate, in which the Labour Inspectorate was incorporated on 1 January 2012. In addition to repressive enforcement, the Dutch authorities provide information to employers to ensure that they do not breach the law unintentionally. If illegal employment coincides with employment-related exploitation, these cases are transferred to the Public Prosecution Service.32

30 See Section 3 of the Foreign Nationals (Employment) Act
2.4 Important changes in policy and legislation in the past five years

Improper use of procedures
In 2006, the Minister for Immigration and Integration at the time decided to apply an organisational solution to the problem of improper use of immigration procedures. Prior to that, it had been established that more and more applications for regular residence permits were being submitted, whereas it was clear in advance that these applications were nearly certain to fail, because the third-country nationals did not hold the required Regular Provisional Residence Permit (MVV). Submission of said application entitled the third-country national to a legal stay in the Netherlands, at least while the application was being processed. The submission of such an application just before removal could furthermore postpone the removal. The Minister decided that in the future, all applications of third-country nationals who did not hold the required MVV would have to be submitted directly at the IND desk. If the third-country national could not be exempted from the MVV requirement at the moment of submission, he could be placed in aliens detention immediately. Agreements had been made with the Aliens Police for this purpose.

Settlement of the Legacy of the Former Aliens Act
The ‘Settlement of the Legacy of the Former Aliens Act’ entered into force on 15 June 2007. Asylum seekers who were still present in the Netherlands and who had submitted their initial asylum applications prior to 1 April 2001 were eligible for a residence permit pursuant to this Settlement, subject to specific conditions. By this Settlement, the residence permit was regularised with respect to a large group of asylum seekers, of which a part were illegally present in the Netherlands. Criminal records and the provision of incorrect details constituted a contraindication to granting a residence permit. The Settlement was mainly the result of political and social debates that had been conducted in the period preceding the introduction of the Settlement.

Administrative Agreement
Special attention was also given to return policy upon the entry into force and the implementation of the Settlement of the Legacy of the Former Aliens Act. One of the conditions for the Settlement that was laid down in the Coalition Agreement between the Christian Democratic Appeal (CDA), the Labour Party (PvdA), and the Christian Union (CU) was that agreement should be reached with the Association of Netherlands Municipalities (VNG) about rendering cooperation to fully implement aliens legislation, including return. The main issues in this context concerned the temporary accommodation provided by the municipalities and the refusal to proceed to eviction. On 25 May 2007, the former State Secretary for Justice and the VNG concluded an administrative agreement about the implementation of the above-mentioned Settlement. It was agreed that the Repatriation and Departure Service (DT&V) and the municipalities would support and inform each other locally in the implementation of the return policy.
in the best possible way, with direct points of contacts for the municipalities at the DT&V. It was also agreed that the VNG would be involved in the manner in which third-country nationals would be facilitated in realising their departure. It was furthermore agreed that the municipalities would not cooperate in the reception of third-country nationals who were illegally present in the Netherlands.35

A more effective approach to induce the individual third-country national to leave
In 2008, the Cabinet created the possibility of placing asylum seekers in a centre with restricted movement at the end of the reception facilities in order to achieve a more effective return policy. This was mainly motivated by the continued concern of the Cabinet that the return measures failed. The Cabinet emphasised that the centre with restricted movement was not a reception-related measure, but a measure that restricted the movement in order to be able to supervise the third-country national for the purpose of departure. The measure is imposed on an individual basis, primarily on former asylum seekers who have not yet left the country when the departure deadline has expired, and on families with minor children in general. In such cases, aliens detention is often considered too stringent, whereas it is still desirable to supervise the persons concerned in order to facilitate the departure.36

Measures resulting from the review of the literature
As a result of a review of the literature titled Unlawful Residence in the Netherlands by the Research and Documentation Centre in 2008, and after a review of the Policy Document on Illegal Aliens from 2004, the Cabinet decided in 2008 to develop new measures or to change existing measures.37 In the summer of 2008, the former State Secretary for Justice emphasised, for instance, that she considered measures against irregular migrants who also committed criminal offences or caused particular forms of nuisance an ‘absolute priority’. The actual measures taken will be discussed in Subsection 3.3.

Use of restriction of freedom and deprivation of liberty
In order to combat illegal stay, the Cabinet decided in 2009 to implement a broader application of both the restriction of freedom and the deprivation of liberty.38 The main reason for this measure was also to achieve a more effective return of irregular migrants.

B9 Scheme
The B9 Scheme (Chapter B9 of the Aliens Act Implementation Guidelines 2000) enables third-country nationals who are victims or witnesses (or possible victims or witnesses) of trafficking in human beings to temporarily stay in the Netherlands during the investigation and prosecution process and to continue to be available to the police and the Public Prosecution Service in this way.

During the General Consultations on trafficking in human beings with the Dutch House of Representatives in 2008, it was announced that the period for victims (or possible victims) of trafficking in human beings who enter the Netherlands via Amsterdam Airport Schiphol will be extended. This was made possible by decision of 14 April 2009. With this change, the victims (or possible victims) who have been identified by the Royal Netherlands Marechaussee at Amsterdam Airport Schiphol, and in respect of whom there is sufficient indication of trafficking in human beings, are offered a maximum period of rest of three months to consider whether they wish to render their cooperation and/or report to the police.39

Establishment of VRIS Task Force
By decision of 26 January 2010, the former Minister of Justice and State Secretary for Justice decided to establish a Task Force on Foreign Nationals in the Criminal Justice System (VRIS). Since 2007, the central theme in the public order policy under immigration law has been characterised by the efforts to coordinate the activities of the organisations in the criminal justice system and those in the immigration process with each other. According to the Cabinet, the cooperation between the organisations in the criminal justice system and those in the immigration process is a theme which has been approached consistently since then. The Cabinet furthermore stated that it was among its priorities to optimise that cooperation.40

The objective of the Task Force is to achieve an effective and comprehensive approach to combat criminal third-country nationals and criminal irregular migrants by maintaining the best possible relations between the organisations in the criminal justice system and those in the immigration process, in order to be able to implement measures intended specifically for third-country nationals in the criminal justice system or to ensure the removal of third-country nationals as and when necessary.41

New asylum procedure
On 1 July 2010, the new asylum procedure - the so-called Improved Asylum Procedure - entered into force. The improvements in the asylum procedure were also intended to facilitate return, as the investigation of identity and nationality is started already at an early stage in order to combat illegal stay.42

Victims of domestic violence and trafficking in human beings who illegally stay in the Netherlands
On 2 December 2010, the Cabinet introduced the policy framework for victims of domestic violence who are staying illegally in the Netherlands and victims of trafficking in human beings who are staying illegally in the Netherlands who cannot or do not want to cooperate in the criminal proceedings because of threats or because of their mental constitution.43 The policy framework for victims of honour-related violence has been amended.

40 Papers II 2009/10, 19 637, no. 1306.
41 Decision of the Minister of Justice and the State Secretary for Justice of 26 January 2010, no. (5638955) establishing the Task Force Foreign Nationals in the Criminal Justice System (Decision establishing the VRIS Task Force).
By creating possibilities of stay for illegally staying victims of honour-related violence, domestic violence, and trafficking in human beings in addition to the existing B9 scheme\(^\text{44}\), the Cabinet wants to provide protection in acute situations of violence and threat of violence, irrespective of the residence status of the victim. This basic principle justifies the granting of a residence permit, at least for the period that the threat of violence continues.\(^\text{45}\)

Mobile Security Monitoring

By decision of 30 May 2011, the Aliens Decree 2000 was amended in connection with further regulations on monitoring in order to combat illegal stay after crossing the borders.\(^\text{46}\) The amendment had been prompted by a decision of the Administrative Division of the Council of State of 28 December 2010. This tribunal is the highest administrative tribunal in the Netherlands.

2.5 Future policy

Making illegal stay a criminal offence

The Rutte Cabinet considered in its Coalition Agreement ‘Freedom and Responsibility’ of September 2010 that irregularity of third-country nationals in the Netherlands ‘is a serious problem’.\(^\text{47}\) The Coalition Agreement reveals that the Cabinet will advocate ‘making illegality a criminal offence, and will focus enforcement mainly on persons causing nuisance or indulging in criminal behaviour, with the aim of deporting them from the country as soon as possible.’ During the budget debate on 30 November 2010 with the Minister for Immigration and Asylum Policy, the opposition was concerned that churches, hospitals, and other organisations that received irregular migrants or provided medical care would also be punishable. The Minister made it known that aid to irregular migrants would not be prohibited.

The social debate was also fed by the plans of the Cabinet. Church in Action (\textit{Kerk in Actie}), a division of the Protestant Church in the Netherlands, is one of the initiators of the ‘Coalition against Criminalisation’ which presented a statement on 9 March 2011 against the intention of the Cabinet to make irregularity a criminal offence. This coalition not only included nearly all Dutch churches, but also the Dutch Trade Union Federation, the National Federation of Christian Trade Unions in the Netherlands, various Dutch municipalities, associations of legal experts, and refugee organisations. In their joint statement, the organisations referred to the possible criminalisation of illegal stay as ‘out of all proportion’ and ‘bad for society’.\(^\text{48}\)

These organisations were of the opinion that the measure would result in the fact that irregular migrants would no longer seek help, as a result of which they would become even more anonymous and municipalities would lose sight of the irregular migrants within their boundaries.

\(^{44}\) Application of the B9 scheme is subject to the condition to cooperate in the criminal proceedings.


\(^{46}\) Decision for the amendment of the Aliens Decree 2000 in connection with further regulations on monitoring in order to combat illegal stay after crossing the border, \textit{Government Gazette} 2011, no. 9951.

\(^{47}\) http://www.government.nl/government/cabinet/coalition-agreement

\(^{48}\) http://www.trouw.nl/tr/nl/5091/Religie/article/detail/1858190/2011/03/10/Leers-heeft-toch-dezelfde-Bijbel.dhtml
The Chairman of the umbrella organisation of the refugee organisations pointed out that ‘Irregular migrants will go underground, and this will have disastrous and dire consequences for these people. Besides, care workers will be cautious, for fear of being guilty of an offence if they provide aid to irregular migrants.’ The Minister of Immigration and Asylum Policy made the riposte ‘it won’t get that bad’. If someone wants to help people for charitable reasons, this cannot be a criminal offence. The intention of criminalisation is, in particular, to combat crime committed in circles of irregular migrants. In all our neighbouring countries, irregularity has been made a criminal offence; as a result of this, the problem has a magnet effect in this country,’ said the Minister.49

With regard to the criminalisation, the Cabinet presented the following concrete plans in its letter to the Dutch House of Representatives of 6 July 201150:

- Illegal stay will be made a minor criminal offence.
- The sentence will be a term of imprisonment of not more than four months or a fine of not more than EUR 3,800. If this fine is not paid, it will collectable for four years.
- The criminalisation applies to adult third-country nationals, because minors depend on their parents for their stay in the Netherlands.
- Complicity in illegal stay, such as providing accommodation or food to irregular migrants for humanitarian reasons, will not be made a criminal offence.
- Those who are guilty of trafficking in human beings or providing employment to irregular migrants will, however, be prosecuted for these offences.51

In the letter of 6 July 2011, the Minister explained that making illegal stay a criminal offence is not an objective in itself; it is one of the instruments to prevent and combat illegal entry into and illegal stay in the Netherlands. It is part of a coherent set of measures that is aimed at making illegal stay in the Netherlands unattractive. Making illegal stay a criminal offence is also intended to have a larger deterrent effect. A clear message is sent to third-country nationals who entered the Netherlands without complying with the entry regulations or who failed to leave the Netherlands contrary to their obligation to leave the country, or failed to do so in time: they will be punishable from now on. Making illegal stay a criminal offence consequently also has a legal effect. The Minister emphasized that the efforts of the authorities are and will continue to be aimed at, preferably, the voluntary but, if necessary, the forced removal of irregular migrants from the Netherlands.

In response to this Cabinet intention, the Dutch Council for Refugees expressed serious objections to, among other things, the plans to make illegal stay a criminal offence. In a reaction, the Dutch Council for Refugees characterized the intended measure of imposing a criminal sanction on a migrant merely because he or she did not leave the Netherlands in time – whether the sanction concerned a fine or imprisonment – as much too severe and, in addition, in violation of the European Return Directive.52

49 http://nos.nl/artikel/224328-verzet-tegen-straftbaarheid-illegalen.html
In its letter of 8 July 2011 to the Dutch House of Representatives, the Cabinet elaborated its plans to address illegal stay in the form of a number of concrete measures. By means of the programme ‘Streamlining Entry Procedures’, the Cabinet intends to provide third-country nationals clarity about the question of whether they can stay in the Netherlands— as early as possible in the procedure. Stimuli that prompt third-country nationals to extend their stay in the Netherlands by submitting application upon application (submitting repeat applications for a residence permit) will be eliminated, according to the Cabinet.

Another measure that is being prepared by the Cabinet is the possibility of rejecting an application for a residence permit if the applicant had previously been illegally present in the Netherlands.

**Intensification of supervision**

The Cabinet furthermore intends to intensify its measures against criminal third-country nationals and third-country nationals causing nuisance, among other things, by strengthening aliens supervision. The Cabinet considers the role of the Aliens Police essential in realising this policy. Establishing a person’s identity is primarily a task of the police and the Royal Netherlands Marechaussee. Being able to efficiently establish a person’s identity is of major importance to the processes in the immigration process, including the repatriation process.

A bill further extending the powers for the purpose of aliens supervision is before the Dutch House of Representatives. With regard to the entry into a dwelling in connection with an investigation of suspected illegal stay, the Cabinet proposed, for instance, to make it possible to search the dwelling with the aim of seizing documents in order to establish the identity of the person(s) concerned. The authority to read data carriers, such as mobile telephones, of third-country nationals during aliens detention will also be made possible.

**Review of policy on unaccompanied minors**

The current Coalition Agreement also states that with respect to the entry of unaccompanied minors, every effort will be made to realise their return, under the condition that reception is available for them locally. The letter on the review of the previous Cabinet’s policy on minors (unaccompanied or otherwise) states that the policy on this category of third-country nationals should be aligned as much as possible. In his letter of 14 December 2010 to the Dutch House of Representatives, the current Minister of Immigration, Integration and Asylum Policy stated that this review letter had many aspects in common with the measures presented in the Coalition Agreement. The Minister consequently intends to further elaborate and implement this review.

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55 Parliamentary Papers II 2009/2010, 27 062, no. 64.
Illegal Employment

The current Cabinet also intends to address and combat illegal employment. The Minister and State Secretary of Social Affairs and Employment announced in their letter of 10 March 2011 that the sanction regime for companies who are guilty of fraud will be tightened. This means, among other things, that the amounts of the fines for illegal employment and underpayment will be raised, and the amounts of the fines in the event of recidivism will be doubled.

In its letter of 8 July 2011, the Cabinet pointed out that the housing of irregular migrants is often associated with one or more forms of housing fraud, such as illegal subletting. Addressing such housing fraud requires active contribution from the municipality, as the competent authority, and from the landlords. The Cabinet is of the opinion that the administrative fine stipulated in the Housing Allocation Act will make it easier for municipalities to enforce the Housing Allocation Act.

2.6 Other relevant legislation

This Subsection provides an overview of policy and legislation which is not directly related to combating illegal stay but which may, indirectly, be of influence in this context.

Compulsory Identification Act

Since 1 January 2005, every person of 14 years of age or older must be able to present a valid identification document if the authorities so request. Since 1 January 2006, the obligation to present a valid identification document also applies in the care sector. The government wants to combat fraud in the care sector by means of compulsory identification. An example of fraud in this context is an uninsured person who attempts to get the costs of his treatment in hospital reimbursed through the use of another person’s health insurance card.

Care

As already explained in Subsection 2.1, in the Netherlands, third-country nationals who do not hold a residence permit are excluded from insurance on the basis of social health insurance policies (Exceptional Medical Expenses Act and Exceptional Medical Expenses Act) pursuant to the principle of linking eligibility for benefits to residency status, and are consequently not entitled to general medical care which is covered by these types of insurance. They are, however, entitled to the provision of medically necessary care. The costs incurred by the care providers are reimbursable on the basis of various regulations.

Education

Each child of school age has the right to education, irrespective of whether it is legally or illegally present in the Netherlands. Schools may not refuse pupils on the basis of their residence status. Furthermore, if parents cannot pay, or refuse to pay, the parental contribution, this must not have any consequences for their child’s participation in education, irrespective of whether the child is legally or illegally present in the Netherlands.

