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An assistance system for labour migrant in The Netherlands? The possible emulation of the Czech programme to reduce irregular employment of Ukrainian nationals

Statements and Comments

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This paper aims to provide an overview of present Dutch ambitions in the field of labour immigration policy making. Subsequently it discusses whether within that framework there is scope for a programme like the Czech Republic's assistance system for labour immigrants with a view to reduce irregular employment of immigrants from the new EU-Member States or from 3rd countries. It concludes with some thoughts about the possible application of such a programme beyond the limits set by the present Dutch plans.

1. The course of Dutch labour migration

From the mid-1970s, the aim of Dutch migration law was to limit the arrival of newcomers as much as possible. Only in cases where a) Dutch national interests were at stake, b) international obligations stipulated otherwise, or c) in case of compelling humanitarian concerns, deviation from this rule was deemed permissible. During the 1990s and especially the new millennium it gradually became clear that restrictive measures might impede upon the Dutch ability to compete on the world markets. The Dutch economy, which has developed over the past three decades into a service based one, faces a growing demand for – especially - highly skilled workers.

In May 2006, the cabinet formulated its ideas on the modernisation of Dutch migration policy in a letter to the lower house of parliament. Among other things, the cabinet formulated its point of departure that, although the limiting of immigration was to be retained, this should be combined with selectiveness so that 'much more than was the case so far' migrants could contribute to society.⁴⁵ The admission of such migrants should furthermore be enabled in a decisive manner in accordance with 'society and the labour market's needs'.⁴⁶ In order to be able to achieve this, the cabinet was of the opinion that it was necessary to drastically simplify policy and practice. Whereas, in the system used thus far there were 26 residence objectives, the cabinet proposed reducing this number to five clearly distinguished categories.

⁴⁵ Tweede Kamer, vergaderjaar 2005-2006, 30573, nr.1, p.3.

⁴⁶ Ditto.

In the field of labour migration, the cabinet furthermore made the following concrete proposals:

- The Netherlands should be able to enter into competition with other countries when it comes to recruiting the higher educated - 'the battle for brains' – and was therefore to become attractive as a country to relocate to for those who could provide an important contribution to the culture and economy.
- As an element hereof the cabinet wished to create a scheme whereby migrants would be admitted on the basis of a points system. This would introduce an element which is – to the present day – a known factor in some classic immigration countries: the government draws up a catalogue of criteria a newcomer should ideally speaking meet and those who score highest are eligible for admittance.
- Labour migrants who could meet the demand in the middle or lower segment of the labour market could possibly be admitted according to the rules already valid as laid down in the *Wet Arbeid Vreemdelingen* [Foreign Workers Employment Act] (WAV) i.e. they will only be admitted if no workers are available from within the EU (prioritised supply).
- Furthermore, the cabinet considered it important to create a strict distinction between labour migrants that might possibly settle in the Netherlands permanently and those cases in which temporary residence should be strictly enforced. In the past, it often proved possible to prolong a temporary work permit thereby creating long-term residence. The cabinet was of the opinion that this was no longer desirable and for this reason 'non-prolongable residence permits were introduced with a maximum validity of one year, linked to a limited package of rights.'⁴⁷ Such a residence permit could, for example, allow the rotation system to function that was proposed by the *Adviescommissie voor Vreemdelingenzaken* [Advisory Committee on Aliens' Affairs]⁴⁸ and could thereby constitute a positive driver for the temporary migration of lower qualified labour migrants.⁴⁹ Circular migrants were also considered potentially positive by the countries of origin. This would constitute what is currently referred to as a 'win-win' situation, because it would not only benefit the Dutch labour market, but also have positive economic effects abroad.

⁴⁷ Op. cit. p.3,4.

⁴⁸ Adviescommissie voor Vreemdelingenzaken (2004) *Regulering en facilitering van arbeidsmigratie* Den Haag: ACVZ.

⁴⁹ Tweede Kamer, vergaderjaar 2005-2006, 30573, nr.1, p.15.

