

Highlight of developments in Dutch labor immigration policies

Is Holland becoming an investor's paradise?

Jelle Kroes, January 2008

Entrepreneurs: Points based system

The long-awaited new policy for foreign entrepreneurs and investors was finally implemented on January 4, 2008. Applicants should now accumulate points in three categories: (1) personal qualities e.g. education, (2) business plan e.g. financial plan, organization, and (3) added value for the Dutch economy e.g. capital injection, job creation. A total minimum of 90 points is required, and not less than 30 points in each category - 100 points are available per category. The Ministry of Economic affairs is asked to allocate the points. The system is expected to be a great improvement as the old system suffered from a lack of transparency.

Knowledge migrants

Per 1 January 2008, the income level requirement for Knowledge migrants was indexed and set at Euro **34,881.-** gross salary per annum for those under the age of 30, and Euro **47,565.-** for those aged 30 or over. An important change is the one for foreign students who have graduated from Dutch Universities or Polytechnics. For this category, the salary requirement has been set to Euro **25,000.-** gross per annum (this used to be the Euro 34,881.- threshold). Furthermore, the "search period" for foreign graduates to find a job with such salary was also set from three months to 12 months. Decision times for spouses were cut down from three months to two weeks.

Intracompany transfer scheme

For the intracompany transfer scheme the threshold of 50,000.- gross annual salary (including per diems and various allowances such as travel costs and housing) was lowered to **47.565,-**, thus following the amount applied in the Knowledge migrant scheme (KMR). Noted that for the KMR salary requirement, per diems and other allowances are not taken into account, the intracompany transfer scheme - a work permit scheme - can still offer a solution in cases where the KMR salary requirement cannot be met.

Compliance

Since last year the Minimum wage Act contains an employer's fine of up to Euro 6,700.- for paying salaries under the statutory minimum wage (currently Euro 1,335.- per month before taxes plus 8% holiday pay). The fine is an *administrative sanction* and is imposed by the Labor Inspection - who also have the power (since 2005) to impose administrative fines of Euro 8,000.- for every employee without work authorization. Labor inspection audits have increased drastically since 2005. In the course of 2007 the chain responsibility for illegal employment has taken a wide scope, to the effect that e.g. building companies will be fined for foreigners employed illegally by a contractor, even if they have no actual control over the building site. In policy rules and case law gradually options are being developed to moderate the fines in specific circumstances, however these options are still very limited and the amount of Euro 8,000.- per employee should generally be considered as fixed and non-negotiable.

Europe: long-term residents from non-EU countries

The EU Directive on long-term residents is intended to protect long-term third country national residents in the European Union against removal and expulsion. The Directive, implemented in Dutch law in 2007, entitles third-country nationals to a new, permanent EC residence permit as a long-term resident after 5 years of legal stay. This status gives a beneficiary the possibility of staying in another EU Member State for periods of up to 6 years without losing their status in the initial EU state. Conditions vary from Member State to Member State. The Directive was implemented in Dutch law in the course of 2008. Dutch law requires as follows:

1. the legal residence must be of a non-temporary nature;
2. sufficient financial means
3. no public policy issues
4. adequate medical insurance

The costs for the permit are €201,-. Long-term residents from other Member States are exempt from the entry clearance visa requirement. However, in the Netherlands they continue to be subject to a work permit requirement for salaried employment during the first 12 months of their stay. Long-term residents who wish to be active in a self-employed capacity have free access to these activities.

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