58 http://www.rijksoverheid.nl/onderwerpen/paspoort-en-identificatie/identificatieplicht
59 Parliamentary Papers II 200720/08, 19 637, no. 1207, pp. 7-8.
60 Ibid.
Problems regarding traineeships of students who are illegally present in the Netherlands

In May 2011, MP Klaver broached the issue of students who were illegally present in the Netherlands and who could not find any trainee posts due to the fact that their illegal residence status prevented the issuance of a work permit (which is required for such traineeships). The MP concerned asked the Minister whether he had the intention to fulfil the commitment made by his predecessor in office, to introduce a regulation that a work permit would no longer be required for those following a traineeship during regular further education. The Minister replied that the Cabinet did not consider it necessary ‘that these third-country nationals would do traineeships and finish the course with a diploma that would qualify them for the Dutch labour market.’

2.7 Institutional Framework

This Subsection provides an overview of the governmental institutions that make and implement policy to tackle irregular migration. In addition, it describes other stakeholders, and other agencies and implementing bodies working in the field of irregular migration. Finally, this Subsection provides an overview of the cooperation among the official institutions as well as the cooperation between official institutions and other stakeholders.

Governmental Institutions

In the Netherlands, different Ministries play a role in the implementation of policy to tackle irregular migration. As a result of the new Coalition Agreement in 2010, various portfolios were transferred from one Ministry to another Ministry. The former Ministry of Justice was, for instance, responsible for the entry of third-country nationals into the Netherlands, for duties regarding the Netherlands Nationality Act (naturalisation), and for the return of those who were not permitted to stay in the Netherlands. Within the Ministry of Justice, the State Secretary for Justice was responsible for the subfields of immigration and asylum policy. The subject of asylum and migration currently falls under the Ministry of the Interior and Kingdom Relations, with a programme Minister for Immigration, Integration and Asylum Policy.

This Minister for Immigration, Integration and Asylum Policy has overall responsibility for aliens policy, the coordination and synchronisation in the immigration process, and for implementing this policy. The Minister is furthermore responsible for the following implementing bodies: the Central Agency for the Reception of Asylum Seekers (COA), the Immigration and Naturalisation Service (IND), and the Repatriation and Departure Service (DT&V). The implementing bodies fall directly under the responsibility of the Ministry of the Interior and Kingdom Relations. The Minister furthermore maintains a relationship of authority with the Royal Netherlands Marechaussee, the Aliens Police, and the Seaport Police. The Minister is responsible for policy on aliens detention and on the removal centres of the Custodial Institutions Agency (DJI).

62 On 16 December 2011, this Minister was assigned the portfolio of Integration. Prior to that, he was Minister for Immigration and Asylum.
63 Parliamentary Papers II 2011/2012, 33 000 VII, no. 2 (Adoption of the budget).
**Directorate for Migration Policy (Ministry of the Interior and Kingdom Relations)**

The Directorate for Migration Policy (DMB) is responsible for developing national and international policies for entry, stay and return of third-country nationals. In addition, the Directorate is responsible for ensuring that the policies are implemented by the relevant implementing bodies. The DMB also supports the horizontal and vertical management of the organisations.

**Office for Direction and Management (Ministry of the Interior and Kingdom Relations)**

This office provides support in the horizontal and vertical management of the cooperating organisations.

**Immigration and Naturalisation Service (Ministry of the Interior and Kingdom Relations)**

The Immigration and Naturalisation Service (IND) is responsible for the implementation of the Dutch Aliens Policy. This means that the IND assess all applications submitted by third-country nationals who wish to stay in the Netherlands or who wish to become Dutch citizens. These third-country nationals may be refugees who are not safe in their own country; they may, for instance, also be people who want to live and work in the Netherlands; and it may concern people who have lived in the Netherlands for such a long time that they feel Dutch citizens and therefore want to naturalise.64

**Repatriation and Departure Service (Ministry of the Interior and Kingdom Relations)**

In the Netherlands, a special service, the Repatriation and Departure Service (DT&V), is responsible for supervising the independent and forced departure of third-country nationals who do not have the right to stay in the Netherlands. The DT&V is a support service of the Ministry of the Interior and Kingdom Relations.

The Minister intends to deploy the DT&V also for assisting in the departure of third-country nationals whose application for a regular residence permit has been rejected.

On the basis of its operational task, the DT&V is the discussion partner of the competent authorities of countries of origin, including diplomatic representations. The DT&V works on the basis of case management and individual arrangements. The approach is aimed specifically at the relevant third-country national. This approach is initiated the moment that the Aliens Police, the Seaport Police, the Royal Netherlands Marechaussee, or the Immigration and Naturalisation Service transfers the departure process of a third-country national to the DT&V by means of a transfer file.65

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64 www.ind.nl consulted on 20 January 2012

65 http://www.dienstterugkeerenvertrek.nl/organisatie/ consulted on 4 October 2011
**Custodial Institutions Agency**

As an agency under the responsibility of the Ministry of Security and Justice, the responsibilities of the Custodial Institutions Agency (DJI) include the enforcement of sanctions and custodial orders. The Special Facilities Department of the DJI is specifically responsible for third-country nationals who have been refused entry at the border, and irregular migrants.

**Royal Netherlands Marechaussee**

Part of the Ministry of Defence is the Royal Netherlands Marechaussee. The Royal Netherlands Marechaussee is a police organisation with military status and has a wide range of tasks in the context of national and international security. In the implementation of the Aliens Act the Royal Netherlands Marechaussee has the following tasks:

- Border control at airports and seaports, with the exception of the Rotterdam port area;
- Providing assistance in asylum procedures of asylum seekers who apply for asylum immediately at the border, including document analysis;
- Granting visas (just like the Seaport Police) at the border if the third-country national is able to prove that urgent reasons and unforeseen circumstances have prevented him from applying for a visa prior to his coming to the Netherlands;
- Participating in the Coastguard Centre to combat illegal immigration over sea;
- Performing Mobile Security Monitoring at the internal borders;
- Escorting irregular migrants in forced returns and being charged with the transfer of irregular minors to foreign authorities;
- Escorting persons by air for the purpose of the Enforcement of Criminal Judgments (Transfer) Act and on the instruction of the Public Prosecution Service (escorting Dutch citizens who are undesirable abroad).  

**Seaport Police**

The Seaport Police is part of the Rotterdam-Rijnmond Regional Police Force and is responsible for border control in the Rotterdam port area. Border control means checking people who want to cross the Dutch border. The Rotterdam port is a maritime external border of the Schengen area. The Seaport Police is responsible for checking people crossing this border. Administrative checks are carried out automatically regarding all ships entering and leaving Rotterdam. Depending on specific indicators, such as the country of origin or the country of destination, physical checks are carried out on board ships. The Seaport Police has divided its duties into four processes. The District Police, Investigation, Border Control, and Intake, Service & Support. The checks on board ships fall under the Border Control process. The Seaport Police checks crew members, passports and other documents. If a stowaway is suspected to be on board, the Port-Related Aliens Supervision Team is called in. This team is specialised in investigating irregular migration and border-crossing crime. The Seaport Police is authorised to grant visas at the border if the third-country national is able to prove that urgent reasons and unforeseen circum-

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stances have prevented him from applying for a visa prior to his coming to the Netherlands.67

Aliens Police
The Aliens Police is part of the regional police forces. It is engaged in the supervision of the legal stay of third-country nationals. The Aliens Police aims its efforts in particular at preventing cases of abuse (abuse and exploitation) and at preventing and combating the disturbance of public and legal order. With this the police want to contribute effectively to combating irregularity and as a result to security in the Netherlands.

The most important tasks of the Aliens Police are the following:

- Dealing with criminal migrants;
- Dealing with irregular migrants causing nuisance;
- Tackling migration-related crime (e.g. trafficking in human beings and forgery of documents);
- Preventing all forms of fraud by irregular migrants and engaging other public and private organisations in this.

In addition, the Aliens Police performs administrative supervision. The purpose of this is to frustrate unwanted influx and unwanted stay. This is achieved partly by enforcing the obligation to report for people who are present in the Netherlands for a short stay. This is linked to checking actual departure.68

Central Agency for the Reception of Asylum Seekers (Ministry of the Interior and Kingdom Relations)
The Central Agency for the Reception of Asylum Seekers (COA) is the organisation in the Netherlands that is responsible for the reception of asylum seekers. On the instruction of the Minister of Immigration, Integration and Asylum Policy, the COA provides accommodation to asylum seekers and assists them in preparing for their future, in the Netherlands or elsewhere. From the moment that an asylum seeker receives an initial negative decision from the Immigration and Naturalisation Service, the COA informs the asylum seeker about the possibility of voluntary return. The COA deals, in particular, with asylum seekers and refugees, and with specific groups such as unaccompanied minors. The COA is the implementing body with reception centres throughout the Netherlands.69

Social Affairs and Employment Inspectorate (Ministry of Social Affairs and Employment) The Social Affairs and Employment Inspectorate began its operations on 1 January 2012. The Social Affairs and Employment Inspectorate is a merger of the organisations and activities of the Labour Inspectorate, the Work and Income Inspectorate, and the Social Security Intelligence and Investigation Service of the Ministry of Social Affairs and

67  http://www.politie-rotterdam-rijnmond.nl/over-ons/zeehavenpolitie.aspx
68  http://www.politie.nl/ consulted on 4 October 2011
69  www.coa.nl consulted on 4 October 2011.
Employment. In the context of irregular migrants, it is its priority is to identify, locate, and tackle illegal employment, ousting of regular employees by irregular employees, and other forms of fraud and abuse that cause unfair competition on the labour market.70

**Civil Society Organisations**

In addition to the above-mentioned governmental institutions, also many civil society organisations are involved in the problems related to irregular migration. It is obvious that the activities of these organisations are more in the area of guiding and assisting third-country national without legal residence status. The International Network of Local Initiatives (INLIA) provides emergency relief to asylum seekers and supports churches in their activities for asylum seekers. The aid is provided to both asylum seekers who have exhausted all legal remedies and asylum seekers who are still following the procedure but who no longer receive reception facilities from the government.71

Organisations such as Defence for Children are committed to providing aid to specific vulnerable groups. Defence for Children manages the website iLegaalkind.nl, which provides an overview of the rights of children without valid residence permit and the most important developments in this area.72

Picum (Platform for International Cooperation on Undocumented Migrants) is committed, in particular, to helping – and standing up for the rights of – undocumented migrants in Europe.73 At the national level, the LOS Foundation (National Support Centre for Undocumented Migrants) is active in this field.74

The trade union ‘FNV Bondgenoten’ is the largest trade union in the Netherlands and is also committed to aiding undocumented migrants; migrants without residence permit can also join this union.75

**Cooperation**

With respect to activities deployed in combating irregular migration, the different organisations cooperate in various areas. The cooperation may be between government organisations, but also between government organisations and civil society organisations. Some information about a few examples of such cooperations is given below.

*Expertise Centre for Human Trafficking and Human Smuggling*

A good example in the area of cooperation between official institutions is the Expertise Centre for Human Trafficking and Human Smuggling (EMM). This is a cooperation between the National Criminal Intelligence Service, the Royal Netherlands Marechaussee, the Immigration and Naturalisation Service, and the Social Intelligence and Investi-
gation Service. It functions as a knowledge and information centre in the area of trafficking in human beings and smuggling of migrants. These organisations attempt to address the trafficking in human beings in the Netherlands. They also aim their efforts at the smuggling of migrants via the Netherlands.

**Integrated Management of External Borders**
Another example is the cooperation between the Royal Netherlands Marechaussee, the Seaport Police, and the Customs in border control in the so-called ‘Integrated Management of Border Control’. In this cooperation, the three services coordinate the deployment on a structural basis, and they exchange information for the purpose of controls at the external borders and at airports.

**Cooperation between the Repatriation and Departure Service and the International Organisation for Migration**
The Repatriation and Departure Service (DT&V) and the International Organisation for Migration (IOM) cooperate in the area of independent return. The IOM may provide financial support to migrants who wish to leave the Netherlands independently. The organisation provides this support on the basis of the REAN scheme (Return and Emigration of Aliens from the Netherlands). The IOM contributes to facilitating the assisted voluntary return to the country of origin by, among other things, giving information and advice about voluntary return and providing additional support to vulnerable groups. The activities of the IOM also include preparing the migrants and providing them with guidance in the return process (such as helping them to obtain travel documents).  

**Telephone hotline for illegal employment in the building industry**
Three trade unions in the building industry and timber sector, the Building and Woodworkers’ Union (affiliated with the Dutch Trade Union Federation), the National Federation of Christian Trade Unions in the Netherlands, and the collective industrial organisation Vakvereniging Het Zwarte Corps, cooperate in combating illegal employment in the building industry. Together with the Social Affairs and Employment Inspectorate, these unions seek to curb irregularity in the building industry. A telephone hotline has been set up to collect all reports of illegal employment, which reports are followed up by the Social Intelligence and Investigation Service.

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76 Parliamentary Papers II 2011/2012, 33 000 VII, no. 2 (Adoption of the budget).
3 PRACTICAL MEASURES TO REDUCE IRREGULAR MIGRATION

This Section provides an overview of practical measures undertaken by the Netherlands to tackle irregular migration on the basis of the four subsequent stages that can be identified in irregular migration.

3.1 Pre-Entry

As stated in Subsection 2.1.1, one of the starting points of Dutch immigration policy is that Dutch authorities verify whether a third-country national complies with the entry conditions as much as possible before his entry into the Netherlands. This applies not only to short stays but also to third-country nationals who wish to settle in the Netherlands for a longer period of time. This basic principle ensues from the national policy framework. Below is an overview of practical measures undertaken by the Netherlands to tackle irregular migration before the migrant arrives in the Netherlands. The relevant measures are often undertaken in the countries of origin or the countries of transit.

Immigration Liaison Officers

In order to combat illegal immigration, the Netherlands has maintained an active network of Immigration Liaison Officers (ILOs) in the key countries of origin and countries of transit since 1997. Initially, the focus was primarily on the prevention of entry into the Netherlands of undocumented or incorrectly documented foreign nationals, and the activities were mainly aimed at giving on-site advice to airline companies. Over the course of time, however, the range of duties has continued to develop. As a result of this, information has been collected on increasingly diverse subjects related to migration; various parties have been trained in the area of document analysis and Schengen acquis, and by now, the facilitation and investigation of possibilities of return have become one of the core duties of the ILO. In addition, the Netherlands has participated - and continues to participate - in EU projects.

Swift Action Teams Pilot Project

One measure to identify minor third-country nationals who run the risk of falling victim to activities of human traffickers or migrant smugglers at an early stage and to prevent them from ending up in a situation of exploitation in the Netherlands was launched in 2008. It concerned the Swift Action Teams Nigeria. The deployment of these teams in Nigeria was primarily to prevent possible victims of trafficking in human beings/smuggling of migrants, as well as other undocumented or incorrectly documented persons, from travelling to the Netherlands from Nigeria by air. Such a team is composed of employees from the Royal Netherlands Marechaussee and an employee from the Immigration and Naturalisation Service. The teams have knowledge about vulnerable groups
and document fraud. During the pilot project, the teams checked passengers with the Netherlands as destination on the basis of risk profiles and documents.  

**Capacity building in Liberia**
The Immigration and Naturalisation Service and the Repatriation and Departure Service cooperated with Ghana and the United Nations in a capacity building project for the benefit of the Liberian immigration authority. It concerned the project ‘Strengthen Institutional Capacity and Competence of the Bureau of Immigration and Naturalisation, Liberia’. The project started in June 2009 and ended in June 2011. The project was aimed at training more than a hundred Liberian recruits to become immigration workers and training twenty Liberian immigration workers to become trainers themselves. This project took place at the Ghanaian training school of the immigration authority.

**The Regional Immigration training Academy (RITA)**
The Netherlands has used funds for migration and development to support various activities in countries of origin and countries of transit with a view to institutional development in the area of migration management. The Netherlands has contributed, among other things, to the RITA project.
The purpose of this project is to expand the capacity of 600 immigration and customs officers from the East-African community.

**i-Map**
The Netherlands supports the Mediterranean Transit Migration (MTM) i-Map project of the International Centre for Migration Policy Development (ICMPD). The MTM i-Map project is an interactive website mapping irregular migration around the Mediterranean Sea. The MTM i-Map was launched by the ICMPD in January 2007 and is a good example of the cooperation between the partner states engaged in the MTM dialogue.