Table 1: schematic overview of the new admission system

	Column I	Column II	Column III	Column IV	Column V
Type	temporary exchange and labour	Standard study and labour	High-quality knowledge and labour	Family and family unit	Humanitarian reasons
Example	Au-pairs Seasonal labour	Studying and work through WAV	Knowledge workers and talents	Partners children	Refugees, victims of human trafficking
Residence objective	Demarcated and temporary	Linked to study or position	Free on the labour market	Uniting and reuniting families	Dutch interest not considered
Residence duration	Maximum of 1 year	Prolongable to permanent	Prolongable to permanent	Dependent on partner, after which permanent	Temporary unless otherwise essential
Miscellaneous	Limited rights	Family reunion and gaining of rights	Family reunion and gaining of rights	Gaining of rights	Family reunion and gaining of rights

Source: Tweede Kamer, vergaderjaar 2005-2006, 30573, nr.1, p. 29-34

In summary, the Dutch cabinet's proposals were based on a twofold ambition: 1) promoting the sustainable relocation and integration of knowledge migrants and 2) the strict enforcement of temporary residence for most other labour migrants.

1.1 Emulating the Czech Assistance Programme

The Czech scheme addresses labour market features that come close to (or actually are) trafficking. The Dutch labour market would seem to be much less affected by this crime, even though exploitation in varying extents is in evidence⁵⁰.

Even though the Dutch economy is highly formalized in nature, undeclared work nevertheless is one of its features. To a large extent undeclared work takes place in the medium and unskilled service sectors: i.e. construction, agriculture and horticulture, catering, and personal care. This is not by definition the employment of immigrants. Natives too, be they welfare dependant or already occupied elsewhere, are known to earn undeclared incomes.

In case irregularly employed workers are aliens, Dutch law does not allow regularization of such a worker. If a work place inspection brings to light the irregular employment of an alien, the employer is fined (€ 8,000 per case if first time offender) and the employee is to be expelled. There are no provisions for spontaneous labour seeking third country nationals. In effect, the Dutch system as yet is solely demand driven except for knowledge workers, EU nationals and long-term resident third country nationals as defined by the EU directive (2003/109/EC) (who are under obligation to meet the Dutch integration requirements).

In case an employer seeks to hire a worker from outside the EU, proof needs to be brought that reasonable efforts have been made to recruit a worker already legally residing within the Union

⁵⁰ Blanca Garcés-Masareñas & Jeroen Doornik (2007) *Exploratory Study on Trafficking and Labour Exploitation among West African Immigrants in the Netherlands* ILO Working Paper, Geneva: International Labour Office.

(except the new Member States Bulgaria and Rumania). If this condition is met, the Centre for Work and Income (CWI) issues a work permit. With this the migrant can apply for a residence permit. This is not usually considered to be an unduly complicated, costly or lengthy procedure - although some instances of farmers who could not quickly enough hire foreign workers to bring in their crops have been noted in the past.

Yet there is a substantial number of temp agencies that would more accurately be labelled gang-masters because they offer employers opportunities to hire cheap labour – i.e. remuneration below the minimum wages – or otherwise allow employers cutting some legal corners. This often involves the employment of aliens. The branch organisation ABU (Algemene Bond Uitzendondernemingen) estimates that around 6.000 of such agencies are active on the Dutch labour market⁵¹. ABU thus proposes to introduce a certification programme for all temp agencies thus weeding out the bad ones.

Within such a system little scope would seem to exist for a scheme like the Czech Assistance Programme as no serious alternatives for irregular employment can be offered to prospective migrants; be they Ukrainians or nationals of other third countries.

Nationals of Bulgaria and Romania, who are presently still banned from the Dutch labour market, at times will find themselves employed irregularly but for many the alternative is self-employment. In such a case they are free to offer their services in other European countries and many appear to do so in the Netherlands.

1.2 Possible alternatives

No concrete plans are currently being circulated for schemes that would introduce supply driven immigration into the Dutch labour market for semi- or unskilled jobs. This is different on the European level. Several proposals have been drafted by the European Commission to introduce such a mechanism in order to undercut the markets for irregular migration and illegal employment. Introducing such a system in the Netherlands arguably might have a few advantages, especially for those aliens who have been in the country in an irregular situation for a prolonged period of time (for instance failed asylum seekers who cannot return to their country of origin) without any other perspective of regularising their status. In many cases these people came to Europe with the aid of smugglers and have thus invested greatly into their chances for a new life. It might also reduce pressure on the refugee protection regime, as economically motivated migrants would not need to take recourse to an asylum application. Whether it would greatly benefit the economy overall is hard to predict but certain sectors would probably benefit from a flexible labour reserve. Obviously, without the strict enforcement of labour laws, this would create new possibilities for the exploitation of new migrants who are in more or less desperate need for employment after having invested in their travels. Offering information and counselling to prospective migrants before they take any final decisions about moving to Europe - or the Netherlands in particular – in search for work would further aptly address the latter problem.

⁵¹ <http://www.abu.nl/abu2/pagina.asp?pagetype=100598>