The MTM i-Map facilitates the practical cooperation between the Arabian and European partner states in the area of migration, one of the reasons why the Netherlands is supporting this project. The object of the MTM i-Map is to support sustainable information exchange among the partner states in the area of migration. The MTM i-Map started as an interactive map about irregular migration routes in Africa, the Middle East, and the Mediterranean, and as a starting point for further development of a sound information exchange and analysis instrument. By now, the MTM i-Map has entered its fourth stage, the so called Dialogue in Action'. Until 2013, the i-Map will receive funds within the framework of the Thematic Programme.

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80 Parliamentary Papers II 2009/2010, 30 573, no. 54.
81 In order to receive funds for specific activities, the Member States and/or non-governmental organisations may submit project proposals from the ‘Thematic programme for the cooperation with third countries in the areas of migration and asylum’ (hereinafter referred to as ‘Thematic Programme) of the European Commission. The Thematic Programme has five objectives: fostering the links between migration and development; promoting well-managed labour migration; combating illegal immigration and the facilitation of the readmission of illegal immigrants; protecting migrants against exploitation and exclusion; and promoting asylum and international protection, including through regional protection programmes. See Dutch House of Representatives, session year 2009-2010, 30 573 no. 54.
In addition, the Netherlands contributed actively to the development of a similar i-Map in 2010. This is the BMP i-Map (Building Migration Partnerships), which focuses on the East European external borders.82

External Processing

By letter of 29 September 2009, the former State Secretary for Justice requested the Advisory Committee on Migration Affairs (ACVZ) to examine whether it is possible to process asylum applications outside the territory of the European Union, the so-called ‘external processing’. This has been a regularly recurring theme in debates on asylum policy in the Netherlands. According to the ACVZ, external processing is primarily providing third-country nationals the option to submit an application for international protection in a safe area outside the EU and to gain entry into the EU when the application is granted. The application would in that case be processed by and/or under the responsibility of the EU, i.e. a Member State of the EU. Asylum seekers who travel directly to a location outside Europe would in that case no longer be forced to make the often dangerous journey to Europe before being able to apply for asylum. In EU practice, external processing does not yet exist.

On 15 December 2010, the ACVZ concluded in its advisory report ‘External Processing’ that it is not yet feasible to assess asylum applications outside Europe. According to the ACVZ, external processing is prevented by legal and practical obstacles. The ACVZ was of the opinion that these legal obstacles were unsolvable. It furthermore stated that it was still doubtful as to whether the practical conditions for external processing could be met. The cooperation of other, non-EU countries would, for instance, be necessary. But it would also have to be possible to guarantee careful procedures and proper reception conditions.

If it were decided to develop external processing, the ACVZ recommended doing so in the European context. This will, however, not be possible until asylum policies and asylum legislation of the EU countries have been harmonised to a greater extent.83

3.2 Entry

Below is an overview of the measures undertaken by the government at the borders, in order to prevent an increase in the number of people staying in the Netherlands without residence permits.

Border controls

In February 2006, the Cabinet in office at that time announced an action plan to improve external border control, partly in response to the report ‘The Use of Border Controls in Counterterrorism’ (Gebruik van grenscontrole bij terrorismebestrijding), which was published by the Court of Audit on 28 September 2005. Most of the intended measures have been implemented. These measures include, for instance, the linking of informa-
tion systems and the receipt of passenger and crew lists prior to arrival at the border. The above-mentioned cooperation of the Royal Netherlands Marechaussee, the Seaport Police, and the Customs in the ‘Integrated Management of Border Control’ is a corollary of this action plan. In this cooperation, the three services coordinate the deployment on a structural basis, and they exchange information for the purpose of controls at the external borders and at airports. In addition to this, the strengths and weaknesses of the border control system were further identified, which has resulted in further improvements having been made to border control in the past few years.  

**Port-Related Aliens Supervision**

In 2009, the Port-Related Aliens Supervision (HVT), which was established in 2008, was developed in further detail in 2009 through the training of staff for this specific task. The aim of this HVT is to combat illegal immigration (and cross-border crime) at the earliest possible stage, in and around the ports and the coastline within the competence area of the Seaport Police, in addition to performing the border control by means of mobile checkpoints. HVT is performed on a project basis, and is risk-driven.

**Border Management Renewal Programme**

On 13 July 2009, the Border Control Framework Document was presented to the Dutch House of Representatives. The measures announced in this document included the Border Management Renewal Programme. It is the ambition of this programme to develop an effective and efficient border control process, with maximum use being made of automated control and risk-driven actions on the basis of information about passengers and their luggage received in advance. The intention is to find a balance with this programme between maximum security and optimal mobility. This programme is a cooperation under the umbrella of the Ministry of the Interior and Kingdom Relations between the Royal Netherlands Marechaussee, the Customs, the Seaport Police, the Ministry of Security and Justice, the Ministry of the Interior and Kingdom Relations, the National Coordinator for Counterterrorism and Security, the Immigration and Naturalisation Service (IND), the Schiphol Group, and KLM Royal Dutch Airlines.

Of particular importance for the purpose of combating irregular migration is the Advanced Passenger Information (API) programme. API consists of passport data supplemented by flight details. Pursuant to the Aliens Act, the border control authorities may oblige airline companies to collect and provide passenger information. This is an implementation of Directive 2004/82/EU of 29 April 2004 on the obligation of carriers to communicate passenger data (the so-called API Directive).

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87 Schiphol Group owns and operates, among other things, Amsterdam Airport Schiphol. http://www.schiphol.nl/SchipholGroup/Company1.htm
88 Ibid. p. 75.
According to this Directive, it is essential that all Member States introduce provisions laying down obligations on air carriers transporting passengers into the territory of the Member States, in order to combat illegal immigration effectively and to improve border control.

To date, API has been provided and processed in the Netherlands only on a limited scale since the implementation of this API Directive in immigration law. A pilot project was launched in 2009. On the basis of the experience gained during this pilot project, it has been concluded that by receiving passenger information in advance, the border control authorities are able to take more efficient action. It was consequently decided to impose the obligation, which would come into effect on 1 January 2012, to provide API on airline companies that carry out flights to 27 specific destinations which are considered a risk from the perspective of irregular migration.89

**Quality management system**

In 2010, the Royal Netherlands Marechaussee implemented a quality management system, which is - for the time being - specifically intended for border control at Amsterdam Airport Schiphol, but there are plans to implement this system for use by the entire organisation of the Royal Netherlands Marechaussee. The system contains seven steps for border guards to follow, with the border guard being personally responsible for his compliance with this system. The system is intended to improve the knowledge and quality levels of the border guards.90

**Migration management using dogs**

Since December 2010, the Royal Netherlands Marechaussee has used tracker dogs trained to identify the human scent, also referred to as ‘migration tracker dogs’. The Royal Netherlands Marechaussee has two dogs of this type. They have proved their added value, not only in border control tasks in the Netherlands, but also in the Frontex context in border control tasks on EU external borders. A dog has already been used twice during operations in Greece.

The major advantage of this tracker dog is that much time is saved in checking large vehicles. In the case of trucks, in particular, it can be quickly established whether persons are present anywhere in or under the vehicle.

### 3.3 Stay

This Subsection addresses the measures undertaken to control irregular migration in the Netherlands. Irregular migration in this context may relate to persons who have illegally entered the Netherlands, but also to third-country nationals who have legally entered the Netherlands (e.g. overstayers).

**Benefit Entitlement (Residence Status) Act**

Although the Benefit Entitlement (Residence Status) Act has been in force for some time, this Act should not be ignored in an overview of the measures undertaken in the

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Netherlands to combat illegal stay. The essence of this Act was already discussed in Subsection 2.1. The purpose of this Act is to discourage illegal stay and to prevent irregular migrants from acquiring a ‘semblance of regularity’, as a result of which they become - with the passage of time - difficult to remove.

**Evaluation of the Benefit Entitlement (Residence Status) Act**

The Benefit Entitlement (Residence Status) Act was evaluated in 2001. In the relevant report, the authors concluded that the Act could be considered effective with regard to the exclusion of third-country nationals without the correct residence status (the authors pointed out, however, that, in practice, these third-country nationals often still received - government-subsidised - humanitarian aid). In order to answer the question of whether the Benefit Entitlement (Residence Status) Act was necessarily the best means to achieve this goal, the researchers examined consistency, proportionality, and the presence of policy alternatives.

They concluded that the Benefit Entitlement (Residence Status) Act contributed to consistency in the entry policy pursued. At the same time, they established that the implementation of the Benefit Entitlement (Residence Status) Act was precluded by a failing return policy. Third-country nationals cannot (or do not want to) return, as a result of which they continue to be part of the local community. Municipalities felt forced to seek creative solutions, which resulted in an inconsistent implementation of the policy at the local level.

With regard to proportionality, the report posed the question of whether the relationship between policy efforts and the small numbers of exclusions was in proportion. The result of the 300,000 checks that were carried out was that, ultimately, eight benefit payments had to be terminated on the basis of the Benefit Entitlement (Residence Status) Act. Out of the 12,400 cases examined at the Social Insurance Bank, ultimately 1,917 were excluded; these exclusions mainly concerned child benefit payments. The authors wondered, in particular, whether the exclusion of specific groups of migrants who were staying legally in the Netherlands (among others, asylum seekers who had submitted a repeated application and Dublin claimants) was actually proportional.

The authors also posed the question of whether any policy alternatives existed to realise the objectives set, i.e. the objectives of deterring the influx and facilitating the outflow of third-country nationals without right of residence. According to the authors, more effect was to be expected from a tightening of return policy and a stringent approach to mala fide employers.

In a response to the report, the Minister observed that the Act had proved to be effective. She concluded that third-country nationals who were staying in the Netherlands without a residence permit were no longer entitled to provisions on the basis of the principle of linking eligibility for benefits to residency status.

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**Intensifying Aliens Supervision (in response to the Policy Document on Illegal Aliens)**

For the purpose of intensifying aliens supervision, the Cabinet decided to make agreements with the police about the priorities for (a more active) aliens supervision for the period 2004 to 2006. For this period, performance agreements were made, among other things, about the number of identities and nationalities to be established, with the ultimate purpose of increasing the actual number of removals.\(^{93}\) This measure was not undisputed:

> ‘One measure that was implemented, however, was the quota on irregular migrants of Minister Verdonk [for Immigration and Asylum]. Under her influence, the performance contract of the police included the provision that the combined the police forces had to ask 40,000 third-country nationals for their identification documents, and had to detain 11,883 third-country nationals who were found to be illegally present in the Netherlands. A police force that would achieve its quota, could count on a bonus of approximately 240,000 euros. “Tactless”, was the opinion of many people with respect to this measure. Disapproving notes were also heard among the forces. ‘If the Minister suddenly decides that we must apprehend third-country nationals,’ said the Chairman of the Works Council of the Limburg South Police Region in Vrij Nederland magazine, ‘and he attaches a bonus of a million euros to it, I can understand that my Commissioner of Police would want to get a piece of the pie. But whether it is ethical to promote this type of activities for a financial consideration? I do not think so.’

Rita Verdonk and Job Cohen, the Mayor of Amsterdam, who signed the performance contract on behalf of all Commissioners of Police, hastened to say that this did not mean that the police would ‘go hunting’ for irregular migrants, and that priority would be given to ‘criminal irregular migrants’ anyhow. But appearances were soon against them.\(^{94}\)

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Optimise cooperation between the organisations in the criminal justice system and those in the immigration process

Many policy measures in the area of irregular migration have been linked to combating crime. For the purpose of optimising the cooperation between the organisations in the criminal justice system and those in the immigration process, a special protocol was developed – as early as in 2002 – that was referred to as the Protocol for Foreign Nationals in the Criminal Justice System. Irregular migrants who are arrested and convicted for a crime first fall under the scope of criminal law. The protocol regulates, among other things, that the return procedure is already initiated during the process of detention under criminal law, so that the irregular migrant can be removed immediately at the end of the detention period under criminal law. In 2005, the Protocol for Foreign Nationals in the Criminal Justice System was revised and the Aliens Act Implementation Guidelines were also amended.\(^{95}\)

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\(^{94}\) Griend, van de R. ‘Veel angst, weinig effect; Twintig jaar illegalenbeleid.’ (Much fear, little effect; Twenty years of immigration policy). Vrij Nederland 18 February 2008

**Remove-Detain Programme**

The purpose of this programme was, among other things, to provide an actual follow-up to the public order policy.96

The Cabinet was of the opinion that policy on this point could be implemented best from the principle of ‘remove or detain’. This meant in concrete terms that all efforts should be aimed at removing criminal irregular migrants.97 In order to be able to detain irregular migrants longer under criminal law, it was decided to extend the custodial order for placement in an Institution for Habitual Offenders to include irregular migrants, with effect from 1 June 2009.98 This order makes it possible to place very active adult habitual offenders in an Institution for Habitual Offenders for a maximum period of two years. This order was formerly not applicable to irregular migrants, as the custodial order for placement in an Institution for Habitual Offenders is aimed at reintegration into society. This does not apply to irregular migrants, and in their regard the order is executed fully within the institution.

The Cabinet also retained the possibility to impose a hospital order on third-country nationals who had received an exclusion order. The hospital order is a treatment order imposed by the court on people who have committed serious offences and suffer from a psychiatric illness or disorder. Whereas treatment is usually aimed at resocialisation, in respect of irregular migrants this treatment is aimed at returning them to their own country.99

The establishment of the Task Force on Foreign Nationals in the Criminal Justice System, mentioned earlier in this report, followed from the desire to establish the best possible relations between the organisations in the criminal justice system and those in the immigration process, in order to be able to implement measures intended specifically for third-country nationals in the criminal justice system. The most important tasks of this Task Force are the following:

- To identify and solve bottlenecks in the Protocol for Foreign Nationals in the Criminal Justice System;
- To realise the necessary relations between the organisations in the criminal justice system and those in the immigration process in order to ensure the best possible cooperation between these organisations;
- To continue the programme-based approach to ensure the removal or detention of criminal irregular migrants;
- To draw up an action plan describing the bottlenecks, the objectives to be met, the results to be achieved, the activities to be undertaken, and the role of the participating organisations;
- To inform the Minister and State Secretary of Justice about the progress of the activities of the Task Force.100

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100 Decision of the Minister of Justice and the State Secretary for Justice of 26 January 2010, no. (5638955) establishing the Task Force Foreign Nationals in the Criminal Justice System (Decision establishing the VRIS Task Force), Government Gazette 2010, no. 1791.
Measures to increase the number of exclusion orders to be imposed on irregular migrants

In March 2008, a pilot project was launched to gain experience in consistently imposing exclusion orders on people who had been stopped by the police several times for being found to be illegally present in the Netherlands. This pilot project was consequently aimed at third-country nationals who had repeatedly been guilty of violating the Aliens Act. The pilot project ended on 1 November 2009. The Minister of Justice informed the Dutch House of Representatives about the results of the pilot project on 7 October 2010. According to the Minister, the pilot project emphasised the importance of enforcing immigration law to combat serious forms of nuisance and crime. It should be noted that the pilot project resulted in the identification of only three cases where exclusion orders were issued for persons being repeatedly found to be illegally present in the Netherlands.

Agreement with the police

In order to step up aliens supervision, a national agreement was entered into with the police. On 10 October 2008, the former Minister of Justice - also on behalf of the Minister of the Interior and Kingdom Relations, and the State Secretary for Justice - and the Chairman of the Board of Chief Commissioners signed the Agreement Outlining the Police Duties in Respect of Foreign Nationals 2009-2011. In the context of the duties in respect of third-country nationals, the efforts of the police were aimed, in particular, at criminal migrants who were either illegally or legally present in the Netherlands, asylum seekers who had exhausted all legal remedies and/or irregular migrants, as well as migrants who were disturbing public order or caused nuisance otherwise.

Pilot project for protected reception of unaccompanied minors

The Cabinet was also of the opinion that attention should be paid to victims of irregular migration, more in particular to unaccompanied minors. As a result of the fact that many unaccompanied minors disappeared from the reception centres, measures were undertaken to protect unaccompanied minors at risk against the danger of becoming victims of trafficking in human beings and smuggling of migrants. The pilot project in this context started on 1 January 2008. The duration of the pilot project was two years. The purpose of the pilot project was to prevent unaccompanied minors between 13 and 18 years of age from disappearing and ending up in possible situations of exploitation. The unaccompanied minors were screened on the basis of risk profiles upon arrival at Amsterdam Airport Schiphol. When the unaccompanied minors appeared to be at risk, they were placed in protected reception under the responsibility of the guardianship agency ‘Nidos’. It was also possible to make such a decision at a later procedural stage. Protected reception consists of reception in small-scale living units with 24 hours’ supervision a day (at least during the first three months) in order to prevent the unaccompanied minors from disappearing. The guidance provided to these unaccompanied minors was aimed at increasing their knowledge, skills and ability to assert themselves, and offering alternative prospects for the future. In this context, they specifically received information about trafficking in human beings, exploitation, and prostitution. In order to prevent unaccompanied minors from disappearing, a specialist unit processed the

applications submitted by unaccompanied minors in protected reception on an accelerated basis. In this context, the IND aimed to arrive at a decision within three months. After the first rejection, the Repatriation and Departure Service also provided intensive guidance to these unaccompanied minors to prepare them for return. If unaccompanied minors still disappeared from protected reception, despite this additional supervision, this was immediately reported to the police who immediately started a comprehensive investigation.  

The pilot was evaluated by the Research and Documentation Centre. The former Cabinet presented the evaluation report to the Dutch House of Representatives on 18 June 2010.  

The most important findings from the report were the following:  
- While the pilot project was being executed, the percentage of unaccompanied minors disappearing from reception centres declined across the board. The percentage of unaccompanied minors disappearing from protected reception corresponded with the percentage for regular types of reception during the duration of the pilot project. In its response, the Cabinet considered that the fact that the percentage of unaccompanied minors disappearing from protected reception was not lower was probably due to the circumstance that of all the unaccompanied minors registered with the IND, the unaccompanied minors running a higher risk of disappearing were staying in protected reception.  
- The pilot project was initially aimed, in particular, at reducing the number of disappearances among Indian boys and Nigerian girls by means of protective measures; this was later followed by Chinese and Guinean unaccompanied minors. The influx of unaccompanied minors holding these nationalities was reduced or had remained the same, whereas the influx of unaccompanied minors in the age category of 13 to 18 years of age had increased.  
- The number of unaccompanied minors that returned within the framework of the pilot project on protected reception was limited, and concerned six young people to date. The pilot project was primarily aimed at protecting unaccompanied minors at risk against disappearing and exploitation.

The letter and Annex of 7 July 2011 from the Minister for Immigration and Asylum Policy to the Dutch House of Representatives states that the protected reception of unaccompanied minors has been continued.

Measures against the improper use of regular entry procedures
The submission of a regular application (i.e. not an asylum application) entitles the applicant to a legal stay in the Netherlands as long as the processing of the application takes, also with regard to applications with are certain to fail. The procedures associated with such applications could easily take eighteen months. This resulted in the submission of such applications that were certain to fail, merely for the purpose of obtaining temporary legal stay. In this context, legal consultancy firms and foundations - both

103 Ibid p. 31.  
mala fide and bona fide - were involved. In April 2009, the Cabinet decided to take action against such practices by reducing the period required for processing regular applications and by amending the relevant legislation. Several years prior to that, the IND had also established the so-called M50 desks to prevent abuse and improper use of the entry procedures.106

**Inspections to tackle illegal employment**

Every year, the Social Affairs and Employment Inspectorate (formerly the Labour Inspectorate) conducts approximately 10,000 inspections at companies in order to combat illegal employment.

A third-country national who is found to be present in the Netherlands without a residence permit and in respect of whom it is established that he or she is performing paid work, is by definition illegally employed.

In order to tackle illegal employment, the Cabinet decided in 2004 to oblige employers to register employment on the first working day (referred to as ‘first day registration). This measure is enforced by fines. The first day registration enables the inspectorate and investigation services to take targeted action against illegal employment.

It was also decided to establish a national network of intervention teams. The Cabinet considered the cooperation between governmental organisations in the area of repressive control of major importance to tackle illegal employment. The Social Affairs and Employment Inspectorate, the Tax and Customs Administration, the Netherlands Employees Insurance Agency, the Social Insurance Bank, the municipalities, and the Public Prosecution Service cooperate in these teams.107

The effectiveness of government measures aimed at illegal employment have been under discussion. In the book titled *Onzichtbaar achter glas (Invisible behind Glass)*, the authors concluded that ‘the number of years of service fulfilled by irregular migrants has decreased.’ The authors wondered, however, whether this effect would also have been achieved without the coming of Polish workers who exercise their right of free movement of persons. It is conceivable that part of the work that used to be performed by illegal employees is currently being performed by workers from the East European EU countries. The authors stated that, where illegal employment still occurs, ‘the measures have promoted deterioration of the employment relationships, fraud, and improper competition.’ According to the authors, the measures have ‘adverse effects that make the most vulnerable people even more vulnerable.’108

**Mobile Security Monitoring (formerly Mobile Supervision of Aliens)**

By the entry into force of the Schengen Agreement, the border controls at the land borders of the Netherlands, Belgium, and Germany were no longer performed. Although these controls between the Schengen countries are no longer performed, people must still be able to provide proof of their legal residence.

Several countries have implemented measures to tackle undesired illegal immigration and crime. In the Netherlands, the Royal Netherlands Marechaussee has been charged with Mobile Security Monitoring at the internal borders with Belgium and Germany since May 1994. The purpose of these controls is to tackle illegal immigration and all forms of crime.

Controls are carried in the area behind the border and random checks are carried out throughout the Netherlands, on the roads, in the trains, on water, and at air traffic.

In 2001, a study into the effectiveness of Mobile Supervision of Aliens was conducted, on the instructions of the Research and Documentation Centre. Since 2001 no new evaluations into the effectiveness of this measure were conducted. According to the Royal Netherlands Marechaussee controls nowadays are much more effective as they make use of Information Guided Acting. This means that information from the police is used by the choice of the moment and location of the controls. Moreover by the selection of cars profiles are being used. Besides these adjustments the Royal Netherlands Marechaussee has developed the @MIGO-BORAS system. The purpose of this system is to provide the Royal Netherlands Marechaussee technical support in the performance of its duties in the area of enforcement of the Aliens Act. The @MIGO-BORAS system consists of camera positions (fifteen permanent and six mobile camera positions) at the main frontier roads with Belgium and Germany. This system is capable of observing traffic patterns and - on the basis of general data of target group profiles – of reporting which passing vehicle may be interesting to check.

The Trafficking in Human Beings and Smuggling of Migrants Information Group
The Trafficking in Human Beings and Smuggling of Migrants Information Group (MIG) is part of the IND Information and Analysis Centre (INDIAC). The MIG analyses data in the area of trafficking in human beings, smuggling of migrants, and other migration crime (such as entry fraud and illegal employment). The MIG aims to contribute to the administrative, preventive, and criminal-law approach to trafficking in human beings, smuggling of migrants, and related offences, both at the national and international level. The MIG receives its information from various sources. MIG passes on any signs observed to the Expertise Centre for Trafficking in Human Beings/Smuggling of Migrants, operating under the direction of the National Police Services Agency (see also Subsection 2.2).

3.4 Pathways out of irregularity
This Subsection describes, among other things, which ‘pathways’ exist in the Netherlands to escape irregularity or to prevent irregularity. The possibilities of legal assistance for irregular migrants are also discussed. Attention is subsequently paid to the situation that arises if such ‘pathways’ are not available. Finally, this Subsection will deal with the issue of return.

109 Witte R., (et al) (2010). On the basis of the results of this study it was concluded that ‘an effective contribution to combating illegal immigration by Mobile Supervision of Aliens should strongly be doubted. This doubt relates both to the repressive function and the preventive function of Mobile Supervision of Aliens’.


3.4.1 A permit as pathway out of irregularity

The circumstance that a migrant is illegally staying in the Netherlands does not preclude the possibility that he or she can develop ties with the Netherlands. As stated earlier in this report, until the entry into force of the Benefit Entitlement (Residence Status) Act, irregular migrants could even make use of certain collective provisions.

It is settled case law that long-term stay without residence permit in itself does not create any entitlement to residence in the Netherlands. In the past, specific policy criteria for certain categories of migrants were occasionally made known, in the context of assessments of cases for compelling humanitarian reasons. The background to these schemes and settlements was often that the stay of many of these third-country nationals who had been illegally present in the Netherlands for a long time without residence permit had been known to the Dutch authorities for years, without any action having been taken against them by these authorities.112

Policy on irregular migrants able to prove long stay

In the nineties of the previous century, a settlement was announced for the category of irregular migrants who had been in the Netherlands for a very long time and who were able to prove this.

One-off amnesty

In 2003, at the time of the Balkenende III Cabinet, the so-called one-off amnesty was announced. It concerned a defined group of asylum seekers who had stayed in the Netherlands for a long period of time (since before 27 May 1998) and who were still awaiting a final decision on their initial asylum application on 27 May 2003.

Settlement of the Legacy of the Former Aliens Act

A more recent settlement, and also the last regularisation to date, is the Settlement of the Legacy of the Former Aliens Act, also referred to as the general pardon. When, after fierce political debates at the end of 2006, a temporary stop on removals had been announced for those categories of third-country nationals who could possibly fall under the general pardon, a compromise was reached about a general pardon during the coalition negotiations for the Balkenende IV Cabinet.113 Asylum seekers who had exhausted all legal remedies and who had still submitted their asylum application under the former Aliens Act (the Aliens Act of before 1 April 2001) could qualify for a residence permit subject to specific conditions.

In the Coalition Agreement, the implementation of this settlement was linked to a number of conditions. Firstly, an agreement had to be reached between the central government and the municipalities, united in the Association of Netherlands Municipalities, about the implementation of the settlement and the consequences thereof. The following starting points were used:

- The municipalities were to be responsible for housing and integration of the permit holders.

113 INDIAC-NL EMN NCP (2007)
The municipalities were expected to cooperate in the return of third-country nationals.

An end should be made to municipal temporary accommodation or the financing thereof for asylum seekers who had exhausted all legal remedies and who were no longer legally present in the Netherlands.

Secondly, the intention to improve the entry procedure for asylum seekers and to prevent new arrears from developing was linked to the general pardon.

The agreement with the Association of Netherlands Municipalities was finally concluded on 25 May 2007. After an extensive debate in the Dutch House of Representatives, the so-called Settlement of the Legacy of the Former Aliens Act entered into force on 15 June 2007. By letter of 9 December 2008, the State Secretary for Justice informed the Dutch House of Representatives that the Settlement would end on 1 January 2009. Finally, approximately 30,000 third-country nationals were granted residence permits in the context of this Settlement.

In Subsection 2.1, the comment was already made with regard to these regularisation measures that most of the third-country nationals who were finally granted residence permits pursuant to this Settlement had not been staying illegally in the Netherlands, but were often still engaged in the procedure and were awaiting a final decision on their initial or repeated application.

Discretionary power of the Minister

In addition to the settlements and schemes described above, all of which are of a category-specific nature, the Dutch Minister also has the option to decide to approve the residence and to grant a regular residence permit in individual cases.

All restrictions under which a regular residence permit may be granted are listed in the Aliens Decree. The Minister for Immigration, Integration and Asylum Policy has, however, the discretionary power (decision latitude) to grant a regular residence permit under a different restriction from those listed in the Aliens Decree. This discretionary power has been laid down in Article 3.4(3) of the Aliens Decree. This power may be exercised in the following ways. When unforeseen circumstances are of a category-specific nature, the Minister will usually exercise this power to set a policy rule for the entire group. In addition, special individual situations may also cause the Minister to exercise his discretionary power to grant a residence permit.

This power is limited to issuing regular residence permits. Asylum residence permits can be issued only pursuant to Section 29 (a) up to and including (f) of the Aliens Act. An asylum procedure followed by an asylum seeker can consequently never result in the issuance of a regular residence permit through the exercise of this discretionary power on the basis of Article 3.4(3) of the Aliens Decree. If a third-country national submits a

114 INDIAC-NL EMN NCP (2008).
regular application after the asylum procedure, this may, of course, result in the issuance of such a regular residence permit.

The Minister will usually exercise the discretionary power only when very special individual circumstances of the third-country national lead to the conclusion that an extremely distressing situation is concerned, whereby the third-country national does not qualify for an asylum residence permit or for a regular residence permit on the basis of current policy.\textsuperscript{116}

It sometimes also happens that individual cases result in adjustments to asylum policy. Below is a recent example of the drafting of such a policy adjustment (see the box below), by way of illustration.

\begin{quote}
In the Netherlands, the return of minors, whether or not accompanied, has been an issue of discussion with some regularity. The majority of cases concern children who have been in the Netherlands for a considerable period of time and who, often after years of long drawn-out legal proceedings, are still supposed to return to their country of origin. In 2010, the MPs Spekman and Anker drew attention to this problem. On 21 April 2010, they submitted a motion in which they requested the Cabinet to include a restriction in the Aliens Act and the Aliens Decree on the basis of which a minor child of a third-country national could obtain a residence permit, whereby the state of being rooted in Dutch society was one of the conditions stated.\textsuperscript{117} In his letter of 7 December 2010, the Minister for Immigration, Integration and Asylum Policy let it be known that he considered this motion irresponsible.\textsuperscript{118}

In the meantime, the 14-year old Afghan girl Sahar had caused quite some commotion. In 2004, the initial asylum application of Sahar’s family was rejected. After the family had stayed in Sweden for a short time, the family submitted a repeated asylum application. This application was also rejected. In January 2011, the Court held the family’s appeal well-founded. The Court assumed that the daughter had been raised according to Dutch views since she was a child, and that she had acquired those views and corresponding life style.

After the Minister had requested the Minister of Foreign Affairs to report specifically on the situation of girls of school age in Afghanistan, he notified the Dutch House of Representatives on 8 April 2011 that Sahar and her family would be granted residence permits.\textsuperscript{119} The Minister subsequently announced a new country-specific asylum policy that was included in the Aliens Act Implementation Guidelines on 2 May 2011.
\end{quote}

Third-country nationals who cannot leave the Netherlands through no fault of their own Another category of third-country nationals to whom temporary regular residence permits may be granted automatically are third-country nationals who cannot leave the Netherlands through no fault of their own.

\textsuperscript{116} INDIAC – NL EMN NCP (2010a), pp. 30-31.
\textsuperscript{117} Parliamentary Papers II 2009/2010, 19 637, no. 1340.
\textsuperscript{118} Parliamentary Papers II 2010/2011, 19 637, no. 1379.
\textsuperscript{119} Parliamentary Papers II 2010/2011, 19 637, no. 1410.
The basic principle of Dutch policy is that all asylum seekers who have exhausted all legal remedies are able to return to their countries of origin. Special situations may, however, still occur, as a result of which the third-country national cannot leave the Netherlands because he cannot acquire the required travel documents, whereas there are no doubts about the data provided by him about his identity and nationality. An example of this situation is when the third-country national is stateless and he cannot obtain re-entry to the country where he had continuous residence.

In these cases, the third-country national may qualify for a residence permit under the restriction ‘stay as a third-country national who cannot leave the Netherlands through no fault of his own’.

The third-country national is personally responsible for proving on the basis of evidence that can be verified objectively that the authorities of the country of origin or of the country of continuous residence will not render any cooperation in his return. The third-country national has his own responsibility in the attempts to obtain the required cooperation from the relevant authorities and to obtain the required travel documents. There are three categories of third-country nationals who qualify for resident permits on the basis of policy on third-country nationals who cannot leave the Netherlands through no fault of their own. These categories are the following:

- Third-country nationals who have attempted to leave without success;
- Unaccompanied minors who have exhausted all legal remedies;
- Third-country nationals who cannot leave for medical reasons.120

Unaccompanied minors who have exhausted all legal remedies qualify for such a residence permit because, if the government has assumed the duty of care for a minor for a period of three years or longer without procuring the return of an unaccompanied minor, it consequently indicates that the government is not capable of realising the return in the case concerned. If this is not the fault of the third-country national and he has not yet reached the age of 18 years, this third-country national may qualify for a regular residence permit.121

**B9 Scheme**

Victims of trafficking in human beings who report to the police against their traffickers will qualify for a temporary residence permit. Policy to this end was elaborated in Chapter B9 of the Aliens Act Implementation Guidelines, hence the name ‘B9 Scheme’. Since the autumn of 2007, this scheme has also applied to victims who do not wish to report to the police, but who wish to cooperate in the investigation and prosecution in other ways. This policy has been harmonised within the EU by the implementation of Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings.122

122 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. OJ EC 2004, L 261, pp. 19-23.
Legal aid
Anyone who needs legal assistance but cannot afford this himself is entitled to government-funded legal aid. ‘Irregular migrants’ are also entitled to government-funded legal aid.

Council for Legal Aid
An irregular migrant will usually not be able to pay lawyer’s fees. The lawyer may submit an application for an appointment as a lawyer in a legal aid case to the Council for Legal Aid for the costs incurred in connection with the legal aid provided to the irregular migrant. For the purpose of this appointment, the lawyer (or mediator) is normally required to submit the client’s Citizen Service Number (tax and social insurance number) or an alien registration number, but this is often not possible with regard to irregular migrants. It is, however, still possible to submit such an application for an appointment as a lawyer in a legal aid case. This may be done in the following way:

Declaration of Support
For the purpose of applying for legal aid, it is important that the irregular migrant is able to submit a declaration from someone who is providing him with material support. This person may be a family member, a relative, friends, or someone from the church who is supporting the irregular migrant. A note in which, for instance, the family member declares that he is providing material support to the irregular migrant is sufficient. The point is that it must be clear for the Council for Legal Aid that someone (in this case, the irregular migrant) does not have sufficient capital to pay for legal aid. The lawyer must submit this note together with the application for appointment as a lawyer in a legal aid case.

No Declaration of Support
If someone is not able to submit a declaration, the Council for Legal Aid will not be able to assess the amount of capital that the ‘irregular migrant’ possesses. In such a case the ‘irregular migrant’ will always have to pay an own contribution, which has been fixed at €94.

Obligation of confidentiality
The Council for Legal Aid is bound by an obligation of confidentiality. They are not permitted to use the information included in the declaration about the ‘irregular migrant’, for instance, to pass it on to the police or the Immigration and Naturalisation Service (IND).124

Legal Aid and Advice Centre
For advice regarding simple legal questions, anyone living in the Netherlands can seek contact with the Legal Aid and Advice Centre. This is an independent organisation which can be approached by anybody to obtain free legal advice.

123 An appointment as a lawyer in a legal aid case is a form of providing government-funded legal aid whereby the Council for Legal Aid pays a substantial portion of the lawyer’s fees. http://www.rvr.org/nl/subhome_rz/rechtsbijstandverlener
124 http://www.legaalkind.nl/?pageAlias=hoofd&mainId=55&id=312&setNivo=3
3.4.2 Return

Third-country nationals in respect of whom it has been established that they do not qualify for regularisation will not be treated differently from third-country nationals whose application for a residence permit has been rejected. Consequently, they are, or they are no longer, legally present in the Netherlands. Illegal stay is not prohibited, the Aliens Act does not include any prohibition to stay in the Netherlands without a residence permit, but if a person does not have a legal right of residence, this person is obliged to leave the Netherlands. Section 61 of the Aliens Act provides for the legal obligation to leave the Netherlands. Section 62 of the Aliens Act regulates the obligation to leave. Third-country nationals are obliged to leave the Netherlands before a specific departure deadline. If the third-country national does not comply with this obligation, the competent authorities have the power to remove the person concerned. The power to remove a person is regulated in Section 63 of the Aliens Act.125

The basic principle in Dutch return policy is, however, independent return. Independent return is encouraged by means of assisted return. Third-country nationals without residence permit who wish to return independently to their country of origin may receive assistance in building up an existence once again in their country of origin. Former asylum seekers will often qualify for separate schemes, on the basis of which they receive financial contributions or assistance in kind (e.g. in schooling or setting up a business) or a combination of the two. In this context, a major role has been assigned to non-governmental organisations and the International Organisation for Migration (IOM). An overview of the existing programmes can be found in the EMN report Assisted voluntary Return and Reintegration Programmes in the Netherlands.

New asylum procedure

On 1 July 2010, the new asylum procedure - the so-called Improved Asylum Procedure - entered into force. In its letter of 24 June 2008, by which the Cabinet presented the Improved Asylum Procedure, the Cabinet explained that the improvements to the asylum procedure would also facilitate return, as the investigation of identity and nationality starts already at an early stage.126 The Cabinet stated that this improved procedure aims at the asylum applications being processed faster and more carefully. In addition, it was anticipated that the number of repeated applications would decrease as a result of changes to the procedure. The Cabinet expected that more applications than previously could be processed in the application centre, as a result of which more asylum seekers would obtain clarity about their asylum application in the application centre.127 In the above-mentioned letter, the Cabinet also established measures to increase the effectiveness of return policy in the broader sense. According to the Cabinet, this will only strengthen the previous improvements to the Aliens Act 2000. The Cabinet undertook the following measures to increase the effectiveness of Dutch return policy:

- To provide additional assistance to former asylum seekers for a maximum period of twelve weeks after expiry of the departure deadline from within a centre with restricted movement;

To intensify the strategic approach to countries of origin, including individual arrangements to support these countries in effective migration management;

To increase the possibilities of individual reintegration support for third-country nationals.

The Cabinet emphasised that the measure restricting the freedom of movement did not concern a measure involving reception, but a measure that restricts the freedom of movement in order to be able to supervise the third-country national before this third-country national’s departure.128

**Detention of aliens**

Subsection 2.2 already provided a discussion of the legal context of the means of aliens detention. Aliens detention is a custodial order for the purpose of removal. This order is regulated in Section 59 of the Aliens Act 2000. In formal legal sense, aliens detention is an administrative measure, which might be used only if the same objective cannot be achieved by less far-reaching means (the *ultima ratio* or *ultimo remedium* principle) and which, when it is applied, should not restrict the third-country national in his rights and freedoms further than justified by the purpose of the measure - the intended removal (principle of minimum restrictions). Some legal experts are of the opinion that this basic principle of aliens detention has strongly eroded.129

Amnesty International has been critical of Dutch policy on aliens detention for years. In a report from 2010 *Aliens Detention: Contrary to Human Rights* (*Vreemdelingendetentie: in strijd met de mensenrechten*) Amnesty concludes that ‘despite several improvements, the Dutch practice of aliens detention has not materially improved since the publication of their report in 2008. The Dutch situation is consequently still contrary to international human rights.’ “The most important recommendations from 2008, such as the use of alternatives for aliens detention, including a periodical obligation to report or to pay a financial sum as deposit, have not been followed,” said Eduard Nazarski, Director for Amnesty International Netherlands.130

The fact that Amnesty’s criticism is not always shared by all parties is evidenced by the reaction from the parliamentary party of the People’s Party for Freedom and Democracy (VVD). One of the MPs of this party was not convinced by the alternatives brought forward of, for instance, an obligation to report or to pay a deposit. She feared that irregular migrants would attempt to evade this obligation. ’It sounds sympathetic, but not all people are of good faith. Many people are being detained who intentionally lost their papers or stated an incorrect country of origin, and who had consequently hampered the procedure.’131

129 Kalmthout van, A.M. (2007)
130 [http://www.amnesty.nl/nieuwsportaal/rapport/vreemdelingendetentie-in-strijd-met-de-mensenrechten](http://www.amnesty.nl/nieuwsportaal/rapport/vreemdelingendetentie-in-strijd-met-de-mensenrechten)
131 ‘Niet iedereen is te goeder trouw’ (Not Everyone Is of Good Faith). *De Volkskrant*. 13 November 2010
The effectiveness of aliens detention was also doubted. The government considers it an essential instrument to implement Dutch return policy effectively, but in a study by IOM, the conclusion is drawn that for most migrants, by far, a stay in immigration detention does not affect their lack of willingness to return.\textsuperscript{132}

\textit{Detention at the border}

The detention at the border is regulated in Section 6 of the Aliens Act. The measures included in this Section are aimed at preventing irregular migrants from obtaining illegal entry at the external border to Dutch territory and consequently to the entire Schengen territory. In order to achieve this objective, the irregular migrant may be obliged to stay in a room or place designated by the border control officer. Chapter A6/2.2 of the Aliens Act Implementation Guidelines 2000 provides that it is in the interest of border control and international relations to prevent an irregular migrant who has been refused entry into the Netherlands - but who cannot immediately leave the Netherlands - from actually obtaining entry to the Netherlands in the period until his departure.\textsuperscript{133}

\textit{Return often difficult to realise}

The return of irregular migrants to their countries of origin is often a complicated process. The factors that may complicate this process are authorities who set conditions of the forced return of their citizens, irregular migrants who fail to cooperate, the specific situations in the countries of origin, but also humanitarian aspects. Other factors that may complicate return are the problems concerning unaccompanied minors, migrants with diseases or disabilities that prevent return, and the advanced age of some of the migrants. Above, a description was already provided of several of these categories of irregular migrants who could still qualify for a residence permit under special circumstances.

\textit{Separate return organisation}

In order to increase the effectiveness of Dutch return policy, it was decided in the Netherlands several years ago to incorporate the return activities into a separate organisation. The Repatriation and Departure Service (DT&V) began its operations on 1 January 2007 (see also Subsection 2.2).

Return is difficult to realise if the country of origin does not cooperate in providing the required travel documents. In exceptional cases, the DT&V can use an EU document (or EU laissez-passer) as an alternative for the usual travel documents. This depends on the country of origin concerned on the one hand, and the availability of any other supporting documents (regarding identity and/or nationality) on the other hand.

If the above-mentioned methods do not lead to the desired result, the DT&V will attempt to improve the relationship with the central authorities in the countries of origin, for instance by organising working visits or missions. Another possibility is to organise meetings with representatives of key organisations with a view to concluding agreements in

\textsuperscript{132} IOM (2011)
the area of return, whether voluntary or forced. As its ultimate instrument, the DT&V may decide - in close cooperation with the Directorate for Migration Policy of the Ministry of the Interior and Kingdom Relations and the Ministry of Foreign Affairs - to attach the cooperation in the area of return and readmission agreements with other subjects in the area of the bilateral relationship between the country of origin and the Netherlands.

As already pointed out above, the unaccompanied minors are a group that may often require additional attention in the area of return. For this category of migrants, the DT&V will have to ascertain that adequate reception conditions exist in the country of origin. Firstly, efforts will be made to reunite the unaccompanied minor with the parents and/or family members or relatives. If this is not successful, the DT&V will attempt to actually place the unaccompanied minor in an orphanage in the country of origin.

With respect to persons with a disability and/or medical problems, the DT&V may request advice in connection with the journey and the arrival in the country of origin. Just before departure, the DT&V may apply for a fit-to-fly certificate.

**Unaccompanied minors**

In her letter of 26 May 2008, the former State Secretary for Justice announced a package of measures that related, among other things, to the return of former unaccompanied minors. The package included the following measures:

- The DT&V provides intensive assistance in return;
- Former unaccompanied minors who must return may be placed in a centre with restricted movement in order to be able to continue the assisted return;
- The possibility of realising voluntary and forced returns to countries of origin will be improved by aiming one’s efforts to crucial factors for successful return, which is the cooperation of the minor and that of the country of origin.

**Experiment of Perspective**

In response to the Spekman motion \(^{134}\) of 3 July 2008, in conjunction with 20 municipalities of the Association of Netherlands Municipalities, the Experiment of Perspective was launched on 1 October 2009. The purpose of this experiment was to prevent illegal stay of former unaccompanied minors (former unaccompanied minors of 18 years old and older), and it was based on the use of 20 assistance centres throughout the country. This experiment centred on holding out realistic prospects for the future. The most important ‘programmes’ were aimed at obtaining either a residence permit in the Netherlands or return, assisted return or otherwise, to the country of origin. The experiment ran from 1 October 2009 to 1 April 2011. An evaluation study was conducted on the instructions of the Research and Documentation Centre of the Ministry of Security and Justice. On the basis of this evaluation study, and due to the disappointing results, the Minister for Immigration and Asylum and the State Secretary for Foreign Affairs decided not to continue their financial support.\(^{135}\)

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\(^{135}\) Parliamentary Papers II 2010/2011, 19 637, no. 1461.
Temporary stop on departures
Situations are conceivable in which the situation in the country of origin has changed to such an extent that it is uncertain whether it is still possible to remove former asylum seekers to the relevant countries after the asylum application has been rejected without appeal. In those situations, the Minister may decide that this category of third-country nationals may not be removed forcibly. This is referred to as a ‘temporary stop on departures’. A third-country national falling under this temporary stop on departures has lawful residence in the Netherlands. The relevant third-country national will receive a ‘certificate of lawful residence’. The period of validity of the lawful residence is equal to the duration of the temporary stop on departures.136

4  TRANSNATIONAL COOPERATION IN REDUCING IRREGULAR MIGRATION

This Section provides an overview of existing European and international cooperation, including agreements with third countries and other Member States.

4.1  Cooperation Agreements

First of all, an overview is given below of return and readmission agreements.

The purpose of a return and readmission agreement is the readmission of persons, on the basis of reciprocity, and to facilitate the transfer of persons originating from the relevant countries, and to establish, among other things, procedures and deadlines to this end. In the context of the return and readmission agreement, the persons concerned are those who are not, or no longer, permitted legal stay in the territory of one of the parties to the agreement. The Netherlands is a party to return and readmission agreements concluded with various countries, both in Benelux context and in EU context.

Agreements for the practical implementation of the return and readmission agreements are usually laid down in application protocols. As far as the return and readmission agreements in Benelux context are concerned, the relevant application protocols are entered into simultaneously with the conclusion of the return and readmission agreements themselves, and form an integral part thereof. Although the application protocols also form an integral part of the return and readmission agreements in EU context, these protocols are not negotiated and concluded bilaterally until after conclusion of the return and readmission agreement itself. The Netherlands negotiates and concludes such protocols in Benelux context. Below is a list of return and readmission agreements which currently exist in Benelux context. The agreements concerned have been concluded with both third countries and other Member States.

Albania
Austria
Bosnia and Herzegovina
Bulgaria
Croatia
Estonia
France
Germany
Hungary
Latvia
4.2 Other forms of cooperation with countries

Below is an overview of the forms of cooperation of a more operational nature between the Netherlands and third countries or between the Netherlands and other Member States.

Cooperation agreements on return
In the area of return, the Netherlands has concluded cooperation agreements with several countries of origin. The emphasis of these agreements is on operational cooperation. Examples include clear procedures for the verification process in order to establish the identity and nationality of third-country nationals, and to obtain travel documents to realise the forced return of third-country nationals.

Network of Immigration Liaison Officers
The Netherlands maintains a network of Immigration Liaison Officers (ILOs) (see also Subsection 3.1). All of the ILOs who are currently stationed abroad by the Immigration and Naturalisation Service (IND) and the Royal Netherlands Marechausse cooperate with colleagues of other countries who have also been appointed as ILOs. It is essential that knowledge and experience in the area of trends, itinerary, and modi operandi with regard to irregular migration is shared on a daily basis. The ILOs working for the IND are currently stationed in Beijing, Shanghai, Bangkok, Moscow, Istanbul, Amman, Dubai, Accra, Abuja, Nairobi, Pretoria, and Kiev.

Mediterranean Transit Migration (MTM)
As already pointed out in Subsection 3.1, the Netherlands supports the Mediterranean Transit Migration (MTM) i-Map Project of the ICMPD. The Trafficking in Human Beings and Smuggling of Migrants Information Group (MIG) is the supplier of these data for the Netherlands and it is responsible for updating them. The ILOs facilitate the ICMPD as regards regional meetings to promote the i-Map, with the aim to expand the network for the purpose of the i-Map.

Unaccompanied minors
The Netherlands is of the opinion that the position of unaccompanied minors can be improved by giving a quick and full final decision on their possibilities of staying in the
Netherlands. Unaccompanied minors who do not qualify for international protection should return to their countries of origin as soon as possible. This is to prevent young people travelling to or in Europe from ending up in situations of exploitation. In order to achieve this, Norway, Sweden, Denmark, and the United Kingdom initiated a cooperation which, among other things, aims at finding the parents of the unaccompanied minors and at prevention by giving information about the dangers of illegal immigration in the countries of origin.137

**EURINT Project**

The ‘European Initiative on Integrated Return Management Project’, (EURINT) is a cooperation between the Netherlands (Dienst Terugkeer en Vertrek), Germany (Zentrale Ausländerbehörde Stadt Bielefeld), Belgium (Dienst Vreemdelingenzaken), and Romania (Romanian Immigration Service), with the object of operational cooperation in three areas.

Firstly, joint actions are undertaken with respect to approaching authorities of third countries in order to improve cooperation in the area of return (return and readmission, issuance of Laissez-Passers, etc.). This object is realised by organising joint missions to the following countries: Pakistan, Democratic Republic of the Congo, Nepal, Bangladesh, Tunisia, and Guinea. During these missions, discussions are held with the responsible authorities, such as consular services and immigration services. Where applicable, these services are requested to come to the above-mentioned Member States for a return visit.

Secondly, the participating countries organise joint task forces which are focused on improving the identification process of the third-country national. To date, task forces have come from Armenia, Azerbaijan, and Nepal. In the remaining project period, several task forces will be organised and funded on the basis of the EURINT Project.

Finally, the Netherlands and Germany agreed to also organise joint removals on the basis of this project within the framework of EURINT II. To date, joint removals have been effected to Nepal. These removals were not effected with government flights, but with normal scheduled flights with the deployment of escorts to accompany the third-country nationals. The EURINT I project started on 1 February 2011 and will run until 1 August 2012.138 EURINT II will run until 31 December 2012.

During the length of the project, the EURINT partners have experienced the advantages of the cooperation. In addition, other Member States have also shown their interest in participating in the project. This has resulted in the drafting of a proposal for a follow-up of EURINT I.

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138 INDIAC - NL EMN NCP (2011b).
4.3 Cooperation with EU or international organisations

Within the EU, the Netherlands cooperates with other Member States in joint return operations. The general coordination is with the Return Operations Sector (ROS) of Frontex. Frontex provides all Member States the possibility of participating in coordinated joint return operations. In 2010, the Netherlands participated in seven coordinated Frontex flights. Two flights were organised by the Netherlands.

In addition to the joint return operations organised by Frontex, the Netherlands participates in charter flights organised by other EU countries. Participation depends on the availability of possible flights, and whether the Netherlands has a sufficient number of irregular migrants to board these flights. All costs must be settled with the organising Member State. These flights could consequently be financed from the national European Training Foundation. In 2010, the Netherlands participated in three flights; this is in accordance with bilateral agreements.139

In the Border Security Training Center of the Royal Netherlands Marechaussee at Amsterdam Airport Schiphol, training courses are provided to border officials from the EU for the purpose of Frontex operations. Since 2010, the Netherlands has also contributed several times to border control operations by means of the deployment of heavy equipment. In both 2010 and 2011, two mine hunters participated in the INDALO Operation off the South Spanish coast. In September 2010, an aircraft of the Coast Guard participated in the Poseidon Operation in the Aegean Sea off Greece. The same aircraft participated in the Hermes Operation in the Mediterranean Sea off Italy in March 2011. Finally, the Netherlands contributed substantially to the deployment of special border intervention teams (RABIT) at the border between Greece and Turkey. The Netherlands made 48 border guards and several interpreters available for these teams. The Netherlands also contributed to the Poseidon Land Operation, which has replaced the swift intervention teams since March 2011, by the deployment of border guards and interpreters. The Dutch deployment from March to November 2011 consisted of more than 76 border guards.
5 IMPACT OF EU POLICY AND LEGISLATION

Europe has left an increasingly more noticeable mark on national policy, also in the area of combating irregular migration. This Section provides an overview of the state of affairs with regard to the impact of EU policy and legislation on this policy area. Attention will also be paid to activities financed from the European External Borders Fund and the European Return Fund to the extent that those activities contributed to tackling irregular migration.

5.1 European impact on national policy

Return Directive

The bill to amend the Aliens Act 2000 for the purpose of implementing the Return Directive was adopted by the Dutch House of Representatives on 1 November 2011. The Senate subsequently adopted the bill on 13 December 2011. The Directive was implemented in Dutch laws and regulations on 31 December 2011.

Before the bill was adopted, however, the Return Directive already cast its shadow on Dutch national policy. The Return Directive has had major consequences for national policy with regard to combating irregular migration. Existing national legislation in that area was already interpreted by the Courts and the Administrative Division of the Council of State in accordance with the Directive. It turned out that this interpretation in accordance with the Directive was not always possible. This resulted, among other things, in the fact that, the aliens detention of irregular migrants had to be terminated in a number of cases. Now that the Return Directive has been implemented, a number of ‘points of controversy’ are expected to belong to the past. The following matters are relevant to be mentioned:

- Prior to the implementation, the risk of going into hiding could not serve as a basis for aliens detention. For this reason, the aliens detention had to be terminated in a number of cases. The risk of going into hiding is currently included in the Aliens Decree as a ground for detention;
- In the former situation, the obligation to make a formal decision to extend the detention period after 6 months of aliens detention or detention at the border, whereby the period of detention could be extended by a maximum period of 12 months, did not exist. Irregular migrants have the right to lodge an appeal against the decisions to extend;
- Until recently, Dutch immigration law did not provide for an entry ban. The entry ban as currently introduced extends to the entire Union. This entry ban has a ‘light’ version for irregular migrants without criminal records and a ‘heavy’ version for criminal irregular migrants. In fact, this ‘heavy’ version corresponds to the exclusion orders
pursuant to Section 67 of the Aliens Act (see Subsection 2.3). This Section will continue to exist as a national measure, but will apply only to aliens who do not fall under the scope of the Return Directive (in particular EU nationals).

- Section 197 of the Dutch Criminal Code has been amended to the extent that not only the migrant who has received an exclusion order, but also the migrant who has received the ‘heavy’ version of the entry ban is punishable if they are present in the Netherlands.

**Asylum applications at the Schengen external border**

With regard to the prevention of irregular migration, it is possible to point to a ‘continuous debate’, in particular on different interpretations of the various relevant Directives (Reception, Procedures and Return). This was revealed, in particular, by asylum applications at the Schengen external borders. The Netherlands has received increasingly more criticism about its position that merely requesting international protection at the Schengen external borders does not entitle a third-country national to entry to the territory, and that the assessment of the application is made, in principle, in a closed-regime procedure (detention at the border), after which a prompt return may be undertaken when the application is rejected.140

For the Netherlands, the importance of border control - which has been imposed on the Netherlands to prevent illegal entry pursuant to the Schengen Border Code and, in particular, by Article 14(4) of the Schengen Border Code - is decisive for the question of how border procedures should be structured.

The Return Directive gives the Member States the option to decide not to subject third-country nationals who have been refused entry at the border to this Article, for the applicability of the Return Directive may lead to complications in connection with the grounds for detention, as formulated in Article 15 of the Return Directive, and the provisions with regard to the time periods for voluntary departure, as these ensue from Article 7 of the Return Directive. By decision141 of 29 December 2011, the Administrative Division of the Council of State raised the question of whether Article 25 of the Return Directive applies in full to a third-country national who has been refused entry at the border, and whose asylum application has been rejected, and whether it should therefore be assessed whether this is a matter of evading or hampering the return process. This question was answered in the affirmative. In the concrete case, however, it concerned a third-country national who hampered his removal, because he had torn his passport. In connection with the importance of border control, a ground for a lighter means did not exist. In cases of withdrawal of the departure deadline and referral to the measure referred to in Section 6 of the Aliens Act, in asylum decisions, harmonisation will be sought with the grounds provided by the Aliens Decree to assume the risk of absconding.

However, also after amending the Act to the extent that third-country nationals who have been refused entry at the external border are still excluded from the scope of the

140 See, among other things, [http://www.amnesty.nl/nieuwsportaal/rapport/vreemdelingendetentie-in-strijd-met-de-mensenrechten](http://www.amnesty.nl/nieuwsportaal/rapport/vreemdelingendetentie-in-strijd-met-de-mensenrechten)

141 Administrative Division of the Council of State of 29 December 2011 no. 201108418/1.
Return Directive, it is clear that the procedural pressure, which is also dictated by the position of NGOs, is substantial. It is the opinion of the Dutch government, however, that each policy on irregular migration should begin by preventing illegal stay by adequate control at the external borders. According to the Dutch government, a prompt assessment of asylum applications at the border in accordance with a careful procedure is part of a set of practical measures to prevent irregular migration.

**Mobile Security Monitoring**

In the context of the Mobile Security Monitoring described in Subsections 2.1 and 3.2, the Administrative Division of the Council of State rendered a positive decision for the government on 20 October 2011. In 2010, it became evident from decisions of the European Court of Justice and the Administrative Division that the Mobile Security Monitoring performed at the time was contrary to European law, because it was a disguised form of border control. The Aliens Decree was amended accordingly. The Roermond District Court decided that this new legislation was also contrary to European law. The IND appealed to this decision. By decision of 20 October 2011, the Administrative Division held the appeal well-founded because Mobile Security Monitoring was currently adequately regulated and therefore satisfied the criteria of the European Court of Justice. Whether this legal discussion is definitively decided in the advantage of the Dutch State is for the future to show.

The Coalition Agreement provides that the use of Mobile Security Monitoring will be intensified and irregular migration will be tackled. In order to be able to provide more effective and efficient Mobile Security Monitoring, the Royal Netherlands Marechaussee has developed the @MIGO-BORAS system. As already pointed out in Subsection 3.2, the purpose of this system is to provide the Royal Netherlands Marechaussee technical support in the performance of its duties in the area of enforcing the Aliens Act. On 17 November 2011, the European Commission asked written questions about the legal basis and objective of the system, and about the process of putting this system in operation. The Cabinet answered the questions early in 2012.142

**Directive to combat illegal employment**

The implementation deadline for Directive 2009/52/EC (Sanctions Directive) was 20 July 2011. To be able to implement this Directive, it was necessary to amend the Foreign Nationals (Employment) Act and the Aliens Decree 2000. The amendments to the Aliens Decree 2000 entered into force on 19 June 2011 by a partial entry into force of the Modern Migration Policy Decree.143 The Directive has not yet been implemented fully. A proposal to amend the Foreign Nationals (Employment) Act in connection with the implementation of the Directive was submitted to the Dutch House of Representatives on 6 July 2011 under the responsibility of the Ministry of Social Affairs and Employment, and adopted by the Dutch House of Representatives on 20 December 2011. The Netherlands has actually operated in accordance with the directive to a large extent. When an inspector of the Social Affairs and Employment Inspectorate comes across violations

142 Parliamentary Papers II 2011/2012, 19 637, no. 1485.
during an inspection or investigation, he will use an enforcement instrument, which may be followed by a sanction. As stated in the Directive, it is also possible to impose fines on illegal employment.

Dutch legislation complies nearly fully with the standards of the Directive; this is, in particular, due to the Foreign Nationals (Employment) Act. Several provisions from the Directive must, however, still be implemented. The relevant provisions relate to an obligation to notify for employers and sequential liability for back wages. An obligation to notify will therefore be included in the Foreign Nationals (Employment) Act by means of the above-mentioned proposed amendment. An employer who has a third-country national perform work in the Netherlands for which a work permit is not required will be obliged to notify this. The failure to perform this obligation will be liable to a fine. The situations in which the notification may be dispensed with, if the employer is already subject to an obligation to notify pursuant to other provisions, will be determined by governmental decree.

In addition, a sequential liability for back wages will be included in the Foreign Nationals (Employment) Act. This sequential liability means that a provision will be included which enables the third-country national to lodge his claim with the next higher employer, if an appeal to the employer claimed from first fails.144

Carriers
In order to implement the Articles 6 and 27 of the Convention Implementing the Schengen Agreement, a provision has been included in Section 108 of the Aliens Act which tightens the liability of the carrier with regard to conveying undocumented or incorrectly documented third-country nationals. This provision entered into force on 1 July 2010.145

At the national level, a number of carriers who are obliged to photograph, photocopy, or scan the documents of their passengers were furthermore designated on 15 April 2010.146 For this purpose, all the carriers designated are those who fly from specific airports to the Netherlands. In order to prevent unnecessary burdening of the airline companies, this list was limited to a number of airports from where undocumented third-country nationals are being conveyed. In order to ensure that the measure will be as effective as possible, the list of airports is updated each time on the basis of empirical data.147

5.2 Impact of EU agreements on Dutch approach to irregular migration

Experience gained by the Repatriation and Departure Service shows that, in general, return and admission agreements have a positive effect on both the cooperation with the countries of origin and on the actual return and the return process as such. In prac-

144 Parliamentary Papers II 2010/2011, 19 637, no. 3.
145 Government Gazette 2010 no. 9603.
147 Idem.
In practice, this means that the cooperation in forced return has improved, that a positive answer is obtained more often, and that the period between the request and the issuance of a replacement document (laissez-passer) has shortened substantially.\textsuperscript{148}

### 5.3 European External Borders Fund and the European Return Fund

Below is an overview of the most important activities in the area of combating irregular migration funded from the European External Borders Fund and the European Return Fund.

First of all, it should be noted in this regard that an interim evaluation will be carried out with regard to both of the above-mentioned funds in 2012. As a result of this, details regarding, among other things, the above-mentioned question will become available from all Member States participating in the funds.

The contribution of the funds to activities in the area of irregular migration has been relatively small in the Netherlands. The scope of the available means from these funds constitutes a fraction of the amount spent by the Netherlands in this area. All regular activities are paid from the national budget.

In the Netherlands, the available means from these funds have been used to co-finance several innovative projects. This concerns projects that do not always relate directly to irregular migration. The European Return Fund is, after all, also designed for the facilitation of and assistance in the return - voluntary or otherwise - of persons who are, or still are, legally present in the Member State. The activities funded from the European External Borders Fund also include, for instance, efficient checks of legal passengers crossing the borders, so as to aid the freer flow of passengers. In this context, tackling irregular migration only plays an indirect role.

So far, the following projects have been financed from the European External Borders Fund:

- EU-VIS (European Visa Information System);
- The equipment of the control room of the Seaport Police;
- The Border Management Renewal Programme;
- SIS (Schengen Information System).

Funds from the European Return Fund were used for several projects aimed at facilitating the return - voluntary or otherwise - of persons illegally staying in the Netherlands.\textsuperscript{149}

\textsuperscript{148} INDIAC - NL EMN NCP (2011b).
\textsuperscript{149} Source: Directorate for Migration Policy, See e-mail of 16-11-2011.
6 ESTIMATES AND STATISTICS ON THE IRREGULAR MIGRANT POPULATION

Official statistics provide little insight into the population of irregular migrants. Population statistics are based on the Municipal Personal Records Database. Since the early nineties, the municipalities apply the principle that only persons who are staying legally in the Netherlands can be registered. This Section will attempt to provide insight into the scope of irregularity in the Netherlands on the basis of statistics related to irregular migration, and a study conducted by the Research and Documentation Centre of the Ministry of Security and Justice.

6.1 National statistics related to irregular migration

This Subsection provides an overview of the data that may be related to irregular migration over the period 2005-2010. Not all data were available for the entire period. Some data have been collected only since 2008. Nearly all statistics originate from the Eurostat database, the European statistical office situated in Luxembourg. The data collected for the purpose of these statistics have been collected in accordance with the Migration Statistics Regulation. The data relate to the following subjects:

- Third-country nationals found to be illegally present in the Netherlands;
- Third-country nationals who were refused entry at the border;
- Third-country nationals who were ordered to leave the Netherlands;
- Third-country nationals who returned following an order to leave the Netherlands;
- The number of asylum applications rejected;
- The number of asylum permits withdrawn.

Where possible, the data have been broken down by age, gender, and nationality of the persons concerned. Before discussing the different categories, the following comments should be made with regard to the data presented below. The data presented are, at the most, only an indication of what has been measured, i.e. the total number of irregular migrants in the Netherlands.

Because of their solely indicative nature, the data used relate only to the persons observed. In addition, a category such as ‘third-country nationals found to be illegally present in the Netherlands’ is strongly coloured by the manner in which the Netherlands has defined this category for the purpose of the above-mentioned Migration Statistics Regulation. In the Dutch context, this category relates to irregular migrants who have been placed in detention pending removal. The question of whether a third-country national is placed in detention also depends on the prospect of removing this person to

150 The Regulation concerned is Regulation (EC) No 862/2007 on Community statistics on migration and international protection.
his country of origin. If a Court decides that the removal to a specific country is not possible, this has consequences for the detention of third-country nationals holding the relevant nationality. As a result of this, the number of detained third-country nationals holding a specific nationality may differ drastically from one year to the next, without such a change saying anything about the percentage of that category of third-country nationals present in the total population of irregular migrants. Finally, it should be noted that no statistics are available on overstayers. As a result of this, the emphasis is on the category of asylum seekers.

Third-country nationals found to be illegally present in the Netherlands
The statistics used for third-country nationals found to be illegally present in the Netherlands actually concern the number of persons placed in aliens detention. Dutch law provides that a third-country national who is not, or no longer, legally present in the Netherlands may be placed in detention.151

Figure 1 Third-country nationals found to be illegally present in the Netherlands

![Graph showing the number of third-country nationals found to be illegally present in the Netherlands from 2005 to 2010.](source: Eurostat)

Figure 1 shows that the number of third-country nationals placed in detention has shown a downward trend since 2006. Since 2008, the situation has been more or less stable.
What is noteworthy in Table 1 is the strong decrease in the number of Chinese persons placed in detention. In 2008, 605 Chinese persons were placed in aliens detention. In 2009, this number was 255. An obvious reason for this decrease of 58% may be the decision of the highest administrative court in the Netherlands. In September 2008, this court ruled that Chinese without documents could not be held in aliens detentions because forced removal appeared not to be possible for this group of Chinese migrants. The possibility of removing a third-country national without lawful residence to his country of origin is a ground for holding third-country nationals without lawful residence in detention. In other words: there must be a prospect of removal. This decision may also explain the lower influx of Chinese persons in aliens detention in 2008 and 2009. Since 2009, the prospect of removal is once again possible, which may explain the increase in 2010.

A second development is the large number of Somalis, 850 persons, that was placed in aliens detention in 2009. The preceding year, it still concerned a number of only 295 persons. It is plausible that the reason for this increase can be found in the abolishment of the protection policy for this specific category as from 19 May 2009. The large number may also relate to the fact that Somalia, apart from the abolishment of the protection policy for a specific category, was the country from which most of the asylum seekers originated in 2009 and 2010.

Bulgaria and Romania are, of course, no longer included in this category after 2006.

---

Table 1  Third-country nationals found to be illegally present in the Netherlands: top 10 nationalities

<table>
<thead>
<tr>
<th>Year</th>
<th>Nationality</th>
<th>Number</th>
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<td>1. Turkey</td>
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<td></td>
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<td>4. Morocco</td>
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<td>5. Unknown</td>
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<td>502</td>
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<tr>
<td></td>
<td>7. Nigeria</td>
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<tr>
<td></td>
<td>8. Romania</td>
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<tr>
<td></td>
<td>9. Iraq</td>
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<tr>
<td></td>
<td>10. Suriname</td>
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<tr>
<td>2006</td>
<td>1. Bulgaria</td>
<td>1,111</td>
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<tr>
<td></td>
<td>2. China</td>
<td>995</td>
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<tr>
<td></td>
<td>3. Turkey</td>
<td>597</td>
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<tr>
<td></td>
<td>4. Morocco</td>
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<tr>
<td></td>
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<tr>
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<td>7. Romania</td>
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<td>8. Algeria</td>
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<td>9. Nigeria</td>
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<td>4. Iraq</td>
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<td></td>
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<th>Nationality</th>
<th>Number</th>
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<td>2. Irak</td>
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<td>3. Morocco</td>
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<td></td>
<td>4. Turkey</td>
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<td></td>
<td>5. Somalia</td>
<td>295</td>
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<td>6. Algeria</td>
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<td>10. Sierra Leone</td>
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<td>2009</td>
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<td></td>
<td>2. Irak</td>
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<td>3. Morocco</td>
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</tr>
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</table>

Source: Eurostat

152 Administrative Jurisdiction Division, 5 September, no. 200805982/1, www.raadvanstate.nl. Currently there is once again a prospect of removal of these migrants to China, also in the case of Chinese migrants who do not have any travel documents.


Men constitute the largest category of third-country nationals found to be illegally present in the Netherlands. In 2010, 85% were men.

Most of the third-country nationals found to be illegally present in the Netherlands fall in the age category of 18 to 35 years of age.
Third-country nationals refused entry at the border

Border controls are performed by the Royal Netherlands Marechaussee or, in the Rotterdam port area, by the Seaport Police of the Rotterdam-Rijnmond Regional Police.

Figure 4  Third-country nationals who were refused entry at the border by the Royal Netherlands Marechaussee: total number of refusals

The number of third-country nationals who were refused entry at the border decreased from 3,707 in 2006 to 2,633 in 2010.

Table 2  Third-country nationals who were refused entry at the border by the Royal Netherlands Marechaussee: top 10 nationalities per year

<table>
<thead>
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<td></td>
<td>2 Bolivia</td>
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<td></td>
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<td>4 Romania</td>
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<tr>
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</tr>
<tr>
<td></td>
<td>8 India</td>
<td>76</td>
<td>9</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td>9 Russia</td>
<td>72</td>
<td>10 Philippines</td>
<td>102</td>
</tr>
<tr>
<td></td>
<td>10 Paraguay</td>
<td>64</td>
<td>10</td>
<td>101</td>
</tr>
</tbody>
</table>

Source: VBS
Surinam, China, and Nigeria are countries that always appear in the top 3 nationalities of third-country nationals refused at the border. What is further noteworthy is the large number of South American countries in the top 10.

**Table 3**  Third-country nationals who were refused entry at the border by the Rotterdam Seaport Police: top 10 nationalities per year

<table>
<thead>
<tr>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Morocco</td>
<td>71</td>
<td>1. Russia</td>
</tr>
<tr>
<td>2. Ukraine</td>
<td>32</td>
<td>2. Morocco</td>
</tr>
<tr>
<td>3. Russia</td>
<td>12</td>
<td>3. Algeria</td>
</tr>
<tr>
<td>4. Turkey</td>
<td>12</td>
<td>4. Ukraine</td>
</tr>
<tr>
<td>5. Algeria</td>
<td>11</td>
<td>5. Turkey</td>
</tr>
<tr>
<td>7. Colombia</td>
<td>6</td>
<td>7. Philippines</td>
</tr>
<tr>
<td>8. Ivory Coast</td>
<td>4</td>
<td>8. Ghana</td>
</tr>
<tr>
<td>10. Tanzania</td>
<td>3</td>
<td>10. Sudan</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Morocco</td>
<td>19</td>
<td>1. Russia</td>
</tr>
<tr>
<td>2. Ukraine</td>
<td>17</td>
<td>2. Philippines</td>
</tr>
<tr>
<td>3. Russia</td>
<td>13</td>
<td>3. Ukraine</td>
</tr>
<tr>
<td>5. Bangladesh</td>
<td>2</td>
<td>5. Turkey</td>
</tr>
<tr>
<td>6. Tanzania</td>
<td>2</td>
<td>6. Algeria</td>
</tr>
<tr>
<td>7. Turkey</td>
<td>2</td>
<td>7. Cape Verde</td>
</tr>
<tr>
<td>8. -</td>
<td>-</td>
<td>8. Palestine</td>
</tr>
<tr>
<td>9. -</td>
<td>-</td>
<td>9. -</td>
</tr>
<tr>
<td>10. -</td>
<td>-</td>
<td>10. -</td>
</tr>
</tbody>
</table>

Source: ZUIS

In addition to being refused entry by the Royal Netherlands Marechaussee, third-country nationals may also be refused by the Rotterdam Seaport Police. The number of third-country nationals who were refused entry in the latter last category is, however, substantially lower than the third-country nationals who were refused entry by the Royal Netherlands Marechaussee.

The countries of origin of the third-country nationals who were refused entry in the Rotterdam port area deviate strongly from the countries mentioned in Table 4. Contrary to Table 4, a situation where third-country nationals originating from South American countries are refused entry hardly ever occurs.
Table 4  
**Grounds for refusal 2008-2010: total by land and sea borders**

<table>
<thead>
<tr>
<th>Grounds for refusal</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>No valid travel document</td>
<td>805</td>
<td>160</td>
<td>245</td>
</tr>
<tr>
<td>False travel document</td>
<td>470</td>
<td>45</td>
<td>25</td>
</tr>
<tr>
<td>No valid travel document</td>
<td>715</td>
<td>915</td>
<td>930</td>
</tr>
<tr>
<td>False visa or residence permit</td>
<td>60</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Purpose and conditions of stay not justified</td>
<td>610</td>
<td>675</td>
<td>855</td>
</tr>
<tr>
<td>Person already stayed 3 months in a 6-months period</td>
<td>40</td>
<td>35</td>
<td>80</td>
</tr>
<tr>
<td>No sufficient means of subsistence</td>
<td>55</td>
<td>80</td>
<td>115</td>
</tr>
<tr>
<td>An alert has been issued</td>
<td>50</td>
<td>80</td>
<td>120</td>
</tr>
<tr>
<td>Persons considered to be a public threat</td>
<td>360</td>
<td>460</td>
<td>435</td>
</tr>
</tbody>
</table>

Source: Eurostat

Table 4 shows that the most important ground for refusing entry at the border is the absence of a valid travel document.

**Third-country nationals who were given notice to leave the Netherlands**

The obligation of a person to leave the Netherlands flows directly from the law. In the Netherlands, the Immigration and Naturalisation Service issues a more comprehensive decision on an application for a residence permit. This decision, whereby a residence permit is refused, also implies the obligation for the third-country national to leave the Netherlands. Where in this report reference is made to third-country nationals who have received a notice to leave the Netherlands, the third-country nationals referred to are those who have received a decision rejecting their application for a residence permit.

Figure 5  
**Total number of third country nationals ordered to leave**

Source: Eurostat
Table 5 Third-country nationals ordered to leave the Netherlands: top 10 nationalities per year

<table>
<thead>
<tr>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey</td>
<td>6,343</td>
</tr>
<tr>
<td>Iraq</td>
<td>2,159</td>
</tr>
<tr>
<td>Morocco</td>
<td>1,915</td>
</tr>
<tr>
<td>Unknown</td>
<td>1,911</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>1,759</td>
</tr>
<tr>
<td>China</td>
<td>1,538</td>
</tr>
<tr>
<td>Serbia</td>
<td>1,409</td>
</tr>
<tr>
<td>Iran</td>
<td>1,254</td>
</tr>
<tr>
<td>Somalia</td>
<td>1,006</td>
</tr>
<tr>
<td>Azerbaidjan</td>
<td>987</td>
</tr>
<tr>
<td></td>
<td>3843</td>
</tr>
<tr>
<td></td>
<td>2,547</td>
</tr>
<tr>
<td></td>
<td>2,165</td>
</tr>
<tr>
<td></td>
<td>1,747</td>
</tr>
<tr>
<td></td>
<td>1,738</td>
</tr>
<tr>
<td></td>
<td>1,348</td>
</tr>
<tr>
<td></td>
<td>1,143</td>
</tr>
<tr>
<td></td>
<td>1,112</td>
</tr>
<tr>
<td></td>
<td>993</td>
</tr>
<tr>
<td></td>
<td>795</td>
</tr>
</tbody>
</table>

Source: Eurostat/INDIS

The number of third-country nationals that were ordered to leave the Netherlands fluctuated around 30,000 a year. The years 2007 and 2009 had peaks with 36,085 and 35,574, respectively. It is not surprising that traditional immigration countries such as Turkey and Morocco rank high in the top 10. Countries where relatively many asylum seekers come from also rank permanently in the top 10.

Third-country nationals returned following an order to leave the Netherlands

The number of third-country national who returned after following an order to leave the Netherlands is substantially lower than the number of notices to leave the Netherlands.
Figure 6 shows, for instance, that in 2010, 9,347 third-country nationals demonstrably left the Netherlands, whereas 29,868 third-country nationals were notified to leave the Netherlands in that same year.

Table 6

<table>
<thead>
<tr>
<th>Country</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Turkey</td>
<td>1046</td>
<td>934</td>
<td>815</td>
</tr>
<tr>
<td>2 Morocco</td>
<td>550</td>
<td>684</td>
<td>659</td>
</tr>
<tr>
<td>3 Nigeria</td>
<td>501</td>
<td>537</td>
<td>580</td>
</tr>
<tr>
<td>4 Iraq</td>
<td>481</td>
<td>477</td>
<td>564</td>
</tr>
<tr>
<td>5 Unknown</td>
<td>414</td>
<td>435</td>
<td>549</td>
</tr>
<tr>
<td>6 Brazil</td>
<td>412</td>
<td>412</td>
<td>527</td>
</tr>
<tr>
<td>7 United States</td>
<td>354</td>
<td>397</td>
<td>460</td>
</tr>
<tr>
<td>8 China</td>
<td>354</td>
<td>380</td>
<td>382</td>
</tr>
<tr>
<td>9 Suriname</td>
<td>319</td>
<td>271</td>
<td>353</td>
</tr>
<tr>
<td>10 Serbia</td>
<td>267</td>
<td>189</td>
<td>299</td>
</tr>
</tbody>
</table>

With regard to third-country nationals who left the Netherlands, the traditional immigration countries such as Turkey and Morocco are also represented well. Third-country nationals from asylum countries such as Iraq and Somalia also appear in the top 5 in 2010.
The number of asylum applications rejected

Above, attention was already paid to the discrepancy between the number of third-country nationals who had received a notice to leave the Netherlands and those who had actually left the Netherlands. The willingness to return among asylum seekers whose asylum applications have been rejected is often small. Their concerns about the security in the country of origin appear to be greater than the fear of living a life as an irregular migrant. Below an overview of the number of asylum seekers whose asylum applications were rejected over the period 2005-2010.

Figure 7  Total number of third country nationals whose application for asylum has been rejected

Source: Eurostat

The number of asylum seekers whose asylum applications were rejected strongly decreased in 2007. This decrease could allegedly be explained by the fact that, in 2007, the protection policy for a specific category applied to three countries. Since April 2007, this protection policy for a specific category has applied to Iraq. Because many asylum seekers had originated from Iraq, the Immigration and Naturalisation Service also granted many applications. The regularisation in 2007 (see Subsection 3.4.1) will also have influenced the number of decisions rejecting the applications. In the subsequent years, the protection policy for a specific category was abolished in respect of important countries of origin, and this may constitute a possible explanation for the strong increase in the number of asylum seekers whose asylum applications have been rejected after 2008.
Table 7: Total number of asylum applications rejected in the first instance

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iraq</td>
<td>1,677</td>
<td>474</td>
<td></td>
</tr>
<tr>
<td>Afghan</td>
<td>706</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Afghan</td>
<td>566</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somali</td>
<td>416</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somali</td>
<td>329</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Angola</td>
<td>309</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Burundi</td>
<td>266</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Azerbaj</td>
<td>265</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberia</td>
<td>258</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>238</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Eurostat

Table 7 shows the strong decrease in the number of asylum seekers from Iraq whose asylum applications have been rejected. Whereas this number was still as high as 1,677 in 2006, and in 2007 this number was only 474. A number of countries disappeared from the top 10 (Serbia and Azerbajian). Their ranking was taken over by countries with a substantially lower number of asylum seekers whose asylum applications have been rejected.

Table 8: Third country nationals whose application for asylum has been rejected, following a final decision

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iraq</td>
<td>172</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Afghan</td>
<td>932</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somali</td>
<td>181</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somali</td>
<td>149</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Azerbaj</td>
<td>133</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>108</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somalia</td>
<td>102</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Servi</td>
<td>96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guinea</td>
<td>76</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ethiopia</td>
<td>99</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>86</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Burundi</td>
<td>25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Angola</td>
<td>93</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Serb</td>
<td>93</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Russia</td>
<td>38</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iran</td>
<td>37</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Eurostat
Most of the asylum seekers are men; which is, of course, also translated into the large percentage of men among the asylum seekers whose asylum applications have been rejected.
As was the case with the third-country nationals found to be illegally present in the Netherlands, the largest group of asylum seekers whose asylum applications have been rejected are in the age category of 18 to 35 years of age.

**The number of asylum permits withdrawn**
The most important reason for withdrawing an asylum permit is dictated by the country-specific policy. The fluctuations may be explained best by the fact that the protection policy for a specific category was no longer applicable. In the Netherlands, it is not possible to make a distinction with respect to the nature of the permits that were withdrawn. It is consequently only possible to provide an overview of the total number of asylum permits that were withdrawn.
Table 9  
Total number of asylum permits withdrawn: top 10 nationalities per year

<table>
<thead>
<tr>
<th>Nationality</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iraq</td>
<td>44</td>
<td>62</td>
<td>51</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>20</td>
<td>54</td>
<td>47</td>
</tr>
<tr>
<td>Unknown</td>
<td>16</td>
<td>29</td>
<td>30</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>15</td>
<td>25</td>
<td>18</td>
</tr>
<tr>
<td>Somalia</td>
<td>11</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>Bosnia</td>
<td>9</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Sudan</td>
<td>9</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Iran</td>
<td>8</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Somalia</td>
<td>7</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>6</td>
<td>6</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: INDIS

The abolition of the protection policy for the category of asylum seekers from Central Iraq as of 12 September 2008 resulted in a substantial increase in the number of asylum permits that were withdrawn in 2009 and 2010. The same reason, i.e. the abolition of the protection policy for the category of asylum seekers from Central and South Somalia as of 19 May 2009, also resulted in an increase in the number of asylum permits of Somalis that were withdrawn in 2009.

6.2 Other national statistics on irregular migration

The purpose of this Subsection is to explain any other relevant studies of the scope of irregular migration in the Netherlands. The research methods used for these studies may also be interesting to other Member States.

6.2.1 Estimates of the number of irregular migrants in the Netherlands

For some time now, the authorities in the Netherlands have indicated the need for estimates of the number of irregular migrants in the Netherlands. On the instructions of the Cabinet, the Research and Documentation Centre (WODC) conducted a study into the estimated number of irregular migrants in the Netherlands in 2009. Previous quantitative estimates were made in 2006 with data over the year 2005. The most recent estimates were made over the period January 2009 - December 2009.

For the purpose of this study, use was made of the databases on irregular migrants from...

the registration systems of the police – the PSH-V (Politie Suite Handhaving Vreemdelingen), and of the Royal Netherlands Marechaussee – the VBS (Vreemdelingenbasisstelsel, VBS). The databases used for the WODC report are different from those used for the category of irregular migrants in the Netherlands referred to in the previous Subsection. In that Subsection, the third-country nationals concerned had been placed in aliens detention. The WODC study distinguished between the following three groups:

- Irregular migrants not effectively expelled (INNE);
- Irregular migrants effectively expelled (IEE);
- Irregular migrants originating from Europe.

Table 10 Number of irregular migrants observed to be illegally present in the Netherlands and the estimated number of irregular migrants in the Netherlands, 1997-2003, 2005, and 2009

<table>
<thead>
<tr>
<th></th>
<th>OBSERVED</th>
<th>ESTIMATED</th>
<th>Confidence interval 95%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>IEE+INEE</td>
<td>Europe</td>
<td>IEE+INEE+Europe</td>
</tr>
<tr>
<td>1997</td>
<td>8,618</td>
<td>5,523</td>
<td>194,304</td>
</tr>
<tr>
<td>1998</td>
<td>7,708</td>
<td>5,189</td>
<td>181,198</td>
</tr>
<tr>
<td>1999</td>
<td>7,335</td>
<td>5,381</td>
<td>144,081</td>
</tr>
<tr>
<td>2000</td>
<td>7,827</td>
<td>5,686</td>
<td>162,788</td>
</tr>
<tr>
<td>2001</td>
<td>8,287</td>
<td>6,018</td>
<td>192,373</td>
</tr>
<tr>
<td>2002</td>
<td>9,345</td>
<td>8,513</td>
<td>211,990</td>
</tr>
<tr>
<td>2003</td>
<td>7,747</td>
<td>6,520</td>
<td>159,077</td>
</tr>
<tr>
<td>2005</td>
<td>5,795</td>
<td>2,694</td>
<td>128,907</td>
</tr>
<tr>
<td>2009</td>
<td>3,909</td>
<td>421</td>
<td>97,145</td>
</tr>
</tbody>
</table>

Source: Research and Documentation Centre

As is evident from Table 10, the WODC arrives at an estimated population of irregular migrants of 97,145 for 2009. The confidence intervals of 95% mentioned are a measure for the reliability of the estimates. As far as the total population is concerned, the actual scope with a probability of 95% is between 60,667 and 133,624.

The Table shows a clear development in the number of irregular migrants observed. With regard to both the European and non-European irregular migrants (IEE+INNE), the number observed clearly decreased after 2002.
The WODC report clearly shows that the trend for European and non-European irregular migrants is comparable. Figure 13 from the report shows that the number of irregular migrants observed decreased slightly from 1997 until 1999 when the number slightly increased again. The peak was reached in 2002. Since that year, the number of irregular migrants observed has strongly decreased. In particular the number of irregular European migrants has decreased. The researchers of the WODC attribute this to a significant degree to the enlargement of the European Union in 2004 and 2007.
Figure 15 Estimated scope (x1000) of the population of European irregular migrants and non-European irregular migrants (including confidence interval)

Source: Research and Documentation Centre

The Figures 14 and 15 from the WODC report provide an overview of the estimated number of irregular migrants over the period 1997-2009. Figure 14 shows the curves of the total population of irregular migrants (European and non-European).

Figure 15 shows the curves of the scope of the population of European and non-European irregular migrants. This figure clearly shows that the decrease can be attributed primarily to the decrease in the number of European irregular migrants.
### Table 11  Number irregular migrants observed and estimated by category of the covariates

<table>
<thead>
<tr>
<th>Covariate</th>
<th>Characteristic</th>
<th>Observed</th>
<th>Estimated Scope</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>Up to 40 years of age</td>
<td>3,644</td>
<td>87,150</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>(unaccompanied minors)</td>
<td>26</td>
<td>750</td>
<td></td>
</tr>
<tr>
<td></td>
<td>40 years of age and older</td>
<td>666</td>
<td>9,996</td>
<td>10</td>
</tr>
<tr>
<td>Gender</td>
<td>Male</td>
<td>3,774</td>
<td>63,651</td>
<td>66</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>556</td>
<td>33,495</td>
<td>34</td>
</tr>
<tr>
<td>Nationality</td>
<td>Turkish</td>
<td>157</td>
<td>2,475</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>North African</td>
<td>379</td>
<td>11,206</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>African (other)</td>
<td>1,028</td>
<td>22,810</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>Surinam</td>
<td>73</td>
<td>3,982</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Asian</td>
<td>1,017</td>
<td>25,141</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>American</td>
<td>108</td>
<td>2,082</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Unknown</td>
<td>1,568</td>
<td>29,452</td>
<td>30</td>
</tr>
<tr>
<td>Police Region</td>
<td>Amsterdam</td>
<td>383</td>
<td>3,552</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Haaglanden</td>
<td>286</td>
<td>3,042</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Rotterdam</td>
<td>284</td>
<td>7,552</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Utrecht</td>
<td>192</td>
<td>12,621</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>3,185</td>
<td>70,379</td>
<td>72</td>
</tr>
<tr>
<td>Asylum procedure</td>
<td>In the period 2005-2009</td>
<td>2,903</td>
<td>66,347</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>In the year (365 days) prior to being stopped</td>
<td>1,236</td>
<td>29,696</td>
<td>29</td>
</tr>
</tbody>
</table>

Source: Research and Documentation Centre

The WODC report provides an overview of several characteristics (observed and estimated) of irregular migrants such as gender and age (Table 11). In a number of respects, the characteristics presented in this Table 11 (such as gender and age) correspond to the findings from Subsection 6.1. The WODC study also pointed to the high percentage of men (66%). Another similarity is the high percentage (90%) of irregular migrants in the age category up to 40 years of age. Finally, it appeared that a substantial portion of the irregular migrants (65%) had followed an asylum procedure in the period 2005-2009.
6.2.2 Results from inspections on the shop floor

The results of inspections on the shop floor for the purpose of the Foreign Nationals (Employment) Act could also be indicative of the population of irregular migrants in the Netherlands. Below an overview is provided of the results from inspections on the shop floor by the former Labour Inspectorate.

As explained in Subsection 2.7, the former Labour Inspectorate is responsible for supervising the enforcement of the Foreign Nationals (Employment) Act in the Netherlands. The former Labour Inspectorate performs approximately 10,000 inspections with 200 inspectors. These inspections are performed on the basis of a risk analysis and, in particular, in risk sectors. Since 2008, an upward trend has been visible in the percentage of violations of the Foreign Nationals (Employment) Act established by the former Labour Inspectorate in the past three years; from 16% in 2008 to 18% in 2010. According to the former Labour Inspectorate, the increase can be explained by the fact that the inspections have been performed increasingly more targeted on the basis of risk analysis. In addition, the former Labour Inspectorate intensified its efforts to combat exploitation of employees and illegal employment. The average number of illegal employees to which the violations relate shows a fluctuating curve; from 1.2 in 2008, 1.5 in 2009, to 1.3 in 2010.\(^{159}\)

Table 12 Results of inspections in the context of the Foreign Nationals (Employment) Act (Wav) and the Minimum Wage and Minimum Holiday Allowance Act (WML)

<table>
<thead>
<tr>
<th></th>
<th>Wav and WML</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of inspections</td>
<td></td>
<td>10,381</td>
<td>9,723</td>
<td>9,987</td>
</tr>
<tr>
<td>% of inspections with violations</td>
<td></td>
<td>16%</td>
<td>17%</td>
<td>18%</td>
</tr>
<tr>
<td>Number of illegal employees found</td>
<td></td>
<td>2,007</td>
<td>2,506</td>
<td>2,397</td>
</tr>
<tr>
<td>Number of underpaid employees found</td>
<td></td>
<td>420</td>
<td>540</td>
<td>564</td>
</tr>
<tr>
<td>Number of fine reports Wav</td>
<td></td>
<td>2,093</td>
<td>2,276</td>
<td>2,146</td>
</tr>
<tr>
<td>Number of fine reports WML</td>
<td></td>
<td>53</td>
<td>84</td>
<td>127</td>
</tr>
<tr>
<td>Number of official reports Wav and Dutch Criminal Code</td>
<td></td>
<td>16</td>
<td>17</td>
<td>16</td>
</tr>
<tr>
<td>Number of warnings WML</td>
<td></td>
<td>-</td>
<td>39</td>
<td>70</td>
</tr>
</tbody>
</table>

Source: 2010 Annual Report of the (former) Labour Inspectorate

\(^{159}\) http://www.arbeidsinspectie.nl/Images/AI%20Jaarverslag%202010_compleet%20(webversie)_DEF_tcm290-303461.pdf?
6.2.3 Costs associated with the measures to reduce irregular migration

It appeared to be impossible to calculate the costs associated with the separate measures to reduce irregular migration. The national budget 2012 does include a number of items that provide an indication of the costs associated with the measures to reduce irregular migration.

In the national budget, the costs for the return of irregular migrants have been estimated at €20,699,000. Aliens detention is a separate cost item and has been estimated for 2012 at €4,200,000.

In comparison, the total costs for entry, admission, and reception of third-country nationals have been estimated at €761,366,000 for 2012.\(^{160}\)

The costs for the Border Management Renewal Programme have been estimated at €8,390,000 for 2012. With regard to this programme, it should be noted that this programme is not aimed solely at the reduction of irregular migration, but also at the facilitation of bona fide travellers.
7 CONCLUSIONS

The past ten years can be characterised by a rapid increase in policy developments in the area of tackling irregular migration. Numerous measures, actions, pilot projects, and programmes were launched. In addition, new laws were drafted, existing legislation was amended, and institutional changes were implemented. At the time of drafting the Aliens Act 2000, this was still primarily dictated by the desire to achieve a more restrictive entry policy. In the subsequent years, in the consecutive Balkenende Cabinets, and now under the Rutte Cabinet, the policy measures intended to tackle irregular migration have received – and still receive – an increasingly more prominent place.

The measures described in this report relate to all four stages identified in irregular migration, namely pre-entry, entry, stay, and pathways out of irregularity. The conclusion seems justified that the government has put the emphasis on policy developments that relate to the situation of irregular migrants who are already present in Dutch territory. In particular the last stage - that of return and the associated issue of return - is a theme that can be recognised in many policy documents. In this context, the government has directed its efforts, in particular, to criminal irregular migrants and irregular migrants causing nuisance. The political and social debates also seem to be targeted, in particular, at those situations in which the issue of return plays a role: The stage at which the irregular migrant is given a ‘face’. It is for good reason that prior to the regularisation settlement in 2007, a campaign was conducted in the media referred to as ‘26,000 faces’. In the past year, the cases of the Afghan girl, Sahar, and the Angolan young man, Mauro, were illustrative of situations in which the files were given a face.

The shift from policy particularly aimed at registering and documenting third-country nationals, identified by Broeders earlier in this report (Subsection 2.1), is supported by this EMN report The Cabinet is, for instance, of the opinion that in the context of the implementation of the new asylum procedure, improvements in the asylum procedure also facilitate return, because the investigation of identity and nationality is already started at the earliest possible stage. The Personal Approach described in Subsection 2.1 is also illustrative of this shift. This shift is also observable in the area of international cooperation. Subsection 4.2 gives, for instance, the example of the organisation of joint task forces, which are focused on improving the identification process of the third-country national.

In this context, it is worth mentioning that staying in the Netherlands without a residence permit does not necessarily mean that the relevant third-country national’s stay in this country is illegal. To the contrary, specific categories of third-country nationals who are still awaiting a decision on their application for a residence permit, or who cannot be removed for medical reasons, have legal stay in the Netherlands. Therefore, residence without a residence permit cannot simply be considered equal to ‘illegal’ stay. In the past, this offered third-country nationals the possibility to submit such applications

161 Broeders (2009)
that were certain to fail, merely for the purpose of prolonging one’s stay or frustrating one’s removal from the Netherlands.

With regard to the impact of the EU on national policy on combating irregular migration, the following observations may be made. In a number of cases, the Dutch government has sought out the limits of EU policy and EU legislation. An example of this is Mobile Security Monitoring, where national law conflicts with European legislation, which has resulted in changes in national policy. With regard to asylum applications at Schengen external borders, European legislation – and more in particular the Return Directive – has also resulted in ‘continuous debates’, and a tension exists between national and European policies.

In other policy areas – for instance the Directive to combat illegal employment – the Netherlands operated in accordance with the Directive to a large extent even before the actual implementation was effected.

One of the study objectives explicitly included in the specifications to this report is the identification of those measures that have proved effective and proportionate in addressing irregular migration. Many measures have been evaluated extremely summarily or not evaluated at all. A possible reason for this may be that, in general, policy effects are often difficult to measure. A study into the effectiveness of policy measures to tackle irregular migration is extremely complicated. Many factors affect the scope of the population of irregular migrants. In numerous studies, also in the WODC study described in this report, the best possible result is an estimate of the population of irregular migrants. The measures undertaken in the countries of origin should preferably have a preventive effect. It is, however, not possible to indicate to what extent such measures actually contribute to the reduction of irregular migration.

With regard to measures or laws that have actually been evaluated, such as the Mobile Supervision of Aliens and the Experiment of Perspective, the results were not altogether positive for the efforts to combat irregular migration. Although the Benefit Entitlement (Residence Status) Act has proved to be effective with regard to the institutional exclusion realised, the question remains whether this will also result in more territorial exclusion. Another measure such as aliens detention, by the government considered as an essential instrument for effective return policy, is qualified in a study conducted by the IOM as ‘not having any effect on the willingness of irregular migrants to return’. Considering the fact that only few measures were evaluated, it is not possible to draw a conclusion about best practices.

Yet, in the literature, the total package of measures against irregular migration and illegal stay, in conjunction with factors such as the limited demand for labour and partners, and limits to local accommodation, is considered an ‘important counterforce’ to a possible growth of the population of irregular migrants. It is also said that ‘The scope of the number of irregular migrants in the Netherlands is limited’.

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163 Ibid p. 326.
The WODC report shows that since 2002, a strong, albeit estimated, decrease in the number of irregular migrants has occurred. An important conclusion from that report is that, in particular, the number of irregular European migrants observed has decreased. The researchers of the WODC attribute this to a significant degree to the enlargement of the European Union.

The regularisations implemented in the Netherlands, the last one in 2007, also constitute a pathway out of irregularity, and have undoubtedly influenced the scope of the population of irregular migrants.\textsuperscript{164} Such an adjustment to the ‘rules of the game’ is certainly not undisputed. Some politicians predicted that such a settlement would have a magnet effect.\textsuperscript{165} As far as we are aware, this assumption has never been confirmed by research.

The data presented in Subsection 6.1, which assumes a relationship with irregular migration, confirm the conclusion from the above-mentioned WODC report to a certain extent. Whereas Bulgaria and Romania still ranked in the top 10 of third-country nationals found to be illegally present in the Netherlands in 2005 and 2006, these nationalities have not returned in the statistics since 2007. This is hardly surprising, now that Bulgarians and Romanians are no longer considered third-country nationals since their accession to the EU. The estimates about the number of irregular migrants showed a decrease that was much less spectacular.

As a policy that would succeed in excluding all irregularity appears to be a utopia, we will have to take the phenomenon of irregular migrants into account in the future, as well. The developments in the scope of this group are difficult to estimate, as numerous factors are important in this context. In the literature, determinants of illegal stay (in particular, the demand for labour and the presence of settled migrants) are considered decisive for future developments.

\textsuperscript{164} It should be noted that most third-country nationals who were finally granted residence permits pursuant to this settlement had not been staying in the Netherlands illegally, but were often still engaged in the procedure and were awaiting a final decision on their initial or repeated application.

\textsuperscript{165} http://www.volkskrant.nl/vk/nl/2686/8innenland/article/detail/958613/2007/06/07/VVD-nooit-meer-een-pardonregeling.dhtml
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The European Migration Network (EMN) has been set up by the Council of the European Union. The EMN collects up-to-date, objective, reliable and where possible comparable information on migration and asylum. The EMN publishes reports on a variety of subjects in the field of asylum and migration.

The establishment of the EMN is consistent with the aim of the EU to establish an effective asylum and migration policy.

The EMN was established via Council Decision 2008/381/EC of 14 May 2008 and is financially supported by the European Commission.

www.emnnetherlands.nl